



INADMISSIBILITY DECISION

Date of adoption: 01 March 2016

Case No. 2015-08

Afrim Berisha

against

EULEX

The Human Rights Review Panel sitting on 29 February 2016 with the following members present:

Ms Magda MIERZEWSKA, Presiding member
Mr Guénaël METTRAUX, Member
Ms Katja DOMINIK, Member

Assisted by
Mr Paul Landers, Legal Officer
Ms Joanna MARSZALIK, 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 17 June 2015.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, may be summarized as follows:
3. On 18 June 2000, at 10.00, the complainant was driving his vehicle to his place of work, the Grand Hotel Pristina, when he was stopped near the hotel

by the Kosovo Police who told him that he was not permitted to drive any further as the road was blocked.

4. The complainant states that he informed the Police that he worked in the Grand Hotel and that he had a parking space in the garage of the hotel. The Police then allowed him to drive to his place of work. The complainant states that the reason the road was blocked was because there was a suspected bomb at the main entrance to the Grand Hotel.
5. The complainant states that at 11.00 KFOR started searching a vehicle outside the hotel with a robot but did not find anything suspicious. At around 13.00 KFOR began searching vehicles at the opposite side of the car park where his vehicle was parked. From 13.00 to 15.00, KFOR used a robot to search the complainant's vehicle.
6. The complainant states that KFOR placed dynamite at the rear of his vehicle and carried out a controlled explosion which resulted in damage to the rear of his vehicle. They then began cutting the seats of his vehicle with knives and removed the entire upholstery including the door and vehicle roof upholstery. The complainant states that he was prevented from going to his vehicle several times by KFOR.
7. A few days later the complainant went to his insurance company to submit a claim for the damage caused to his vehicle. The insurance company photographed the vehicle and assessed the damage but informed the complainant that he should go to those who caused the damage in order to obtain compensation for the loss and damage caused to his vehicle
8. The complainant went to various representatives of KFOR and UNMIK and he submitted a CD to a KFOR representative which had a recording of the entire event surrounding the damage to his vehicle. The complainant states that KFOR informed him that they would pay for the damage and would contact him by phone but, up to the date of the submission of his complaint to HRRP, nobody has contacted him.
9. The complainant states that he also tried on three occasions, once in 2014 and twice in 2015, to contact EULEX in order to request EULEX to deal with his case but on each occasion EULEX security at the Missions HQ denied him any contact with EULEX staff.

III. COMPLAINT

10. The complainant submits that his right of access to justice has been denied and that his economic rights have been violated by KFOR and UNMIK police. He also submits that he was denied any contact with EULEX staff on three occasions by EULEX security at the Missions HQ.

IV. THE PANELS ASSESSMENT

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 (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.
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 alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors.
14. The Panel notes that the complaint originates from an incident that took place in Pristina in June 2000, under UNMIK administration and concerns the actions and/or inactions of KFOR and UNMIK Police. Taking into consideration Rule 25 of its Rules of Procedure, which limits the Panel's mandate to complaints relating to human rights violations committed by EULEX Kosovo, the Panel observes that it lacks jurisdiction to examine actions or omissions by KFOR and/or UNMIK (See *Thaqi v. EULEX*, 14 September 2011, Case No. 2010-02). Furthermore, according to Rule 25, paragraph 2 of its Rules of Procedure, the Panel will only examine complaints concerning alleged human rights violations that occurred after 9 December 2008, in Kosovo, the date on which EULEX became operational.
15. In addition, the Panel need not decide whether, in the present circumstances, EULEX would be competent to investigate an alleged criminal offence arising from this incident. The Panel notes that there is indeed no information which the complainant could point to which would suggest that a criminal offence has been committed in this particular case.
16. It is unclear from the complaint how the complainant would suggest that EULEX could be held responsible for violating his human rights. The fact that he has allegedly been denied access to EULEX Headquarters does not, of itself, amount to a violation of his human rights. EULEX HQ is not a public building and members of the public do not have a protected fundamental right of access to it. It has not been argued or shown by the complainant that he made a formal complaint to EULEX. The Panel further notes that the complainant had many other avenues available to him in which he could contact EULEX in relation to his complaint. Indeed it is still open to the complainant to file a written complaint with EULEX in relation to this matter.

FOR THESE REASONS, THE PANEL UNANIMOUSLY

Declares that it lacks competence to examine the complaint, 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,

Joanna Marszalik
Legal Officer

Magda Mierzewska
Presiding Member