



INADMISSIBILITY DECISION

Date of adoption: 7 March 2017

Case No. 2016-02

V.E.

Against

EULEX

The Human Rights Review Panel sitting on 7 March 2017 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Elka ERMENKOVA, Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Noora AARNIO, 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 2016.

II. THE FACTS

2. The following facts appear from the information which the complainant has provided: In March 2011, the complainant initiated a case concerning ownership of an immovable property before the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters (Special Chamber). The panel of the Special Chamber consisted of both EULEX Judges and local Judges. Since then, he has made two separate urgent claims before that same jurisdiction.
3. At the core of the complaint is a suggestion that the case is being delayed and that it has not been dealt with the necessary degree of diligence on the part of the court.

III. COMPLAINTS

4. The complainant claims that his rights to protection of property have been violated, and requests that the complaint be examined urgently.
5. Whilst the complainant did not refer to any particular provision, it is apparent from the nature of the complaint that Article 6 paragraph 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms are relevant.

IV. THE LAW

6. 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.
7. Before considering the complaint on its merits the Panel has to decide whether to proceed with the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
8. 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.

9. The Panel notes that the complainant's grievance pertains to proceedings before the Special Chamber and the alleged failure of the court to deal with the complainant's case in a diligent and expeditious manner.
10. The Panel has repeatedly held that, according to Rule 25, paragraph 1, of its Rules and based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot 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. 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*, *Z against EULEX*, 2012-06, 10 April 2013, para. 31; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, para. 13; *Halili against EULEX*, 2012-08, 15 January 2013, at par. 21; *Pajaziti against EULEX*, 2012-05, 4 October 2012 at pars. 9-10).
11. It follows that the complaint does not fall within 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