



## **INADMISSIBILITY DECISION**

**Date of adoption: 17 October 2017**

**Case No. 2016-08**

**Hamdi Hasani**

**Against**

**EULEX**

The Human Rights Review Panel sitting on 17 October, 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

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, the Human Rights Review Panel (“the Panel”) decides as follows:

### **I. PROCEEDINGS BEFORE THE PANEL**

1. The complaint was registered with the Panel on 13 June 2016.

### **II. THE FACTS**

1. The facts of the case as submitted by the complainant may be summarized as follows:
2. In 2014, the complainant filed a lawsuit with the District Court of Pristina against a certain M.F. in order to gain ownership of his land and to recover alleged monetary losses. On an unspecified date, M.

- F. filed a suit against the complainant, arguing that the latter had obstructed him from using his land sometime in 2016.
3. At a later date, these sets of proceedings were apparently joined. They are currently pending.
  4. On 13 June 2016, dissatisfied with the manner in which the courts examined the case, the complainant filed a written request with the President of EULEX Judges which was received. He requested EULEX Judges to monitor his civil cases pending at that time before the Basic Court of Pristina.
  5. By letter of 30 June 2016, the President of EULEX Judges informed the complainant that the Law on Amending and Supplementing the Laws related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo - Law no. 05L -103 had entered into force on 29 June 2016. Pursuant to that Law, the new mandate of EULEX judges in the area of civil justice was restricted to cases falling within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters and the Kosovo Property Agency (KPA) Appeals Panel of the Supreme Court of Kosovo on decisions of the Kosovo Property Claims Commission.
  6. The President informed the complainant that his case did not fall into any of the categories of cases foreseen by Law no. 05/L-103 and that EULEX Judges did not therefore have the competence to get involved in this case.
  7. The President further informed the complainant that the person with immediate responsibility for the work of the Kosovo judges was the President of the relevant court of Kosovo and he advised the Complainant to address his concerns to him/her.
  8. The President also advised the complainant that if he did not receive an adequate response from the President of the concerned court, he could refer the matter to the Office of the Disciplinary Council of Kosovo, which was competent to investigate alleged misconduct of Kosovo judges and prosecutors. Such monitoring would help to ensure that the case would be tried fairly on undisputed evidence, facts and arguments which would be filed by the parties at the next court hearings held before the Pristina Basic Court.

### **III. COMPLAINTS**

9. The complainant, without invoking any breach of his human rights or any relevant legal provisions, requests that EULEX should monitor the court proceedings to which he was a party. The complainant also emphasises the importance of such monitoring as a way to ensure that that “the case would be tried fairly on undisputed evidence, facts and arguments”. It appears from this that the complainant is raising issues pertaining to his rights guaranteed under Article 6 of the European Convention on the Protection of Human of Human Rights

and Fundamental Freedoms (“the Convention”) and Articles 14/16 of the International Covenant on Civil and Political 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 and the International Covenant on Civil and Political Rights which set out minimum standards for the protection of the human rights to be guaranteed by public authorities in all democratic legal systems.
11. Before considering the complaint on its merits, the Panel must 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 alleged 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, a property dispute between him and M. F., which is currently pending before Kosovo courts. 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 (see, generally, *Z.A. against EULEX*, 2014-36, 29 February 2016, § 17; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, § 13; *Shaban Kadriu against EULEX*, 2013-27, 27 May 2014, § 17). It consequently has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts.
14. Therefore, the issue raised with EULEX by the complainant, referred to in paragraph 5 above, did not give rise to the Panel’s jurisdiction to examine the case.
15. Furthermore, when EULEX wrote to the complainant on 30 June 2016, it did not thereby exercise executive authority within the meaning of the EULEX Accountability Concept. It merely acted by providing the complainant with general information regarding the limits of its mandate and advised him on remedies that might be available to him within the Kosovo judicial system.
16. It follows that the present complaint falls outside the competence of the Panel as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

**FOR THESE REASONS**

The Panel holds, unanimously, that it lacks jurisdiction to examine the complaint and, under Article 29 (d) of its Rules of Procedure,

**DECLARES THE COMPLAINT INADMISSIBLE.**

For the Panel,

John J. RYAN  
Senior Legal Officer

Magda MIERZEWSKA  
Presiding Member