



DECISION and FINDINGS

Date of adoption: 12 November 2014

Case No. 2013-03

Goran Becic

Against

EULEX

The Human Rights Review Panel sitting on 12 November 2014, with the following members taking part:

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
Mr Florian RAZESBERGER, 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 with the Panel on 27 May 2013.
2. On 7 June 2013, the Panel decided to give notice of the complaint to the Head of Mission (HoM) of EULEX Kosovo, inviting him to submit written observations on the complaint. The observations were received on 15 August 2013. They were subsequently communicated to the complainant for comments. The complainant provided his

comments on 8 September 2013 and sent additional comments on 12 September 2013. Those comments were sent to the HoM for information on 10 October 2013.

3. On 27 November 2013, the Panel decided to communicate to the HoM an expanded statement of facts, inviting him to submit additional written observations. On 9 December 2013, the complainant informed the Panel about further developments in his case. On 26 December 2013, the HoM submitted his additional observations. The complainant submitted further comments on 9 February 2014 and on 27 May 2014.
4. On 1 July 2014, the Panel declared the complaint admissible and found, that in light of the parties' submissions, the complaint raised serious issues of fact and law pertaining to alleged violations of human rights in relation to Articles 13 and 14 of the European Convention on Human Rights (ECHR) as well as Article 1 of Protocol 1 of the ECHR, the determination of which requires an examination of the merits of the complaint.
5. On 21 July 2014, the complainant submitted further observations to the case. On 30 September 2014, the HoM submitted additional comments to the facts as well as to the merits of the case. On 16 October 2014, the complainant submitted final comments on the matter.

II. THE FACTS

6. The complainant owns an apartment located in Pristina. He submits that since 1999 he has not been able to gain possession of his apartment. In 2004, a certain S.H. who unlawfully resided in the apartment was forced out of it pursuant to a "*Decision from Habitat [Housing Property Claims Commission] (HPCC/D/87/2003/C as of 29.08.2003) by which it is confirmed that [the complainant is the] legal owner of the apartment*".
7. Despite this decision, the complainant did not succeed in regaining possession of his apartment. On several occasions different individuals occupied the apartment and thereafter abandoned it.
8. In 2009, during a short period of time while the apartment remained vacant, the complainant managed to renovate it.
9. On 26 August 2009, the complainant's wife went to the apartment and discovered that it was being unlawfully occupied again. On that occasion, the door of the apartment was allegedly opened by the daughter of a certain R.Q. who said that this apartment had been "allocated" to R.Q. by officers of the police station No. 4, "Dardanija" in Pristina. The complainant alleges that the police officers from this police station rent the apartment to R.Q.

10. The complainant submits that R.Q. is a member of the Kosovo police and he took possession of the apartment with the approval of the Chief of the Police Station No. 4.
11. On 14 September 2009, represented by a lawyer from the "Danish Refugee Council", the complainant filed criminal charges against R.Q. and members of the KP from police station No. 4 with the Municipal Public Prosecution Office in Pristina. Subsequently, the complainant was represented by lawyers of the NGO „Further support to refugees and internally displaced persons in Serbia“. The complainant submits that on 6 November 2009 the Public Prosecutor requested the police to collect information in order to identify the perpetrator of the alleged criminal act.
12. The complainant submits that he contacted EULEX via email on 29 November 2009 and informed EULEX about his case. He was referred to an EULEX staff member (M.M.) and was informed that his complaint was forwarded to a number of units within the EULEX Mission. On 13 December 2009 the complainant informed M.M. about his case and in particular about his four attempts to report the matter to the Kosovo police (on 4 June 2008, 14 October 2008, 26 August 2009 and 10 October 2009), which had not yielded any results. On 5 January 2010, the complainant received a reply from M.M., who provided him with the details of a contact person, namely the Head of the Court Liaison Office in Mitrovica with a suggestion to contact her.
13. The complainant submitted the email from M.M. which read, *inter alia*: „EULEX is interested in cases of eventual malpractice in a court's system and it is within our mandate to improve protection of the citizens and their rights before courts“. The complainant was advised to contact the Head of the Court Liaison Office in Mitrovica as „her assessment on the need of EULEX to intervene can be crucial“.
14. Further attempts by the complainant to address the recommended official, as well as the original contact within EULEX, did not elicit any response.
15. EULEX submits that M.M worked as a political and reporting officer until summer 2011 when he resigned from the Mission. EULEX further submits that it has not been able to confirm any registration of a complaint from the complainant or other communication between him and EULEX during 2010.
16. Ultimately, on 6 May 2010 the complainant was able to submit a complaint at the Police Station No. 4 with the assistance of a lawyer.
17. It is alleged that on 30 August 2010 the complainant submitted a letter to the Municipal Public Prosecution Office requesting that the authorities should take measures in regard to his case and should respond to him in writing. The complainant states that he did not receive a reply.

