HRRP
Human Rights Review Panel

INADMISSIBILITY DECISION

Date of adoption: 2 February 2015

Case No. 2014-26

Ajet Kaçiu

Against

EULEX

The Human Rights Review Panel sitting on 2 February 2015.
with the following members present:

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

Assisted by
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 4 April 2014.

II. THE FACTS

2. The facts of the case as submitted by the complainant can be summarised as follows.

3. The complainant worked as a Tax Police inspector in Pristina until 27 February 1999, when he fled Kosovo for Albania.

4. He returned in September 1999 and unsuccessfully attempted to resume his work as the tax inspector.

5. On an unspecified date in 2001, he lodged a claim against the Central Fiscal Authority (a fiscal body established by UNMIK at the end of 1999) before the Municipal Court of Pristina, seeking to be reinstated to his position.

6. On 2 April 2003, the Municipal Court rejected the claim. It found that the Central Fiscal Authority had no legal standing in the proceedings.

7. On 26 May 2003, upon the complainant's appeal, the District Court of Pristina quashed the first-instance judgment and returned the case to the Municipal Court for reconsideration.

8. On 2 April 2003, the Municipal Court of Pristina again rejected the complainant's claim, for the same reasons as before. The complainant appealed against that judgment.

9. On 20 April 2005, the District Court of Pristina again returned the case to the first-instance court for reconsideration.

10. On 29 June 2006, the Municipal Court of Pristina allowed the complainant's claim and reinstated him to his position as a tax inspector.

11. On 7 September 2006, the Tax Administration of Kosovo (which had replaced the Central Fiscal Authority) lodged an appeal against the first-instance judgment with the District Court of Pristina.

12. From the material submitted by the complainant it is not clear what has been the further course of events in these proceedings.

13. On 24 August 2009, the complainant received a letter from an EULEX judge at the Pristina District Court, apparently in reply to his "complaint of 9 April 2009" (the contents of that complaint are not described). In his letter, the judge informed the complainant that, as his case related to an employment dispute, according to the Law No. 03/L-053 on Jurisdiction, Case selection and Case allocation of EULEX Judges and Prosecutors in Kosovo, it fell outside the jurisdiction of EULEX. He stated further that there was no indication that there would be any irregularities during the review of the complainant's case before the Supreme Court and EULEX did not plan to monitor it.

III. COMPLAINTS

14. The complainant requests that "EULEX is fair while reviewing his case". He further requests compensation for the period while he remained unemployed.

IV. THE LAW

15. 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.

16. 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.

17. 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.

18. The Panel notes that the complainant's grievances concern, in essence, an employment dispute between him and the tax authorities of Kosovo. It reiterates that, according to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo. It 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 assuming that EULEX judges took part in any of the proceedings in which the complainant was involved, the Panel reiterates that it has already found on many occasions that even 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, among many other authorities, *Gani Zeka against EULEX*, 2013-15, 4 February 2014, § 13; *Shaban Kadriu against EULEX*, 2013-27, 27 May 2014, § 17).

19. The complaint submitted to EULEX, referred to in par. 11 above, did not trigger the Panel's jurisdiction to examine the case as a matter falling within the executive mandate of EULEX. When the EULEX judge replied to the complaint, he did not exercise executive authority within the meaning of the EULEX Accountability Concept of 29

October 2009 on the establishment of the Human Rights Review Panel (compare, for instance, *Hamiti against EULEX*, 2012-01, 5 June 2012 § 17 or *Shaban Kadriu*, quoted above, § 18).

20. It follows that the complaint falls outside of 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,

Joanna MARSZALIK
Legal Officer

Magda MIERZEWSKA
Presiding Member