



INADMISSIBILITY DECISION

Date of adoption: 23 February 2011

Case No. 2010-15

Faton Sefa

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 28 September 2010.

II. THE FACTS

Background

2. The complainant was employed as a technical manager by Radoniqi Hydro Systems since 1982. The international company "Gelsenwasser" took over the management of the company in 2002. On 18 August 2006 the complainant's employment contract was terminated with immediate effect, allegedly due to the fact that "he did not manage to reduce the water losses".
3. On 24 August 2006 the complainant requested a review of the termination of his contract. On 25 August 2006 the Managing Director of the company requested that the complainant immediately return a mobile phone, which was company property.
4. On 30 August 2006 the complainant filed a complaint against the decision no. 2660 taken by the Disciplinary Commission on 25 August 2006 (the actual decision has not been provided by the complainant). The complaint was rejected on 21 September 2006.

Proceedings before the Ombudsperson Institution

5. The complainant lodged a complaint before the Ombudsperson Institution on 28 September 2007. Additional information was requested from the company on 19 May 2008. No further details have been provided on the proceedings.

Civil proceedings

6. The complainant lodged a civil case in the Municipal Court of Gjakovë/Đakovica in 2008. On 20 March 2009 the Municipal Court found that he was illegally fired and that he should be reinstated to his previous or equivalent position within 8 days from the time when the decision became final.
7. On 9 February 2010 the District Court of Pejë/Peć decided on the matter, apparently for the company. No decision has been provided. The complainant requested that the Supreme Court of Kosovo uphold the earlier decision by the Municipal Court of Gjakovë/Đakovica. The final decision of the Supreme Court is not known.

Additional information

8. The complainant has lodged complaints before UNMIK Administration, Human Rights Advisory Panel, UNMIK, European Court of Human Rights etc. No further documentation has been provided.

III. COMPLAINTS

9. The complainant claims that he was wrongfully dismissed and he wishes to be reinstated to his previous position and that he gets compensated for his financial losses.

IV. THE LAW

10. 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.
11. According to Rule 25, paragraph 1 of the 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.
12. The issue raised in the present complaint relates to a private law dispute between the complainant and his previous employer, “Radoniqi Hydro Systems”. It has not been shown or even argued that EULEX has been involved in any capacity in the complainant’s civil case.
13. The present case does not fall within the ambit of the executive mandate of EULEX Judges, which according to the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law N. 03/L-053) is limited, in civil cases (article 5) to:
 - a) cases falling within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, including cases that have been referred to another court pursuant to the applicable law;
 - b) cases falling within the jurisdiction of any court of Kosovo regarding appeals on decisions of the Kosovo Property Claims Commission according to the applicable law;
 - c) any new or pending property related civil cases, when some specific conditions occur.

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