



INADMISSIBILITY DECISION

Date of adoption: 4 February 2014

Case No. 2013-04

J

Against

EULEX

The Human Rights Review Panel sitting on 3 and 4 February 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 10 June 2013. The complainant asked for her name to be withheld. The Panel granted her request.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, can be summarised as follows;
3. The complainant submits that she and her brother owned a house and a plot of real property in Prishtinë/Priština. The complainant further alleges that the properties were fraudulently purchased from the complainant by certain H.K., E.K. and N.K. in 1999, who then evicted the complainant's brother from the house. The complainant's brother died in 2004.
4. On an unspecified date in 2007, the complainant lodged a claim with the Municipal Court of Prishtinë/Priština, seeking to have the contract of sale declared void.
5. On 15 December 2010, the Municipal Court sitting as a mixed panel of EULEX and Kosovo judges granted the complainant's claim.
6. The defendants lodged an appeal against the first-instance judgment, arguing that the Municipal Court violated procedural and substantive law and had erroneously established the facts of the case.
7. On 13 December 2010, the District Court of Prishtinë/Priština, sitting as a mixed panel of EULEX and Kosovo judges, quashed the contested judgment and remitted the case to the first-instance court for reconsideration. The District Court found that there had been a violation of the provisions of the procedure, erroneous determination of the facts and erroneous application of the substantive law by the first-instance court. The District Court considered, *inter alia*, that the complainant had no standing in the proceedings as she had not been a party to the sale contract, nor was she a legal successor of her brother.
8. The Panel understands that proceedings in this case are currently pending before the first instance court.

III. COMPLAINTS

9. The complainant submits that due to the excessive length of the court proceedings and errors committed by the courts the Kosovo justice system has failed to protect effectively her property 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 reiterates that, according to Rule 25 paragraph 1, 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 Panel has already repeatedly found 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 decisions: *Gani Zeka against EULEX*, no. 2012-02; § 21; *Z against EULEX*, no. 2012-06, § 31).
14. 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