



INADMISSIBILITY DECISION

Date of adoption: 9 April 2014

Case No. 2013-25

Milorad Rajovic

Against

EULEX

The Human Rights Review Panel sitting on 9 April 2014
with the following members present:

Ms Magda MIERZEWSKA, member
Mr Guénaél METTRAUX, Member
Ms Katja DOMINIK, Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Joanna MARSZALIK, Legal Officer
Mr Florian RAZESBERGER, Legal Officer

Having considered the aforementioned complaint, introduced pursuant to Council Joint Action 2008/124/CFSP of 4 February 2008, the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel and the Rules of Procedure of the Panel as last amended on 15 January 2013,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 22 November 2013.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, can be summarised as follows:

The alleged improper use of the complainant's property

3. The complainant is the owner of a company "Udarnik Komerc LLC", which owns a property in Pejë/Peć.
4. On 29 February 2000 and again on 8 July 2000, in accordance with the regulations governing socially and publicly owned property, the United Nations Interim Administration in Kosovo (UNMIK) authorised the OSCE Mission in Kosovo (OMiK) to occupy this property assuming that those premises were socially owned.
5. On 1 March 2000, OMiK took over the property as part of its regional offices within the municipality. The complainant states that after OMiK occupied the premises, he immediately informed them that the premises belonged to him and that a rental agreement should be drawn up. The complainant alleges that during this period and up to 1 November 2007, no rental agreement was established nor rent paid.
6. On 1 November 2007, the complainant's company signed a contract to rent the premises to OMiK, the terms of which were complied with thereafter. The complainant alleges, however, that he has been unable to enter into negotiations with OMiK regarding the occupation of the premises between 1 March 2000 and 1 November 2007 and the backdated rental payments owed to the company.

The complainant before the Human Rights Advisory Panel

7. The complainant introduced a complaint before the Human Rights Advisory Panel (HRAP) on 7 September 2009, which was registered with the HRAP on 14 September 2009.
8. On 31 January 2013, the HRAP declared the case admissible. On 6 June 2013, in its decision on the merits of the case, the HRAP concluded that "*although OMiK represented a distinct pillar of the international presence in Kosovo, responsibility for its overall activities remained with UNMIK*" (see par. 29 of HRAP case no. 308/09, 6 June 2013). The HRAP further concluded that "*the occupation of premises in Pejë/Peć by OMiK between 1 March 2000 and 1 November 2007 prevented the complainant from dealing with his property as he sought fit and thereby constituted an interference with Article 1 Protocol no. 1 of the European Convention on Human Rights (ECHR)*" (see par. 34 of HRAP case no. 308/09, 6 June 2013) and that there had been a violation thereto (see par. 40 of HRAP case no. 308/09, 6 June 2013).

9. The HRAP recommended, *inter alia*, that UNMIK should take appropriate steps vis-à-vis the OSCE to provide redress to the complainant for pecuniary damages.
10. The complainant submits that on 23 May 2013 he received a letter from the Head of OMiK, indicating that there is an obligation on the OSCE to pay compensation for the use of the property. However, further verification regarding the ownership of the property was sought from the complainant.
11. On 24 September 2013, the complainant received a letter from the Head of the Office of Legal Affairs of OMiK, confirming that the OSCE remains interested in negotiating a final settlement with the complainant. However, it was indicated that the OSCE is not in a position to pay a claim in the amount requested by the complainant.

III. COMPLAINTS

12. The complainant, in essence, requests from the Panel that his case be resolved, to ensure that OMiK is held accountable, to enable access to local courts and to mediate a fair agreement between the OSCE and the complainant.

IV. THE LAW

13. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights which set out minimum standards for the protection of human rights which must be guaranteed by public authorities in all democratic legal systems.
14. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria as formulated in the Accountability Concept mentioned above and set out in Rule 29 of the Panel's Rules of Procedure.
15. According to Rule 25, paragraph 1, of the Rules of Procedure the Panel can examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.
16. The Panel notes that the complainant's grievance pertains to his dispute with the OSCE in general and OMiK in particular.


17. It has not been shown that EULEX was involved in any capacity in this matter (compare there also Gashi against EULEX, 2013-20, 26 November 2013, at par. 9; U. against EULEX, 2013-19, 27 November 2013 at par. 14-15 and Susaj against EULEX, 2013-16, 30 August 2013 at pars. 9-10).
18. It follows that the present complaint falls outside the ambit of the executive mandate of EULEX Kosovo and, consequently, outside of the competence of the Panel, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, finds the complaint falls outside of the Panel's jurisdiction within the meaning of Article 29 (d) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member