



INADMISSIBILITY DECISION

Date of adoption: 15 June 2015

Case No. 2014-41

Liridona Mustafa - Sadiku

Against

EULEX

The Human Rights Review Panel sitting on 15 June 2015 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

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 12 September 2014.

II. THE FACTS

2. The complainant is a widow of Mr Faton Sadiku, who was a EULEX employee since 2009 until the time of his death.
3. The facts, as submitted by the complainant can be summarised as follows.
4. Mr Sadiku fell ill on 12 February 2014 and sought medical assistance at the EULEX Medical Unit. He was diagnosed with flu and given medical advice.
5. On 17 February 2014, when his condition did not improve, Mr Sadiku again went to the EULEX Medical Unit. He was prescribed flu medicine.
6. On 20 February 2014, he visited the Medical Unit again. Seeing that his condition had deteriorated, the EULEX medical doctors decided to transport him to a hospital in Skopje, FYROM. The complainant was not consulted about this decision.
7. During her husband's stay in the hospital in Skopje, the complainant attempted to receive detailed information about his condition both from the medical staff there and from EULEX, but to no avail.
8. Mr Sadiku died in the Skopje hospital on 16 March 2014.
9. After his death, the complainant requested the EULEX Medical Unit to provide her with her husband's medical files. On 19 August 2014, the Chief of EULEX Medical Unit informed her that EULEX followed strict data protection rules and asked her to produce proof that she was a legal successor or a legal representative of the deceased's heirs. She also informed the complainant that EULEX did not possess her husband's medical file from the hospital, since he was a private patient there.

III. COMPLAINTS

10. The complainant submits that EULEX failed to provide proper medical care to her husband and, consequently, violated his right to life, guaranteed by Article 2 of the on the Protection of Human Rights and Fundamental Freedoms (the Convention). Moreover, she alleged that EULEX has failed to investigate the circumstances of Mr Sadiku's death, which resulted in violation of Article 3 of the Convention (freedom from torture, inhuman or degrading treatment).
11. She further submits that the failure of EULEX to inform her about the cause of her husband's death constitutes inhuman treatment, in breach of Article 3 of the Convention.

IV. THE LAW

12. 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.
13. 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.
14. The Panel notes that, in accordance with well-established case-law of the European Court of Human Rights, close relatives of a person whose death is alleged to engage the responsibility of the authorities can themselves claim to be indirect victims of the alleged violation of Article 2 of the Convention (see, *Velikova v. Bulgaria* (dec.), no. 41488/98, 18 May 2005; *Keenan v. the United Kingdom*, no. 27229/95, ECHR 2001-III; *Lambert and others v. France*, no. 46043/14, 5 June 2015, §§ 89-90; *Mezhiyeva v. Russia*, no. 44297/06, 16 April 2015, § 55), The complainant therefore has the standing of an indirect victim in respect of her husband's death. Furthermore, she can also claim to be a victim in respect of the alleged violations of her own rights.
15. The Panel will first consider the complaint insofar as it pertains to the alleged violations of the rights of the complainant's husband.
16. Pursuant to Article 25, paragraph 1, of its Rules of Procedure, the Panel does not have jurisdiction *ratione personae* in relation to alleged violation of rights of EULEX Kosovo personnel. The same provision limits the Panel's jurisdiction, *ratione materiae*, to these activities of the Mission falling within its executive mandate. For both of these reasons, the Panel is not competent to deal with the complaint insofar as it pertains to the alleged violation of Mr Sadiku's rights. The Panel recognises, however, the distress and anguish that his death must have caused his wife and relatives.
17. As regards the alleged violation of the complainant's rights, the Panel notes that the complainant's grievance relates to alleged negligence on the part of the medical staff of EULEX.
18. The Panel reiterates that, 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. The

Panel considers that actions or omissions of medical professionals employed by EULEX, whose duty is to provide medical assistance to the staff, cannot be said to fall within the ambit of the executive mandate of EULEX Kosovo. Consequently, while sympathising with the complainant's suffering, the Panel cannot but consider that this complaint is outside of its jurisdiction.

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