18. On 29 June 2011, the Kosovo public prosecutor filed an indictment against R.Q.
19. Thereafter, the complainant submits that he contacted EULEX again via email at the beginning of January 2012. EULEX acknowledges that a communication from the complainant to EULEX was registered late 2011. EULEX further submits that this was the first registered communication with the complainant. On 16 January 2012 the EULEX Property Rights Co-ordinator replied to the complainant for the first time. On 14 February 2012, the EULEX Property Rights Coordinator wrote again to the complainant. In this regard, the complainant has submitted to the Panel, the reply letter from the EULEX Property Rights Coordinator dated 14 February 2012, advising him on available remedies. Further, it was indicated that this response was shared with the appropriate EULEX authority responsible for providing support to the Municipal Prosecution Office in Pristina, as well as with the Head of the Municipal Public Prosecution Office of Pristina and with the Acting Director of the Office of the Disciplinary Council in the Kosovo Judicial Council.
20. EULEX submits that on 24 February 2012, the Office of the Disciplinary Council wrote an email to the complainant asking him about details on his case.
21. The complainant submits a letter dated 7 March 2012 that he received from the Office of Disciplinary Council informing him that the first prosecutor assigned to the case had been replaced in 2010 and that on 28 February 2012 the case had been allocated to another prosecutor who requested the police to collect information. The complainant submits that there was no progress in his case.
22. On 30 August 2012, the complainant again enquired with the EULEX Property Rights Coordinator seeking his assistance. The complainant received a reply from the EULEX Property Rights Coordinator on 20 September 2012, providing advice on possible remedies and informing him that the case had been referred to the responsible EULEX authority for information purposes.
23. On 12 September 2012, the Municipal Prosecution Office of Pristina conducted an interview with R.Q., who allegedly admitted that he was using the apartment which he had unlawfully entered by breaking the door.
24. On 28 January 2013, the complainant addressed EULEX once again, as he was allegedly asked by R.Q. to pay him 5,000 Euros as a precondition for him to vacate the apartment. The complainant did not receive a response from EULEX.
25. On 1 April 2013, the complainant's legal representative wrote to the Basic Public Prosecution Office and requested the initiation of criminal

proceedings on the basis of the available evidence and admissions made by R.Q. He did not receive a reply.

26. On 16 May 2013, the case was allocated to a single judge from the general Department of the Basic Court of Pristina.
27. On 15 August 2013, the complainant received a letter from the Basic Prosecution Office of Pristina. He was requested to augment his case with further documents, including evidence of ownership of the apartment. He was further requested to submit the decision of the Housing Property Claims Commission (see par. 6 above). The complainant provided the relevant documents and further stated that he had filed those documents already when submitting the criminal charge in this case.
28. On 16 August 2013, the complainant received a reply from the Office of the Disciplinary Council regarding an inquiry from the complainant, which stated that the case against R.Q. (proposal for indictment) had been submitted by the Municipal Prosecution Office to the Municipal Court in Pristina on 5 July 2011 and it was pending before that court. Further, the Office of the Disciplinary Council did not determine any grounds for the initiation of disciplinary investigations against unprofessional prosecutorial behaviour of the prosecutor in the case of R.Q. The complainant was informed by the Office of the Disciplinary Council that the respective judge in his case did not decide yet on the confirmation of the indictment (see par. 18 above).
29. On an unspecified date during the autumn of 2013 the Mobile Team in Justice Matters from the EULEX Strengthening Division took over the monitoring of the criminal proceedings pending before the Basic Court in Pristina.
30. On 4 October 2013, the judge issued for the third time a summon against R.Q. as he had twice failed to appear for court hearings.
31. On 28 October 2013, the accused R.Q. was finally present for the hearing. R.Q. requested translation into Serbian as he claimed not to be fluent in Albanian due to his alleged Gorani background. The judge adjourned the hearing to 29 November 2013 to decide on the merits of the case, at which the accused R.Q. again did not appear.
32. On 16 December 2013, the judge of the Basic Court found the accused guilty and imposed on him a conditional sentence of three months of imprisonment, while also ordering him to release the property within 30 days from the date of the judgment.
33. On 21 July 2014, the complainant submitted that he had found out on 20 July 2014 that his flat has been broken into on 20 July 2014 and was again usurped. The new usurper is allegedly of Albanian ethnicity and replaced the entrance door including the lock.

