



INADMISSIBILITY DECISION

Date of adoption: 7 March 2017

Case No. 2015-11

Zvonimir Jovanovic

Against

EULEX

The Human Rights Review Panel sitting on 7 March 2017 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Elka ERMENKOVA, Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Noora AARNIO, 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 5 August 2015.

II. THE FACTS

2. The following facts appear from the information which the complainant has provided:
3. On 18 June 1999, the complainant purchased from the Yugoslav Army an apartment in which he lived for an unspecified period of time.
4. The ownership of the complainant over the property was contested by a third party. As a result, the complainant filed a request before the Kosovo Property Agency and, on 19 December 2008, the Kosovo Property Claims Commission (KPCC) decided the case against the complainant's request and determined that rightful ownership belonged to the third party.
5. The complainant filed a timely appeal against this decision.
6. On 19 May 2011, the Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo, sitting as a mixed panel of Kosovo and international judges, rejected the appeal.
7. The complainant states that thirty (30) other former residents of the building have the same documentation of ownership as he has and have thereby acquired ownership of their apartment based on these documents. He submits that his ownership was not recognized because the third party who questioned his ownership of the apartment "was a member of KLA and his wife works in the Court in Urosevac/Ferizaj".

III. COMPLAINTS

8. The complainant submits that his rights to protection of property and to equality before law have been violated. The complaint also appears to suggest bias or lack of impartiality on the part of the court.
9. Whilst the complainant did not refer to any particular provision, it is apparent from the nature of the complaint that the relevant provisions are Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and Article 1 of Protocol No. 1 to the Convention.

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 (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.

11. Before considering the complaint on its merits the Panel has to decide whether to proceed with 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 alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.
13. The Panel notes that the complainant's grievance pertains exclusively to proceedings before the Kosovo Property Agency, Kosovo Property Claims Commission (KPCC) and the Kosovo Property Agency Appeals Panel.
14. The Panel has repeatedly determined that, according to Rule 25 paragraph 1, of its Rules and pursuant to the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo. The Panel 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, *inter alia*, *Fahri Rexhepi against EULEX*, no. 2014-19, 10 November 2014, para. 12; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, para. 13). Therefore, the Panel cannot in principle review decisions of EULEX judges as such.
15. The Panel has already held, however, that in certain circumstances the Panel's jurisdiction would cover decisions and acts of judicial authorities as such, in particular where credible allegations of human rights violations attributed to EULEX judges have not been fully addressed by the competent judicial authorities in the appellate proceedings (see, e.g., *Milica Radunovic against EULEX*, no. 2014-02, 12 November 2015, para. 17; *Tomë Krasniqi against EULEX*, no. 2014-04, 27 May 2014, para. 15).
16. The complaint pertains to proceedings before the Kosovo judiciary and therefore falls in principle beyond the jurisdiction of the Panel.
17. Furthermore, regarding the complainant's claim of bias and/or lack of impartiality, the complainant failed to raise this issue before the courts and thus failed to allow the courts to address his claim. Therefore, the court may not be said to have failed to deal with this matter. Thus, the Panel cannot evoke its residual jurisdiction as outlined above in paragraph 15.

18. It follows that the complaint does not fall within 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 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