



INADMISSIBILITY DECISION

Date of adoption: 19 June 2019

Case No. 2018-03

E.V.

Against

EULEX

The Human Rights Review Panel sitting on 19 June 2019 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Mr Petko PETKOV, Substitute member

Assisted by:
Mr. Ronald Hooghiemstra, 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 2019,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was submitted to the Panel on 10 August 2018 and registered on 16 August 2018.
2. On 8 February 2019, the complainant was requested to provide additional documentation in support of her complaint. In particular, the complainant was requested to provide information regarding her communications with EULEX in respect of her complaint.
3. On 12 February 2019, the complainant submitted additional documents in support of her complaint.

II. COMPOSITION OF THE PANEL

4. Following the resignation of one of its permanent members, the Panel will sit in this matter with only two members in accordance with Rules 11 and 14 of the Panel's Rules of Procedure.
5. The complainant requested not to have her 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.

III. THE FACTS

6. The facts, as submitted by the complainant, can be summarized as follows:
7. The complainant states that she fled Mitrovicë/Mitrovica with her family in 1999. Allegedly, since that time the family property in Mitrovicë/Mitrovica has been usurped.
8. On an unspecified date, the complainant submitted a claim to the Housing and Property Directorate (HPD) to recover possession of the property.
9. On an unspecified date, the complainant was awarded possession of the property. By Order DS-300897, the HPD ordered the eviction of the illegal occupants of the property.
10. Following the eviction, the property was apparently re-occupied. The new occupants of the property apparently presented the HPD with a contract of purchase dated 30 May 2006.
11. On an unspecified date, the complainant informed the HPD that the contract of purchase was forged and requested the HPD to order the eviction of the new occupants. On 10 October 2007, the HPD informed the complainant in writing that the HPD was not competent to deal with the case and referred the complainant to the regular courts.
12. On 8 December 2006, the complainant filed a law suit at the Basic Court of Mitrovica against the usurpers of her property and filed a criminal complaint with the Basic Prosecution of Mitrovica against the usurpers of her property.
13. On an unspecified date, the new occupants sold the property to a third party and the construction of apartments commenced.
14. On 1 March 2017, the complainant made further submissions with respect to her criminal complaint. Apparently, this criminal complaint was still pending before the Basic Court in Mitrovica.
15. On 25 August 2017, the complainant informed EULEX about the lack of progress in the criminal prosecution and requested the Mission's assistance.
16. On 14 September 2017, EULEX informed the complainant that her complaint did not come within the mandate of EULEX, and that she should address her complaints to the relevant Kosovo authorities.

17. On 15 August 2018, the complainant addressed EULEX by email requesting support to the prosecution of the individuals and institutions who had allegedly conspired to usurp her property.
18. On 20 September 2018, EULEX informed the complainant by email that the mandate of EULEX had changed in June 2018, and that it was no longer competent to pursue criminal investigations, prosecutions and trials.

IV. COMPLAINTS

19. The complainant submits that by their failure to act properly to pursue her complaints the Kosovo prosecution, courts and cadastre have breached her human rights. The complainant is requesting from EULEX that it initiate or take legal action against the relevant Kosovo institutions and prosecute the individuals who have allegedly usurped her property. This would seem from the nature of the complaint that the complainant is alleging a breach of her rights under Article 1 of Protocol 1 to the European Convention of Human Rights and similar provisions contained in other applicable international instruments.

V. THE LAW

20. 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.
21. 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.
22. 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.
23. The Panel notes that the complainant does not point to nor submitted evidence of a culpable failure attributable to EULEX. It is clearly visible from the complaint that EULEX was in any way not involved in the alleged violations of the complainant's rights. Nor has it been established that the Mission was competent over the matter and arbitrarily failed to involve itself in this matter.
24. It follows that the present complaint falls outside the ambit of the executive mandate of EULEX Kosovo and, consequently, outside of the competence of the Panel, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo. The complaint is also manifestly ill-founded.

FOR THESE REASONS,

The Panel holds, unanimously, that the complaint does not come within the scope of jurisdiction of the HRRP within the meaning of Rule 29, 1(d) of its Rules of Procedure, and is manifestly ill-founded in accordance with Rule 29, 1(e) of its Rules of Procedure.

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel:

Mr Guénaël METTRAUX,
Presiding Member

Mr Petko PETKOV
Substitute member