34. On 1 August 2014, the complainant's legal representative filed a criminal charge against the re-usurpation of his apartment. On 15 October 2014, the complainant sent an email message to EULEX and requested that EULEX prosecutors take over his case.

Complaints

35. The complainant submits that EULEX failed to react appropriately to his case and therefore violated his human rights. It can be inferred that the complainant complains under Article 1 of Protocol 1 to the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) in conjunction with Article 14 of the Convention and under Article 13 of the Convention.

III. THE LAW

36. 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 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.

RELEVANT APPLICABLE LAW

Joint Action

37. Relevant extracts of Articles 2 and 3 of European Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO (hereafter: Joint Action), read as follows:

Article 2 Mission Statement

EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices.

EULEX KOSOVO, in full cooperation with the European Commission Assistance Programs, shall fulfill its mandate through monitoring, mentoring and advising, while retaining certain executive responsibilities.

Article 3

Tasks

In order to fulfil the Mission Statement set out in Article 2, EULEX KOSOVO shall:

- (d) ensure that cases of war crimes, terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly

investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities;

Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors 2008/03-L053, applicable until 31 May 2014 (hereafter: Law on Jurisdiction)

Article 6

Provisions concerning the EULEX Property Rights Coordinator in Kosovo

6.1 The EULEX Property Rights Coordinator in Kosovo will assist in coordinating property rights issues, including claims resolution, between different actors involved in this subject matter including, but not limited to the Kosovo Property Agency, the Kosovo Property Claims Commission, the Kosovo Trust Agency, the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, ordinary courts, or the Kosovo Police Service.

6.2 All actors dealing with property rights issues, including claims resolution in Kosovo will be obliged to supply the EULEX Property Rights Coordinator free of charge with any information requested of them. The EULEX Property Rights Coordinator will have access to all the elements required for implementation of its mandate.

Article 11

Authority of EULEX prosecutors for Hate-Motivated crimes

11.1. At any time during the proceedings and upon agreement with the Chief EULEX Prosecutor, the EULEX prosecutors can take the responsibility over any investigation or prosecution of any criminal offence, including offences against persons or property, where the victim, premises, or target of the offence appear to be selected because of their real or perceived connection, attachment, affiliation, support, or membership of a real or perceived group identified according to its race, national or ethnic or social origin, association with a national minority or with a political group, language, color, religion, sex, age, mental or physical disability, sexual orientation, or other similar factor.

Article 12

Authority of EULEX prosecutors in case of unwillingness or inability of Kosovo Public Prosecutors

12.1 At any stage of any criminal proceeding, if a Kosovo Public Prosecutor is unwilling or unable to perform his or her duties and this unwillingness or inability might endanger the proper investigation or prosecution of a criminal offence, or whenever there is a grounded suspicion of attempts made to influence the investigation or prosecution of a criminal offence, the Chief EULEX Prosecutor will have the authority to request the Chief Prosecutor of the competent office to assign the case

- a) to another Kosovo Public Prosecutor working within the same prosecution office,
- b) or to any EULEX prosecutor who will take the responsibility over the relevant investigation or prosecution.

38. The Panel reiterates that in its decision of the admissibility of the application it had held that the case should be examined under Articles 13 and 14 ECHR as well as Article 1 of Protocol 1 of the ECHR (see 2013-03, [Becic against EULEX](#), 1 July 2014 at par. 53.).

