



INADMISSIBILITY DECISION

Date of adoption: 8 June 2011

Case No. 2011-09

Mr. Bojan Mirkovic

Against

EULEX

The Human Rights Review Panel sitting on 8 June 2011 with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, member
Ms. Anna BEDNAREK, 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 12 April 2011.

II. THE FACTS

Background

2. The complainant was recruited by EULEX Kosovo on 28 July 2008 and was employed as a security guard in the Office of the Head of Mission, (HOM) where he worked under a contract of employment until 14 June 2010. He became eligible for medical insurance benefits from the Vanbreda International Insurance Company (later "Vanbreda") on 1 August 2009.

Events

3. According to the complainant he was treated in a Belgrade hospital in Serbia on 27 June, 29 June, 13 July, 31 July, 27 August, 4 September and 24 October 2009. He submits that he sent the hospital bills together with receipts for payment for the medical procedures to the authorized insurance companies, Dukadjini Insurance Company (later "Dukadjini") and Vanbreda.
4. On an unspecified date towards the end of October 2009 the complainant received an e-mail from Vanbreda stating that that he would not be compensated for the bill for the treatment on 27 August 2009 as doubts had arisen as to its authenticity. He was advised by Vanbreda that EULEX Kosovo Administration had been informed of the matter.

Proceedings

5. An investigator from the EULEX Internal Investigations Unit requested the complainant to provide an official statement on the matter on 30 November 2009. His cousin was also interviewed by phone. Statements were taken from the complainant on 2 and 7 December 2009. The complainant was suspected of having altered the date on the bill in the amount of USD 1,160 in order to receive benefits from Vanbreda, although on 27 June 2009 he had already been compensated for the said treatment by Dukadjini.
6. The EULEX Internal Investigations Unit finalized its investigation report on 11 December 2009. It concluded that a Disciplinary Board of Inquiry (later "Board") was to be established to consider the case. It recommended that the fact that the complainant had already received an informal warning from his superior was to be taken into consideration. The strongest possible disciplinary measures were recommended, regard being had to the grave nature of the offences concerned which were considered to amount to fraud.
7. The Board found that the evidence collected by the Internal Investigations Unit was sufficient for the facts of the case being established and did not consider it necessary to hear the complainant in person. On 5 February 2010 the Board concluded that the attempt by the complainant to obtain compensation for the same medical treatment from the two insurance companies was a serious breach of

the Code of Conduct for which the most appropriate disciplinary measure was termination of his contract of employment.

8. On 9 February 2010 the complainant's employment contract was suspended by the Deputy HoM. After an unsuccessful appeal to the HoM the complainant's contract of employment was terminated on 28 April 2010.

III. APPLICABLE REGULATIONS

9. The conduct of the EULEX staff members is regulated by the Code of Conduct and Discipline (hereafter "COC"). In case of an alleged breach of the COC the HOM shall initiate an internal investigation into the matter. The investigation will then be carried out by the Internal Investigation Unit.
10. If the allegations are found to be substantiated, the HOM may, after receiving the Final Investigation Report, designate a Disciplinary Board competent to recommend appropriate disciplinary measures. The Disciplinary Board may call upon a staff member or other individuals to testify but it is not obliged to do so. The HOM shall make the decision on the closing of the case and on the possible disciplinary measures to be taken. The staff member has the right to appeal against the decision to the HOM. The HOM's decision given in the appellate proceedings is final.

IV. COMPLAINTS

11. The complainant submits that he was not treated fairly during the investigations, that his supervisors had not been questioned and that there was no evidence against him sufficient for the imposition of the disciplinary measure. He complains that he was not heard in person by the Board deciding upon the termination of his contract.

V. THE LAW

12. 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.
13. According to Rule 25, paragraph 1 of the Rules of Procedure, the Panel can examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate.
14. The complainant's case concerns an examination conducted by the Internal Investigations Unit of EULEX and the Disciplinary Board of Inquiry of EULEX, of an alleged breach of the Code of Conduct of EULEX Kosovo. The final decision on the termination of the contract of employment was taken by the HOM EULEX Kosovo.

15. The Panel can examine complaints relating to alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. Matters pertaining to employment and internal disciplinary measures are the responsibility of EULEX. Therefore the complaint does 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 the 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 Adviser

Antonio BALSAMO
Presiding Member