



INADMISSIBILITY DECISION

Date of adoption: 27 May 2014

Case No. 2014-07

Fitore Rastelica

Against

EULEX

The Human Rights Review Panel sitting on 27 May 2014
with the following members present:

Ms Magda MIERZEWSKA, Presiding 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 10 February 2014.

II. THE FACTS

2. The complainant has four children with S.R., who currently lives in Germany.
3. She submits that, on 23 December 2010, she was forced to leave her marital home by her husband and his family. Her children now live with their paternal uncle, while she lives with her mother.
4. On 11 June 2012, the Municipal Court of Podujevë/Podujevo, sitting as a panel of a single Kosovo judge, ordered that S.R. was to pay a monthly alimony of EUR 600 (six hundred euros) to the complainant and EUR 130 (one hundred and thirty euros) to their children. It further granted the complainant temporary sole custody of the children and suspended S.R.'s parental rights.
5. On 23 January 2013, the Municipal Court of Podujevë/Podujevo, sitting as a panel of a single Kosovo judge, gave another decision and ordered S.R. to pay the complainant EUR 450 (four hundred fifty euros) monthly to cover the costs of house rent and food.
6. She maintains that the Municipal Court's decisions have not been enforced. Moreover, she submits that EULEX was involved in the proceedings, even "rendered the first decision", but she provides no evidence in support of her allegations.

III. COMPLAINTS

7. Without invoking any provisions of instrument for human rights protection, the complainant submits that her rights have been violated as the court's decisions have not been executed. She appears to complain of a violation of her right to access to court.

IV. THE LAW

8. 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 (the Convention) 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.
9. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.

10. 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.
11. The Panel notes that the complainant's grievance pertains to the alleged non-enforcement of final decisions rendered by Kosovo courts. It is recalled in this respect that the right to a fair hearing, guaranteed under Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way it embodies the "right to a court", of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. However, that right would be illusory if a legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6 § 1 should describe in detail the procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions. To construe the right to the fair hearing as being concerned exclusively with access to court and the conduct of proceedings would indeed be likely to lead to situations incompatible with the principle of the rule of law. Execution of a judgment given by any court must therefore be regarded as an integral part of the "trial" for the purposes of Article 6 (see *Burdov v. Russia*, no. 59498/00, § 34, ECHR 2002-III; *Hornsby v. Greece*, 19 March 1997, p. 510, § 40, Reports of Judgments and Decisions 1997-II). 81. An unreasonably long delay in the enforcement of a binding judgment may therefore breach the right to a fair hearing. The reasonableness of such a delay is to be assessed having particular regard to the complexity of the enforcement proceedings, the applicant's own conduct and that of the competent authorities, and the amount and nature of the court award (see *Raylyan v. Russia*, no. 22000/03, § 31, 15 February 2007).
12. However, the Panel observes that despite the applicant's submissions, it has not been shown that EULEX was involved in any capacity in this matter.
13. The Panel has repeatedly found that, according to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo. It has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. The fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, among many other authorities, *E against EULEX*, 2012-17, 30 August 2013, § 23; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, § 13). Furthermore, the complainant has not demonstrated that the Kosovo courts failed to fully and properly address a human rights

issue that she had validly raised before them (*Z against EULEX*, no. 2012-06, 10 April 2013 § 34; *Krasniqi against EULEX*, no. 2014-04, 27 May 2014, §§ 15-16).

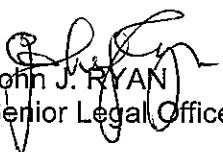
14. It follows that the present complaint falls outside the ambit of the executive mandate of EULEX Kosovo and, consequently, outside of the competence of the Panel, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint as it falls outside its 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