IV. SUBMISSIONS BY THE PARTIES

EULEX submissions on the merits of the case

39. In its submission of 30 September 2014, EULEX reiterates its argumentation that the complainant's claim did not substantiate that an inter-ethnic or hate motivated crime had been committed in his case that could trigger the mechanism envisaged by article 11 of the Law on Jurisdiction which provided for the possibility of EULEX prosecutors to take the case over. Further, EULEX submits that the offence of infringing the inviolability of a dwelling pursuant Article 166 par. 1 of the Provisional Criminal Code of Kosovo which is the subject matter of the complaints does not fall within the competence of EULEX judges and prosecutors.
40. For property rights issues EULEX has had a Property Rights Coordinator who was in contact with the complainant.
41. EULEX submits that in order to qualify as a hate-motivated crime the act/conduct must amount to a crime under criminal law and must have been committed with a motive based on inter-ethnic bias. It is submitted that despite the fact that the complainant belongs to the Serbian ethnic minority of Kosovo and the person convicted of unlawfully occupying his property belongs to another ethnicity, notably to another minority group of Gorani, there is nothing in the case that would indicate that R.Q. selected the complainant's property as a target due to the complainant's ethnic origin. It appears that R.Q. occupied the property for the simple reason of that it was vacant.
42. EULEX submits that even assuming that the crime would fall within the category of hate motivated crimes, Article 11 of the Law on Jurisdiction in force at the time of the events does not contain an inherent obligation on the EULEX prosecutors to act, but the possibility to do so. In this particular case, EULEX prosecutors have not been even informed about the case since it falls outside their mandate and the correspondence of the complainant with the EULEX Property Rights Coordinator was not specifically forwarded to EULEX prosecutors. Further, it is submitted, that due to the limited resources and the large number of cases already falling within the EULEX prosecutor's executive mandate, it is impossible for the EULEX prosecutors to act upon every possible case which could fall within their mandate.
43. Further, it is submitted that Article 12 of the Law on Jurisdiction provides a mere possibility to react by the EULEX Chief Prosecutor. Due to the fact that the local prosecutor had already submitted an

indictment on 29 June 2011 (see par. 18), it appears that the local prosecutor was willing and able to proceed with the case, also, if it was not clear why the case was not assigned to a single judge until 16 May 2013. Therefore, Article 12 of the Law on Jurisdiction does not come into effect either.

44. The criminal proceedings in the complainant's case took place during autumn 2013 and R.Q. has been ordered to vacate the apartment. Therefore, the complainant had access to a court and had an effective remedy within the meaning of Article 13 of the ECHR and in relation to Article 1 of protocol 1 of the same Convention. EULEX submits that despite some delays in the proceedings, there is no indication that the complainant would have been discriminated against due to his ethnicity in the enjoyment of his property rights.
45. EULEX submits that it replied promptly to the complainant's correspondence without discrimination and ensured also the monitoring of his case in accordance with its mandate. The duration of the proceedings cannot be considered as excessive and the delays are not attributable to EULEX.
46. EULEX further submits that it has provided effectively the remedy available for EULEX in property matters through the EULEX property Rights Coordinator, as provided by Article 6 of the Law on Jurisdiction, by responding to the complainant in a timely manner, providing him advise and directly forwarding his complaints to the competent local authorities.

Complainant's observations

47. On 21 July 2014, the complainant submitted additional comments in reaction to the Panel's admissibility decision. It is stated that he has not had access to his flat since 1999, which is by now severely damaged. He submits that he has been continuously threatened by the different usurpers not to return because he is a Serb.
48. He submits that the usurpers are favored by the Kosovo police and the courts and that the Kosovo police did not react appropriately to his complaint.
49. In a further submission of 16 October, the complainant states that R.Q. was lying about his ethnicity and that he is in fact Albanian and not Gorani.

V. THE PANEL'S ASSESSMENT

50. The Panel notes that the issue of property rights is highly complex and affects all communities within Kosovo, which resulted in tens of thousands of claims on damaged or illegally occupied property. The Panel furthermore takes due note of the capacities of an international

Mission like EULEX that has limited resources at its disposal in dealing with complaints.

EULEX awareness of the case

51. The Panel notes EULEX's submission that it has not been able to confirm any registration of the complaint in 2010. The complainant submitted copies of his email correspondence with EULEX sent from different EULEX email accounts, including EULEX's official account for general inquiries, which clearly demonstrates that EULEX was aware of the case from November 2009 onwards. At the end of 2009, and in January 2010 the complainant was in communication with a Political and Reporting Officer of EULEX and thereafter, during 2012, with the EULEX Property Rights Coordinator. The Panel concludes that the submitted documentation indicates that EULEX, at least in 2009 and 2010, did not utilize a proper system of registering complaints.
52. The Panel cannot but note that according to the information available to it, it appears that it took two years and nine months after the first contact of the complainant with EULEX for EULEX prosecutors to be made aware of the case. At the same time it has been argued before the Panel that EULEX Prosecutors were not and still are not in possession of the necessary information concerning this case (compare par. 42 above).

