



INADMISSIBILITY DECISION

Date of adoption: 4 February 2014

Case No. 2013-15

Gani Zeka

Against

EULEX

The Human Rights Review Panel sitting on 3 and 4 February 2014 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Ms 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 17 June 2013.

II. THE FACTS

2. The complainant and his brothers B.Z. and R.Z. are co-owners of several plots of land in Lipjan/Lipljan municipality.
3. On 12 March 2009, the complainant and B.Z. filed a claim with the Municipal Court of Lipjan/Lipljan seeking a declaration that, together with R.Z., they were co-owners of a building constructed on their common property.
4. By virtue of the decision of the President of the Assembly of EULEX Judges of 16 September 2010, the case was assigned to a EULEX judge for consideration, in accordance with Article 5.1 of the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law on Jurisdiction).
5. On 14 March 2011, the court allowed the claim brought by the complainant and B.Z. R.Z. lodged an appeal against the first-instance judgment with the District Court of Prishtinë/Priština.
6. On 10 May 2012, at the request of the Kosovo judge of the District Court of Prishtinë/Priština, the President of the Assembly of EULEX Judges assigned the case to a mixed panel, composed of one international and two Kosovo judges. He found that to avoid any appearance of bias on the part of the local judiciary and with the aim to reduce tensions among the parties, it was appropriate and in the interest of the administration of justice, within the meaning of section c) of Article 5.1 of the Law on Jurisdiction that the case was assigned to a mixed panel in the appellate procedure.
7. On 30 May 2013, the Court of Appeals quashed the contested judgment and remitted the case to the first-instance court for reconsideration. The court found that there were substantial violations of the procedure, erroneous and incomplete determination of the facts of the case and erroneous application of substantive law.
8. The proceedings are currently pending before the first-instance court.

APPLICABLE LAW

Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo

Article 5 Jurisdiction of EULEX judges for civil cases

5.1 EULEX judges assigned to civil proceedings will have the authority to select and take responsibility, in agreement with the President of the Assembly of the EULEX Judges and according to the modalities on case

selection and allocation developed by the Assembly of the EULEX Judges, over:

a) cases falling within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, including cases that have been referred to another court pursuant to the applicable law;

b) cases falling within the jurisdiction of any court of Kosovo regarding appeals on decisions of the Kosovo Property Claims Commission according to the applicable law;

c) any new or pending property related civil cases, including the execution procedures, falling within the jurisdiction of any court in Kosovo, if:

(i) there is a grounded suspicion of attempts to influence the impartiality or independence of the local judiciary; or

(ii) there is a grounded suspicion that the local judiciary is not willing or unable to properly deal with the case; or

(iii) there is a grounded suspicion of a serious violation of the fairness of the proceeding.

III. COMPLAINTS

9. The complainant, without invoking any specific provisions of international instruments for the protection of human rights, submits that the court proceedings have been excessively long. It may be inferred from the tenor of the complainant's submissions that he alleges that his right to a trial without undue delay has been violated.

IV. THE LAW

10. 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.
11. 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.
12. According to Rule 25, paragraph 1 of the Rules of Procedure the Panel can examine complaints relating to human rights violations by

EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.

13. According to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot 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 Panel has already repeatedly found that even the fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court its forms part of the Kosovo judiciary (see, among many other authorities, no. 2012-02; § 21; *Z against EULEX*, no. 2012-06, § 31; *E against EULEX*, 2012-17, § 23).
14. It follows that the issues raised by the complainant in the present case do not fall within the ambit of the Panel's mandate, as formulated in Rule 25 para.1 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