



INADMISSIBILITY DECISION

Date of adoption: 27 May 2014

Case No. 2013-26

Selami Tarku

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 26 November 2013.

II. THE FACTS

2. The complainant's submissions may be summarised as follows.
3. The complainant was an employee of the Radio Television of Pristina (RTP) which ceased to operate in 1999. The assets of the RTP, the socially-owned enterprise, are currently administered by the Privatisation Agency of Kosovo (PAK), although their premises have been used by the Radio Television of Kosovo (RTK).
4. On an unspecified date, RTP lodged a claim against RTK and KPA with the Municipal Court of Pristina, seeking return of buildings, premises and other property used by the respondents. They also sought compensation for lost income of RTP's former employees.
5. On 26 April 2010, the Municipal Court granted the claim in part. The court found that RTP was the owner of twenty or so plots of land enumerated in the claim and ordered that the respondents vacate them. It dismissed the claim with regard to the remaining plots of land. The court also dismissed the request for compensation for RTP's former employees as unsubstantiated.
6. Apparently one or both of the parties lodged an appeal against the first-instance judgment and the proceedings are still pending. It would also appear that the complainant and other former RTP employees have contacted EULEX, seeking their assistance in finalising the proceedings, but no details or evidence have been provided.

III. COMPLAINTS

7. The complainant alleges that he and his former colleagues have been discriminated against and that their fundamental rights, such as the right to be reinstated to their posts have been violated.
8. He also complains that they have been ignored and neglected by EULEX, who has failed to review their case.
9. The complainant demands that the former employees of RTP should be compensated for their loss of income and, whenever possible, reinstated.

IV. THE LAW

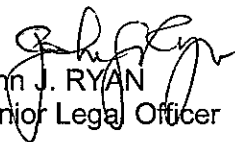
10. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the 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 to 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 grievances concern, in essence, an employment dispute between him and RTP or RTK. It follows that his complaint does not fall within the ambit of the executive mandate of EULEX Kosovo. Consequently, they are outside of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo (see, for instance, *Hamdi Sogojeva against EULEX*, no. 2012-18, 6 June 2013, pars 7-8)
14. Insofar as the complainant's submissions can be understood as a complaint about the outcome and length of the judicial proceedings against RTK and PAK, 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. Consequently, the Panel cannot influence the outcome of judicial proceedings or the speed with which the pending complaints are examined by the Kosovo courts. Moreover, the Panel 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 its forms part of the Kosovo judiciary (see, among many other authorities, *E against EULEX*, 2012-17, 30 August 2013, § 23; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, § 13).
15. 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,


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member