



INADMISSIBILITY DECISION

Date of adoption: 29 February 2016

Case No. 2014-36

Z.A.

Against

EULEX

The Human Rights Review Panel sitting on 29 February 2016 with the following members present:

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

Assisted by
Ms Joanna MARSZALIK, Legal Officer
Mr Paul LANDERS, 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 19 August 2014. The complainant requested not to have his identity disclosed. Having considered the matter, in particular the nature of the allegations being made, the Panel is satisfied that the request should be granted.

II. THE FACTS

2. The facts of the case as submitted by the complainant can be summarised as follows.
3. On 17 September 2010, the complainant submitted a request for recognition of his status as the Kosovo Liberation Army (KLA) veteran with the Pejë/Peč branch of the Organisation of KLA Veterans.
4. On 12 October 2010, the complainant filed an appeal with the Central Organisation of KLA Veterans in Pristina, complaining about the inactivity of the local branch.
5. On 13 December 2010, the complainant filed a petition with the Supreme Court of Kosovo in Pristina and submitted that he had not received a decision from the Central Organisation of KLA Veterans.
6. On 28 December 2010 and on 29 January 2011, the complainant submitted appeals to the Kosovo Judicial Inspectorate against the inaction of the Supreme Court.
7. On 9 February 2011, the complainant received a letter from the Office of Disciplinary Counsel of the Kosovo Judicial Council informing him that his appeal did not meet the admissibility criteria.
8. On 9 February 2011, the complainant made a further request to the Kosovo Judicial Council requesting that his appeals of 28 December 2010 and 29 January 2011 be examined.
9. On 3 March 2011, the complainant submitted the referral to the Constitutional Court of the Republic of Kosovo.
10. On 20 April 2012, the Constitutional Court rejected the complainant's referral as inadmissible.
11. On 25 March 2013, the complainant filed a complaint against the Organisation of KLA Veterans with EULEX. On 7 April 2013, he received a reply from the Office of the EULEX Chief of Staff. He was informed that the matter did not fall within jurisdiction and the responsibilities of the EULEX Mission.

III. COMPLAINTS

12. The complainant invokes a number of provisions of the Constitution of Kosovo, the Declaration on Human Rights, the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights.

13. In substance, he requests to be granted the KLA veteran status.

IV. THE LAW

14. 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 to be guaranteed by public authorities in all democratic legal systems.
15. 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.
16. 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.
17. The Panel notes that the complainant's grievances concern a dispute between him and the Organisation of KLA Veterans regarding his veteran status. The complainant unsuccessfully tried to bring his case before the Kosovo courts. According to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel 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. Consequently, the Panel cannot influence the outcome of judicial proceedings or the speed with which the pending complaints are examined by the Kosovo courts. Even where EULEX judges take part in the proceedings, it does not detract from the fact that this court forms part of the Kosovo judiciary (see, among many other authorities, [Gani Zeka against EULEX](#), 2013-15, 4 February 2014, § 13; [Shaban Kadriu against EULEX](#), 2013-27, 27 May 2014, § 17).
18. The complaint submitted to EULEX, referred to in par. 11 above, did not trigger the Panel's jurisdiction to examine the case. First, the issue raised in that letter does not appear, on its face, to fall within the scope of the Mission's executive mandate. Secondly, when replying to the complainant's letter, the EULEX Chief of Staff did not exercise executive authority within the meaning of the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel as he merely informed the complainant that the matter did not fall within the jurisdiction of EULEX (compare, for instance, [Ajet Kaciu against EULEX](#), 2014-26, 2 February 2015, § 19 or [Shaban Kadriu](#), quoted above, § 18).

19. It follows that the complaint falls outside of the ambit of the Panel's mandate, 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,


Joanna MARSZALIK
Legal Officer




Magda MIERZEWSKA
Presiding Member