



INADMISSIBILITY DECISION

Date of adoption: 08 April 2011

Case No. 2011-03

Afrim Mustafa

Against

EULEX

The Human Rights Review Panel sitting on 08 April 2011
with the following Members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magdalena 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 3 February 2011.

II. THE FACTS

Background

2. The following facts have been established on the basis of decisions of the Independent Media Commission (15 November 2007) and Constitutional Court (15 October 2010).
3. On 19 December 2000 the Independent Media Commission (hereafter: the "IMC") issued for the complainant a license to operate a radio station, "*Radio Zeri I Sharrif*", transmitting in the Municipalities of Kaçanik/Kaçanik and Ferizaj/Uroševac from a location in Hani Elezit. The license was modified on the basis of an agreement between the complainant and the IMC on 21 July 2005.
4. In 2005 the complainant encountered problems with his transmissions and he started to transmit temporarily from another location, which was not included in his license terms. He submits that he informed the IMC of the temporary move.
5. In the beginning of November 2006 the IMC was informed that the complainant had moved his transmitter and that he was transmitting from another location using frequency coordinates that were not specified in his license. The complainant was requested to clarify to the authorities the change of location and frequencies. He informed the IMC that due to force majeure he was forced to operate in the new location. He argued that that change of location was compatible with his license.
6. By a letter dated 13 November 2006 the IMC informed the complainant that he was not in compliance with his radio license and that he had to relocate his operations to Hani Elezit within 5 (five) days, as specified in the license. The complainant did not act on this order.

Proceedings

7. On 10 January 2007 the IMC notified the complainant that he was breaching the terms of his license. The IMC imposed a suspended fine of 1,500 euros (EUR) on him which he would be liable to pay only if he failed to relocate the operations back to the licensed area and if he committed another license violation within the following six months. The complainant refused to sign the agreement and he also refused to relocate his operations.
8. On 6 April 2007 the Council of the IMC imposed a fine of EUR 1,500 on the complainant for violations of the terms and conditions of the license. In addition, the complainant was ordered to relocate his operations to the licensed location within 20 days.
9. The complainant appealed against the decision. On 3 August 2007 the Media Appeals Board upheld the Council's decision and it became final.

10. On 10 September 2007 the complainant was given another opportunity to comply with the terms of his license by 17 September 2007. He refused to have this decision served on him, did not pay the fine and failed to move his operations.
11. On 16 October 2007 the complainant submitted a request to the Media Appeals Board. He stated that he was not in a position to pay the fine at that time, but would do so after his appeal was examined by the Supreme Court. He also stated that he did not intend to relocate the antennas and transmitters to the original location.
12. On 15 November 2007 the IMC suspended the license of the radio station for three months referring to its earlier decision of 6 April 2007 (see paragraph 8 above) and to the continuing violations of its terms and conditions. The complainant was ordered to resume transmission from the licensed location in accordance with the license terms after the expiry of the three-month period. Furthermore, it was stated that if he failed to act in accordance with the decision, the license would be considered revoked and further legal action would be envisaged against him. Subsequently, the Media Appeals Board upheld this decision.
13. On 5 June 2008 the IMC confiscated the complainant's radio equipment on the basis of a relevant warrant issued on 4 June 2008. The complainant sued the IMC before the Municipal Court of Kaçanik/Kaçanik. The claim was rejected by the court and was subsequently found inadmissible by a decision of the Supreme Court of 12 February 2009.
14. On 25 June 2009 the closing of the radio station was debated in the Assembly of Kosovo in connection with the debate on the annual report of the IMC. It was decided that the Assembly could only debate the issue after the IMC had drafted its own report and recommendations on the matter.
15. On 20 July 2009 the complainant requested a new operating license for the new location. He maintains that he did not receive any reply to his application.
16. On 15 October 2010 Constitutional Court rejected the complainant's request to have his case examined by that court as it had not been filed within the time limit of four months, as stipulated in the law.

III. COMPLAINTS

17. The complainant alleges violations of Article 17 (2) of the Universal Declaration for Human Rights (1948) and Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 1950)

18. He claims that the IMC took arbitrary actions with regard to his radio station and violated his right to the peaceful enjoyment of his property which had been created through his personal labour and investments.
19. He requests that all decisions given by the IMC be declared null and void and the return of the seized equipment together with monetary compensation for the damage which he had sustained as a result of the confiscation of equipment and the closure of the radio station.

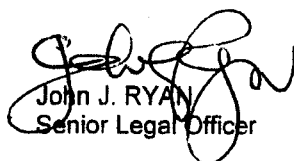
IV. THE LAW

20. 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.
21. 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.
22. The issues raised in the present complaint relate to a dispute between the complainant and the IMC concerning compliance with the broadcasting license issued by that authority. It has not been shown or even argued that EULEX Kosovo has been involved in any capacity in the complainant's case.
23. As a result, the issues concerned in the present complaint do not fall within the ambit of the executive mandate of EULEX Kosovo, the latter being confined to certain matters pertaining to justice, police and customs.

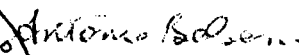
FOR THESE REASONS,

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