



INADMISSIBILITY DECISION

Date of adoption: 10 April 2018

Case No. 2016-34

R.I.

Against

EULEX

The Human Rights Review Panel sitting on 10 April 2018 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Anna BEDNAREK, Member

Assisted by
Mr John J. RYAN, Senior 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 8 November 2016.
2. The Panel conceded to the complainant's wish not to have his name disclosed. He will be referred to as R.I.

II. THE FACTS

3. The facts as submitted by the complainant can be summarised as follows:
4. The complainant submits that he is the owner of a plot of land which he says has been illegally occupied by certain M.M. since 1998.
5. On 31 July 2013, the complainant lodged a claim against M.M. with the Basic Court of Ferizaj/Uroševac, demanding that the defendant vacates and returns the property to him.
6. In its judgment of 15 July 2014, the Basic Court of Ferizaj/Uroševac, dismissed the complainant's claim and confirmed that the defendant was the owner of the disputed property. It also demanded of the complainant to allow M.M. to register the property in his name in the land register.
7. On 3 September 2014, the complainant appealed against this judgment to the Court of Appeals.
8. It would appear that the proceedings are still pending before the second-instance court

III. COMPLAINTS

9. Without invoking any specific international instruments for the protection of human rights, the complainant requests that the Panel intervenes in the proceedings before the Court of Appeals. It would seem from the tenor of his complaint that the matter complained of pertains to the complainant's right to property as guaranteed, inter alia, by Article 1 of Protocol 1 to the European Court of Human Rights.

IV. THE LAW

10. 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 which must be guaranteed by public authorities in all democratic legal systems.
11. 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.

12. 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.
13. The Panel notes that the complainant's grievance pertains to civil proceedings before the Basic Court of Ferizaj/Uroševac. According to Rule 25, paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot in principle review judicial proceedings before the courts of Kosovo. The Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Consequently, the Panel cannot influence the outcome of judicial proceedings or the speed with which the pending complaints are examined by the Kosovo courts. Even where EULEX judges take part in the proceedings, it does not detract from the fact that this court forms part of the Kosovo judiciary (see, among many other authorities, *Z.A. against EULEX*, 2014-36, 29 February 2016, par. 17; *K.P. against EULEX*, 2014-31, 21 April 2015, par. 13; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, par. 13). The Panel notes also that the complainant does not mention any other kind of involvement of EULEX in this case.
14. The Panel is not satisfied, on the basis of the arguments advanced by the complainant, that the matter complained of could be otherwise attributed to the Mission, in the exercise of its executive mandate.
15. It follows that the complaint falls outside the ambit of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

FOR THESE REASONS,

The Panel, unanimously, holds 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,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member