



INADMISSIBILITY DECISION

Date of adoption: 12 February 2020

Case no. 2016-18

P.K.

Against

EULEX

The Human Rights Review Panel, sitting on 12 February 2020 with the following members present:

Mr Guénaël METTRAUX, Presiding Member
Ms Anna BEDNAREK, Member
Ms Anna AUTIO, Member

Assisted by:
Mr Ronald HOOGHMSTRA, 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 11 December 2019,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint in this case was registered on 30 June 2016.
2. The complainant requested not to have her identity disclosed. Having considered the matter, in particular the nature of the allegations being made, the Human Rights Review Panel ("the Panel") is satisfied that the request should be granted.
3. By letter of 1 July 2016, the Panel informed the Mission that this case had been registered.

4. On 28 June 2017, through the representative for Serb families of the Missing Persons Resource Center (MPRC), an NGO based in Pristina, the Panel requested the complainant to provide additional information. The complainant did not provide any response.
5. On 8 December 2017, the Panel transmitted a Statement of Facts and Questions to the Head of Mission (HoM), EULEX Kosovo, inviting the Mission to submit answers and written observations on the complaints no later than 26 January 2018.
6. By letter of 19 January 2019, the Mission was requested to provide answers to the questions by 16 February 2019.
7. By letter of 8 April 2019, the Mission was again requested to provide answers to the questions as soon as practical.
8. By letter of 20 June 2019, the Panel informed the complainant that it was still in the process of dealing with her complaint.
9. By letter postmarked 23 September 2019, the complainant provided documentary proof of her identity and relationship to the victim.
10. On 18 October 2019, the Acting HoM submitted his observations on the case.
11. On 21 October 2019, the Acting HoM's letter was submitted for information to the complainant, who was given until 22 November 2019 to make any further submissions in response to that letter.
12. The complainant did not avail herself of the opportunity to make additional submissions.

II. FACTS

13. On 2 August 1999, the complainant's father went to visit the grave of his son at the Serbian Orthodox cemetery in the southern part of Mitrovica. He was not seen or heard of again.
14. On unspecified dates, the complainant reported the disappearance of her father to the KFOR military, the Red Cross and the Center for Peace and Tolerance of the Republic of Serbia.
15. On 9 February 2000, a body was found in Mirash/Miraš village.
16. On 30 March 2000, the International Committee of the Red Cross (ICRC) opened a tracing request for the complainant's father.
17. On 21 November 2002, the Office on Missing Persons and Forensics (OMPF) of the United Nations Mission in Kosovo (UNMIK) conducted an autopsy on the body that was found on 9 February 2000. The autopsy listed the cause of death as "*gunshot injuries to head and chest*".
18. On 22 June 2003, the Missing Persons Unit of UNMIK issued an Identification Certificate for the complainant's father.
19. On 23 June 2003, the Office of the Medical Examiner, Department of Justice of UNMIK, issued a death certificate for the complainant's father. The cause of death was verified by an autopsy and was recorded as "*gunshot injuries to head and chest*".

20. On 28 July 2003, the OMPF confirmed the identification of the body through DNA analysis. The Certificate on Confirmation of Identity lists the victim's mother and two sisters as blood donors for DNA analysis, but does not list the complainant.
21. On 13 August 2003, the mortal remains of the complainant's father were handed over to the complainant by the Office on Missing Persons and Forensics of UNMIK.

III. COMPLAINT

22. The complainant claims that on an unspecified date she gave blood to the Office on Missing Persons and Forensics (OMPF) of UNMIK for the purpose of DNA analysis for the identification of her father. However, the Certificate on Confirmation of Identity only lists her father's mother and two sisters as the sources of blood for DNA analysis.
23. The complainant alleges that following the identification of her father's body in 2003, the OMPF denied that her father had a daughter. Since that time, the complainant alleges that her father's mother and sister have been denying that she is her father's daughter. The complainant claims that this has caused her significant distress.
24. The complainant requests EULEX to provide her access to the blood sample that she gave to the OMPF and to secure a DNA analysis in order to prove that she is in fact the biological daughter of her father.

IV. SUBMISSIONS OF THE PARTIES REGARDING ADMISSIBILITY

Head of Mission ("HoM")

25. In his submissions, the HoM indicates that, the complainant's main request to the Mission is that EULEX helps her find the DNA analysis of the blood sample that she claims she provided to identify her father, with a view to proving that she is the biological daughter of this man. This request cannot be met by EULEX and should be addressed to the competent authorities in Pristina and Belgrade. The collection of blood samples and the identification of the body were done by relevant authorities before the EULEX Mandate began in December 2008. Any alleged mistakes in the processing of the blood samples cannot be attributed to EULEX in any manner.
26. In light of the above, and having regard to the specific request of the complainant, the Mission deems that the request should be declared manifestly ill-founded or inadmissible *ratione materiae*.

V. THE PANEL'S ASSESSMENT

27. 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 for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.

28. Before considering the complaint on its merits, the Panel has to decide whether to proceed with the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
29. 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.
30. The Panel notes that the subject matter of the complaint is the verification of the complainant's kinship with her father for which purposes she seeks to retrieve blood samples said to have been taken from her.
31. The complainant does not mention what conduct of the Mission would be relevant to her complaint or the basis on which she suggests that such conduct could be said to form part of the Mission's executive mandate. Nor has the complainant pointed to or submitted evidence of a culpable failure attributable to EULEX.
32. Moreover, the complaint pertains to the actions of the Office on Missing Persons and Forensics (OMPF) of UNMIK, which pre-dated EULEX and whose actions cannot be attributed to the Mission.
33. Based on the above, it is apparent that EULEX was not in any way involved in any activities relevant to the present complaint.
34. Furthermore, as the HoM makes clear in his submissions, EULEX is not competent with respect to the complainant's request for access to blood samples or DNA evidence held by local authorities. Nor has it been established that the Mission was otherwise competent over this matter and arbitrarily failed to involve itself in this matter.
35. 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. Therefore, the complaint falls outside the Panel's competence and is 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,

Guénaél Mettraux
Presiding Member

Anna Bednarek
Member

Anna Autio
Member