



INADMISSIBILITY DECISION

Date of adoption: 27 May 2014

Case No. 2014-04

Tomë Krasniqi

Against

EULEX

The Human Rights Review Panel sitting on 27 May 2014
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël 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 on 3 February 2014.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, can be summarized as follows:
3. The complainant submits that with a decision of 3 May 1998, issued by the "*Pension and Disability Insurance Fund of the Pristina Branch of the former Yugoslav Federation*", he was granted the right to obtain pension entitlements. However, from 1 December 1998 onwards until today, he has not received any payments.
4. It is submitted that the complainant is entitled to pension payments under the provisions of the Law on Pension and Disability Insurance of 1983, which is said to be "*in compliance with UNMIK Regulation No. 1999/24*". The complainant submits that UNMIK and thereafter Kosovo authorities were obliged to pay his pension entitlements.
5. On 4 May 2007 the complainant filed a lawsuit against the Ministry of Labour and Social Welfare with the Basic Court in Pristina.
6. On 16 September 2009 the complainant sent a letter addressed to the Head of Mission of EULEX Kosovo that was received on the same date by the EULEX Judges Unit.
7. On 8 December 2009 an EULEX judge from the District Court of Pristina informed the complainant that since his case was a dispute regarding his "*pension rights and not a property related dispute, according to the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, it does not fall in the jurisdiction of EULEX*". Therefore the complainant was informed that EULEX could not take over the case.
8. On 17 January 2013 the Basic Court in Pristina ruled that the Ministry of Labour and Social Welfare "*lack[ed] the passive locus standi in this legal matter, based on the facts that the respondent [was] not considered to be a legal successor of the former 'Pension and Disability Insurance Fund', which existed until 1999*".
9. On 17 January 2013 the complainant appealed to the Appellate Court of Pristina. On 7 October 2013 the Appellate Court rejected the complaint as ill-founded, upholding the reasoning of the Basic Court.

III. COMPLAINTS

10. The complainant, in essence, submits that Article 1 of Protocol No. 1 to the European Convention on Human Rights also encompasses pension entitlements and that the suspension of payments constitutes a violation of his right to the peaceful enjoyment of his possessions. Further, the complainant invokes Article 3 of the ECHR as well as Article 9 and 11 of the International Covenant of Economic, Social and

Cultural Rights. In addition, the complainant considers that the courts of Kosovo did not decide his case within a reasonable time and thus violated his rights to a trial within reasonable time under Article 6(1) of the ECHR.

IV. THE LAW

11. 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 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. Further, it is open to the Panel to apply other international conventions as stipulated by the EULEX accountability concept if deemed relevant for the purposes of assessing a complaint.
12. 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.
13. 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.
14. The Panel has held on numerous occasions that, according to Rule 25, paragraph 1, of its Rules of Procedure, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot review judicial proceedings before the courts of Kosovo. In principle and subject to the qualification mentioned below, the Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Those are within the sole competence of the Kosovo courts. Moreover, the Panel has already found that 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, *Maxhuni against EULEX*, no 2013-24, par. 12; 7 April 2014, par. *Halili against EULEX*, no. 2012-08, 15 January 2013, par. 21; *Pajaziti against EULEX*, no. 2012-05, 4 October 2012 pars. 9-10; *Dobruna against EULEX*, no. 2012-03, 4 October 2012, par. 12).
15. Therefore, the Panel cannot in principle review decisions of EULEX judges as such. The Panel has already held, however, that it cannot be excluded that in certain circumstances the Panel's jurisdiction would cover decisions and acts of the prosecuting authorities in criminal investigations even when they were subject to a subsequent judicial review. The Panel would only intervene if and where

allegations of human rights violations attributed to the prosecutor have not been fully addressed by the competent judicial authorities (see Z against EULEX, no. 2012-06, 10 April 2013 at par. 34). The same reasoning could apply to a complaint pertaining to the acts and decisions of judicial authorities as such 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.

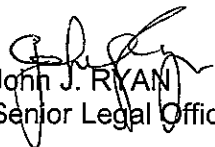
16. In this regard, the Panel refers to the explanatory memorandum of 15 September 2009 to the Accountability Concept of EULEX Kosovo. It makes it clear that the Panel is not excluded from evaluating judicial actions as: “[a]ll matters dealt with by the ordinary courts in Kosovo have to be addressed [...]. This does not mean, however, that the judiciary is entirely exempted from the review by the Panel per se. In the same way as individual deeds by a judge may be addressed separately if the action of the respective judge amounts to perverting the course of justice, the Panel may review complaints addressing human rights violations of similar nature or violations of the procedural human rights, notably the right to a fair trial. The Panel will at any time respect the independence of the judiciary.”
17. Turning to the circumstances of the present case, the Panel notes that the complainant challenges the Kosovo courts’ decisions as well as the view taken by the EULEX judge that the complainant’s case did not fall within EULEX’s jurisdiction.
18. With respect to the former, the Panel observes that it has not been shown or even argued that EULEX judges have been involved in any capacity in the rendering of those decisions (see *Mustafa against EULEX*, 2011-03, 8 April 2011, at par. 22).
19. With respect to the latter, the Panel does not see any indication that the EULEX judge has infringed upon the human rights of the complainant when replying to his complaint (see par. 7 above).

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, finds the complaint falls outside of the Panel’s 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