



INADMISSIBILITY DECISION

Date of adoption: 27 May 2014

Case No. 2013-27

Shaban Kadriu

Against

EULEX

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

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél 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 27 December 2013.

II. THE FACTS

2. The facts of the case as submitted by the complainant can be summarized as follows:
3. In January 1990 the complainant concluded an employment contract with the "*Municipal Assembly of Shtime/Štimlje - Directorate of Social Revenues*". The complainant was employed as a tax collection clerk.
4. On 12 October 1990 the "*Municipal Assembly of Shtime/Štimlje - Directorate of Social Revenues*" terminated the complainant's employment. The reason given for his dismissal was that the complainant "*was in solidarity with a general one-day strike and absent without any reason from [his] workplace*".
5. In March 2004 a vacancy announcement was advertised in relation to the position that had previously been held by the complainant. He applied for the position but did not succeed in being selected.
6. On 7 April 2004 the complainant filed a complaint against this decision with the Complaints Panel of the Municipality of *Shtime/Štimlje*. On an unspecified date the complaint was rejected as ill-founded.
7. On 26 December 2006 the complainant filed a lawsuit against the Municipality of *Shtime/Štimlje* with the Municipal Court in *Ferizaj/Uroševac*, which was dismissed on 15 April 2008 as ill-founded.
8. On 6 April 2009, the District Court of Pristina upheld the judgment of the first-instance court.
9. On 15 March 2012 the Supreme Court of Kosovo dismissed the complainant's request for a review of his case. According to the documents submitted by the complainant, no EULEX judges sat on the Panel of the Supreme Court.
10. On 12 July 2012 the complainant filed a request for "*assessing the constitutionality of the judgment of the Supreme Court*" with the Constitutional Court. On 15 January 2013 the Constitutional Court, with the participation of international judges, declared the complainant's referral inadmissible. The international judges sitting on the Panel of the Constitutional Court were not EULEX judges.
11. On 27 July 2013, the complainant submitted a letter to EULEX, complaining that the selection panel of the Municipality of *Shtime/Štimlje* refused his request to be returned to his old post. The complainant asked EULEX to reverse decisions of the bodies to which he had filed a complaint in the past and to ask the Kosovo institutions to pay retroactively all salaries from 1999 onwards.

12. On 7 August 2013 EULEX informed the complainant that his request did not fall within EULEX's mandate and suggested that he contact a private lawyer or a free legal aid provider for advice on possible legal remedies.

III. COMPLAINTS

13. In essence, the complainant asks the Panel to reinstate him in his previous working position and to have all salaries from 1999 onwards paid to him.

IV. THE LAW

14. 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.
15. 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.
16. 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.
17. The Panel 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. Even assuming that EULEX judges took part in any of the proceedings in which the complainant was involved, the Panel reiterates that even if EULEX judges sit on the bench of any given Kosovo court, this does not detract from the fact that this court forms part of the Kosovo judiciary (see among many other decisions *J against EULEX*, no. 2013-04 at par. 13, *Gani Zeka against EULEX*, no. 2012-02 at par. 21; *Z against EULEX*, no. 2012-06 at par. 31).
18. Further, the Panel observes that it has not been shown or even argued that EULEX Kosovo was involved in any capacity in the circumstances of the case (see for instance *Kahrs against EULEX*, 2012-16, 10 April 2013 at par. 35 and *Hamiti against EULEX*, 2012-01, 5 June 2012 at par. 17). The complainant's request submitted to

EULEX referred to in par. 11 above did not trigger the Panel's jurisdiction to examine the case as EULEX, when replying to his letter, did not exercise its executive mandate within the meaning of the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Nor has EULEX competence to carry out the actions requested by the complainant.

19. It follows that the complaints do 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