

INADMISSIBILITY DECISION

Date of adoption: 11 April 2018

Case No. 2016-35

Ndërmarrja Hoteliere Turistike Iliria Deçan

Against

EULEX

The Human Rights Review Panel sitting on 11 April 2018 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Mr Jorge MARTINS RIBEIRO, Substitute 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 6 December 2016.
2. The complaint concerns proceedings before the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatisation Agency Related Matters ("Special Chamber") and other entities.
3. Ms Bednarek is a Panel Member and also a EULEX judge serving at this Special Chamber. Therefore, she recused herself from the case due to an appearance of conflict of interests and did not participate in

the consideration of the case, in accordance with Rule 12(1) (1) of the Panel's Rules of Procedure. She was replaced by Mr Jorge Martins Ribeiro, the substitute Member of the Panel.

II. THE FACTS

4. The complainant has made extensive and detailed factual submissions regarding the nature of this matter. The Panel has considered all relevant information thus submitted. However, with a view to ensuring conciseness and clarity, the Panel has limited its presentation of the facts of the case to those immediately relevant to the resolution of this case.
5. The facts of the case, as submitted by the complainant, and as apparent from documents available to the Panel, may be summarized as follows:
6. The complainant is a Socially-Owned Enterprise (SOE) located in Dečan/Dečane.
7. On 28 June 1946, the then Socialist Republic of Yugoslavia expropriated several parcels of land from the Visoki Dečani Monastery (the Monastery).
8. On 5 November 1997, the Government of the Republic of Serbia donated a part of the expropriated land back to the Monastery. The parcels in question had been owned by the complainant and another SOE, APIKO. This resulted in a claim being lodged before the Courts in April 2000 against the Monastery by the complainant and APIKO. Litigation in relation to this matter continued until 2008, when it eventually came before the Special Chamber. Proceedings continued thereafter including after the entry into force of Law No. 04/L-033 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, which resulted in the establishment of the Specialized Panels of the Special Chamber before which the case was dealt with. In that context, Panels of the Special Chamber rendered successive decisions along the proceedings.
9. The matter eventually came before the Constitutional Court of Kosovo on 3 November 2015, when the Visoki Dečani Monastery submitted a referral to that Court, requesting a constitutional review of the decisions of the Appellate Panel of the Special Chamber.
10. On 20 May 2016, the Constitutional Court rendered its judgment in the matter. It found the referral to be admissible and held that there had been a violation of Article 31 of the Constitution, in conjunction with Article 6 of the European Convention on Human Rights. It also declared the two challenged decisions null and void and held that the preceding judgments of the Ownership Panel of the Special Chamber dated 27 December 2012 to be final and binding.
11. On 31 October 2016, the Constitutional Court declared the complainant's and APIKO's further request for review of "legality and constitutionality" of the judgment dated 20 May 2016 inadmissible.

III. COMPLAINTS

12. The complainant submits that the judgment of the Constitutional Court was unfair and in contradiction of the legal order of Kosovo. It alleges violation of Article 6 of the European Convention on Human Rights.

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 (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.
14. 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.
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 relates to the proceedings before the Special Chamber of the Supreme Court of Kosovo on Kosovo Privatisation Agency Related Matters and before the Constitutional Court.
17. 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 at any level. Consequently, the Panel cannot influence or reverse the outcome of judicial proceedings. Even where EULEX judges take part in the proceedings, conducted before the Kosovo courts, as in the present case, this fact does not detract from the fact that these courts form part of the Kosovo judiciary (see, *inter alia*, HRRP, *Z.A. against EULEX*, 2014-36, 29 February 2016, par. 17; *K.P. against EULEX*, 2014-31, 21 April 2015, par. 13; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, par. 13).

FOR THESE REASONS,

The Panel, by a majority, 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