EULEX submission on lack of jurisdiction

53. EULEX submitted on 30 September 2014 that "*in this particular case the EULEX prosecutors have not been even informed about the case since it falls out of their mandate and the correspondence of the complainant with the EULEX Property Rights Coordinator has not been specifically forwarded to the EULEX prosecutors.*"
54. First, from the information available to the Panel, it is not possible to determine *prima facie* and *ex-post*, that the case clearly does not constitute a hate-motivated crime and therefore falls outside the EULEX mandate, in particular in relation to the alleged in-action of Kosovo authorities. Second, in the Panel's view it is precisely the lack of information provided to EULEX Prosecutors and the circumstances in which the matter eventually came to the attention of EULEX Prosecutors that gives rise to concern.
55. The Panel stresses that in the circumstances of the present case it does not consider that it is its task to evaluate the merits of a prosecutorial decision as to whether to start an investigation or to take it over by EULEX prosecutors from Kosovo prosecutors.
56. However, it is of paramount importance that arguable claims brought forward by individuals should be properly recorded and that they should reach those EULEX prosecutors, for them to be in a position to

make an informed assessment as to whether to investigate a case or not. It can be reasonably expected from a Mission with an executive mandate that an effective system of registration and communication of complaints will be put in place which ensures that claims and grievances involving allegations of violations of rights brought to its attention and which can arguably impinge on the exercise of the Mission's executive mandate are at least registered and duly recorded and, in timely fashion, scrutinized by respective units within EULEX, in particular EULEX prosecutors. This clearly did not happen in this case.

EULEX and remedies within the Kosovo legal system

57. EULEX submission that "*a reasonable interpretation in line with EULEX's mandate of assistance to Kosovo Rule of Law Institutions is that redress shall be sought within the Kosovo legal system allowing the remedies and mechanisms available within its legal framework to operate*", fails to convince the Panel as for the period from 2009 to 2013 the complaint precisely complains that the Kosovo legal system's remedies failed to address his complaint appropriately.

Article 13 ECHR

58. The Panel's assessment solely concentrates on EULEX's obligation to register and to make an initial assessment of such human rights complaints brought to its attention which can arguably be said to impinge on the exercise of its executive mandate. This did not happen in the current case. While EULEX commends the actions taken by the EULEX Property Rights Coordinator, it stresses, that those do not constitute an effective remedy and do not replace a thorough assessment by EULEX prosecutors, especially as the EULEX Property Rights Coordinator has mainly a coordinating role but no executive powers.
59. The fact that the judicial mechanisms in Kosovo ultimately functioned which led to the sentencing of the usurper and the restitution of the complainants' property does not absolve EULEX Kosovo from its own obligations, in particular, its obligation to diligently record and, in turn, duly register grievances formally brought and communicate them to the competent bodies within the mission. In the present case the failure to do so precluded a timely assessment of the case by EULEX.
60. The failure of EULEX at the time to put in place a reliable system of recording and registering complaints involving allegations of violations of rights resulted in the case of the complainant remaining dormant for a period of approximately two years and nine months. During that period, EULEX was therefore not diligently discharging its mandate in relation to that complaint. The fact that the Kosovo authorities were also competent in relation to this matter does not discharge EULEX of its own obligations to act at all times in a manner that is consistent with minimum standards of human rights.

61. Based on the above, the Panel concludes that there was a violation under Article 13 of the Convention.
62. Having regard to the findings under Article 13, the Panel considers that it is not necessary to examine the complaint under Article 14 of the Convention and Article 1 of Protocol No. 1 to the Convention.
63. The alleged subsequent usurpation of the complainant's flat in July 2014 and the complainant's subsequent complaints to Kosovo authorities and EULEX are subject matter of different proceedings than those assessed in this case and thus do not form part of the Panel's assessment.

FOR THESE REASONS, THE PANEL, BY MAJORITY

Holds that there has been a violation of Article 13 of the Convention;

Holds that it is not necessary to examine the case under Article 14 of the Convention;

Holds that it is not necessary to examine the case under Article 1 of Protocol 1 to the Convention;

Therefore, the Panel finds it appropriate, in the light of its above findings of fact and law, to make the following recommendations to the HoM under Rule 34 of its Rules of Procedure:

To ensure that the existing registration and initial assessment procedures for incoming complaints submitted to EULEX, in so far as they can arguably impinge on the exercise of the Mission's executive mandate, are assessed by staff with legal as well as human rights expertise and consequently communicated to relevant units.

The HoM is invited to inform the Panel of the measures he has undertaken in connection with the present decision by 31 December 2014.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member