



INADMISSIBILITY DECISION

Date of adoption: 23 February 2011

Case No. 2010-08

Velimir Krstić

Against

EULEX

The Human Rights Review Panel sitting on 23 February 2011 with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, member
Mr. Francesco FLORIT, member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Leena LEIKAS, 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 of 9 June 2010,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 8 September 2010. On 29 December 2010 the Panel requested additional information from the complainant. The additional information was received on 5 January 2011.

II. THE FACTS

Background

2. The complainant owns 0.35.48 hectares of land in Fushë Kosovë/Kosovo Polje. The land was rented out to British KFOR until May 2004. After the British KFOR withdrew from Kosovo, the Municipality of Prishtinë/Priština took over the land. No compensation was paid to the complainant, nor was he asked for permission to use his land.
3. According to the complainant, the land was used for storing waste and various other materials at the outset. Later, allegedly, the Municipality of Prishtinë/Priština commenced the construction of a wholesale market on part of the land. An area of 0.12.82 hectares was fenced off and the complainant was prevented from accessing his land.

Civil proceedings

4. On 28 February 2006 the complainant initiated a civil case (no. 291/06) before the Municipal Court of Prishtinë/Priština against the Municipality of Prishtinë/Priština. He claimed damages in the amount of EUR 100.000. In addition he requested that the fence and the waste and stone material be removed from the land and that his legal fees be covered by the respondent. He also proposed that the Court should inspect the site in person.
5. Such inspection took place, in the presence of the complainant, the respondent and the Court, on 23 October 2009. The documents from the Cadastral Agency show that the complainant is the owner of the land. According to the complainant, a total of three hearings have been held by the Municipal Court between 28 February 2006 and 8 September 2010. The case is still pending and no further details have been provided.

Criminal proceedings

6. It seems that several buildings were being constructed on the complainant's land, without informing him or seeking his approval for the buildings. The construction of one building was stopped by the Kosovo Police Service together with Municipal Building inspection. As a result of this, criminal proceedings were initiated by the Kosovo Police on 24 December 2008 (2008-AD-02133) against Public Utility Company Market Place in Prishtinë/Priština before the Municipal Public Prosecutor in Prishtinë/Priština. The company was suspected of the illegal usurpation of immovable property.
7. On 12 February 2009, the prosecutor rejected the charges with his resolution KTR No. 4018-13/2008. The complainant was advised to initiate civil proceedings against the persons using his property. It is not known, whether he has done so.

Investigation by the Ombudsperson Institution

8. On 7 August 2009 the complainant submitted a complaint (no. 353/09) to the Ombudsperson Institution, claiming that the proceedings before the Municipal Public Prosecutor in Prishtinë/Priština had lasted too long.
9. On 7 May 2010 the complaint was rejected, as no civil case had been initiated against the persons illegally using his land, as had been instructed by the prosecutor (see above). As the appropriate legal remedies had not been exhausted, the Ombudsperson could not examine the case.

Other examinations and discussions

10. The complainant has, according to his own submissions, orally received negative responses to his requests to vacate his property from the following authorities:
 - 2 December 2008, the directors from the community office Sladjana Lazic,
 - 2 December 2008, director of the Cadastral Office of Kosovo Polje-Breznica,
 - 19 January 2009, Gerber Aneet, Regional Community Affairs Officer and Lejla Kolenovic, Regional Community Rights Officer,
 - 5 August 2009, Advisory Committee Gracanica.
11. In addition, the complainant has allegedly tried to enter EULEX Police premises in 2009 in relation to his case, but was denied access.
12. No documentation or additional details have been provided on any of these discussions or decisions, despite the request by the Panel to do so.

III. COMPLAINTS

13. The complainant claims he has been discriminated against by the justice system of Kosovo and more particularly by the judge in the Municipal Court of Prishtinë/Priština, who has held three hearing sessions, invited external parties to the hearings in the civil case, and thereby delayed the decision making process. It is therefore assumed that he also complains about the length of the civil proceedings.

IV. THE LAW

14. 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.
15. The Panel notes that in the present case the applicant instituted civil proceedings before the Municipal Court of Prishtinë/Priština on 28

February 2006. The case is still pending before that court. Hence, the proceedings have lasted five years to date in one judicial instance. Such duration of the proceedings can be regarded as incompatible with the requirement that civil proceedings be heard within a reasonable time; a requirement which is a constitutive element of the right to a fair hearing stipulated by Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms applicable in Kosovo.

16. None the less, under Rule 25, paragraph 1 of its Rules of Procedure the Panel can only examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate. The case to which the complainant refers is pending before the Municipal Court of Prishtinë/Priština. It has not been shown or even argued that any EULEX judge has been involved in any capacity in the complainant's civil case.
17. As a result, the issues raised in the present complaint do not fall within the ambit of the executive mandate of EULEX Kosovo.

FOR THESE REASONS,

The Panel, unanimously, holds that it lacks competence to examine the complaint, finds the complaint manifestly ill-founded within the meaning of Article 29 (d) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Senior Legal Officer

Antonio BALSAMO
Presiding Member