



INADMISSIBILITY DECISION

Date of adoption: 14 September 2011

Case No. 2011-14

Lindita Shabani

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. 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 1 May 2011. Additional information was requested from the complainant on 8 June 2011. That information was received the next day.

II. THE FACTS

2. According to the complainant, she got married on 28 August 2005 and has had two children with her husband.

3. She was separated from her husband for most of the time as he lived abroad and he was periodically imprisoned, most recently in Spain. The complainant claims she was victim of domestic violence by her husband's relatives. She did not report the alleged violence to the authorities.
4. On 18 August 2010 the complainant's husband telephoned his relatives from Spain to say that he had divorced the complainant. They informed the complainant accordingly.
5. In September 2010 the complainant left her children with her husband's family, at their insistence, in the hope that she would be able to see them occasionally. The children are currently in the custody of their uncle in Podujevë/Podujevo. He allegedly told the complainant that her husband had forbidden him to allow the complainant to visit and she consequently did not see her children since September 2010.
6. On 11 October 2010 the complainant, who lives in Lipjan/Lipljan, brought her predicament to the attention of the Center for Social Work in Podujevë/Podujevo.
7. On 25 May 2011, after five (5) failed attempts between 11 October 2010 and 25 May 2011 to reach an agreement on the complainant's right to contact her children, the complainant was instructed by the Center for Social Work to vindicate her rights by way of judicial proceedings.
8. In the meantime, on 24 January 2011 the complainant filed a request for custody and maintenance claim for her children with the Municipal Court of Lipjan/Lipljan. The court found on 11 February 2011 that it did not have jurisdiction as the children resided in Podujevë/Podujevo.
9. The complainant, subsequently, filed a similar request with the Municipal Court in Podujevë/Podujevo. The case is pending.
10. On 28 April 2011 the complainant contacted EULEX Kosovo. In his reply, the Chief of Staff of EULEX advised the complainant to seek assistance from a lawyer from Victim's Advocacy and Assistance Unit in the Kosovo Ministry of Justice. She was also advised to contact the Centre for Legal and Regional Development, the Legal Aid Commission of Kosovo, Kosova Women's Network and NORMA (a women's non-governmental organisation).
11. In May 2011 the complainant further discussed her problems with a representative of the Council for the Defense of Human Rights and Freedoms.
12. She has allegedly attempted to commit suicide on a number of occasions.

III. COMPLAINTS

13. The complainant wishes to have regular contact with her children and asks the Panel for assistance.

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. 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.
16. The issues raised in the present complaint relate to a family law dispute between the complainant and the family of her former husband.
17. The case is pending before Kosovo courts. The Panel has no jurisdiction to act as a court of appeal in respect of decisions given by these courts or to intervene in any manner in such proceedings.
18. Consequently, 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. The fact the complainant contacted EULEX Kosovo for advice does not bring the case within the ambit of EULEX Kosovo's executive mandate.

FOR THESE REASONS, the Panel, unanimously,

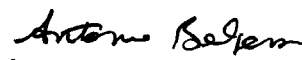
holds that it lacks the competence to examine the complaint, *finds* the complaint manifestly ill-founded within the meaning of Article 29 (d) of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

For the Panel,


John D. RYAN
Senior Legal Officer




Antonio BALSAMO
Presiding Member