



INADMISSIBILITY DECISION

Date of adoption: 14 September 2011

Case No. 2011-05

SH.P.K “SYRI”

Against

EULEX

The Human Rights Review Panel sitting on 14 September 2011 with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, Member
Ms. Verginia MICHEVA-RUSEVA, Substitute Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Leena LEIKAS, Legal Officer
Ms. Stephanie SELG, 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 25 March 2011. Additional information was requested from the complainant company on 23 June 2011. That information was partly received on 26 June 2011.
2. The complaint concerns proceedings before the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereafter SCSC). Ms. Bednarek is a Panel Member and also a EULEX judge serving at the SCSC. Therefore Ms. Bednarek cannot

participate in the examination of the present case as a member of the Panel. She has been replaced by Ms. Micheva-Ruseva, the Substitute Member.

II. THE FACTS

Facts of the case

3. The complainant company has currently a case pending before the SCSC.
4. The SCSC issued an order, requesting the complainant company pursuant to Section 25.7 of UNMIK Administrative Direction 2008/6 (amending UNMIK AD 2006-17) to provide the English translation of all documents. Such order is included in all the requests for documents automatically as per the said Direction. Although requested on 23 June 2011, the complainant company does not provide any documentation or the date of that decision of the SCSC.

Relevant legislation

5. Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, Chapter II, Article 2.1 reads as follows:

An EULEX judge will have the authority and responsibility to perform the functions for cases falling within the jurisdiction of the courts to which he or she is assigned to by the President of the Assembly of EULEX judges, and according to the modalities as established by the present law and by the EULEX KOSOVO.

III. COMPLAINTS

6. The complainant company claims, referring to international human rights declarations and conventions that it has been discriminated against by the order of the SCSC. Furthermore that the respective Article of the UNMIK Administrative Direction No. 2008/6 on the SCSC (amending UNMIK AD 2006-17) in general is discriminatory and that the practice of the SCSC constitutes a denial of the right to a fair hearing, freedom of expression and equality before the law.

IV. THE LAW

7. 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.
8. The Panel can only examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors as outlined in Rule 25, paragraph 1 of its Rules of Procedure.

9. According to the said Rule, based on the accountability concept in the OPLAN of EULEX Kosovo, the Panel cannot review judicial proceedings before the courts of Kosovo.
10. The Panel notes that the complainant company requests, in essence, that the Panel takes measures in order to prevent the SCSC applying Section 25.7 of UNMIK Administrative Direction 2008/6 (amending UNMIK AD 2006-17) in its case and in general before the SCSC, a Kosovo institution.
11. The Panel further notes that the complainant company's case is pending before the SCSC. The Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts and the legislation applied by them. Furthermore, the fact that EULEX judges sit on the bench of the SCSC assigned to examine the case does not detract from the SCSC its character as part of the Kosovo judiciary.
12. As a result, the issue raised in the present complaint does 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.

For the Panel,

John J. RYAN
Senior Legal Officer

Antonio BALSAMO
Presiding Member