INADMISSIBILITY DECISION

Date of adoption: **23 November 2011**

Case No. **2011-26**

Mr. Njazi Asllani

Against

EULEX

The Human Rights Review Panel, sitting on 23 November 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 15 September 2011.

II. THE FACTS

2. The facts of the case, as submitted by the complainant, and as apparent from documents available to the Panel, may be summarized as follows. The more detailed description of the events is available in

the judgment of the Constitutional Court of 17 December 2010 (case reference KI 08/09).

Background

3. On 27 February 1990, the temporary management of the socially-owned enterprise IMK (a steel pipe factory) in Ferizaj/Uroševac terminated the employment contracts of the complainant and 571 other employees on the ground that the said employees had been absent from work for five consecutive days. Subsequently, the employees reported to work every day until 5 May 1990 but they were not permitted to enter the premises. No disciplinary measures were instituted before dismissals.

4. The employees lodged a collective appeal on 8 March 1990. They received no reply to their objections on their dismissal.

Court proceedings with regard the dismissal

5. In 2001 the employees filed a claim in respect of their dismissal and the loss of wages with the Municipal Court in Ferizaj/Uroševac.

6. On 11 January 2002 the Municipal Court ruled that the decision to annul the employment contracts was unlawful and that all the employees who had reported to work until 1 May 2001 should be reinstated and should acquire all their rights eminating from the original employment contracts with IMK from 19 February 1990 until 1 May 2001.

7. It was open to the defendant company to lodge an appeal against this judgment with the District Court of Prishtinë/Priština within eight (8) days from the date of service of the written copy of the judgment. The IMK did not avail itself of this remedy. The decision became final (*res judicata*) on 11 March 2002.

Execution of the final decision

8. As the IMK failed to honor its obligations in connection with the execution of the final decision, the employees requested the Municipal Court of Ferizaj/Uroševac for an execution order.

9. On 22 December 2005 the Municipal Court ordered the execution of its earlier decision, i.e. the payment of unpaid salaries, and prohibited the privatization of IMK by the Kosovo Trust Agency (KTA). The total amount of salaries to be paid amounted to EUR 25.649.250 with a yearly interest of 3 % starting on 13 March 2002.

10. On 16 January 2006, a single judge in the Municipal Court, *ex officio*, reversed the prohibition on the privatization of IMK. The decision was upheld later by the District Court of Prishtinë/Priština.

11. No payments were made due to continuous efforts by the Kosovo Trust Agency (KTA) to stop the execution of the decision and to privatize IMK.

Proceedings before the Special Chamber of the Supreme Court

12. On 2 August 2006 the KTA filed an appeal with the Special Chamber of the Supreme Court (SCSC) arguing that it was essential that the interpretation of the law be clarified in similar cases.

13. On 9 August 2006 the SCSC rejected the appeal as it considered the appeal essentially an attempt to appeal against the final judgment given in 2002, which could not be allowed for reasons of legal certainty (*res judicata*).

Freezing of the assets of IMK

14. On 11 December 2006 the Municipal Court of Ferizaj/Uroševac froze the financial assets of IMK, obliging the KTA to pay the employees EUR 25.649.250 from the assets of IMK. This decision was later set aside by the Supreme Court but the Municipal Court, having re-examined the case, froze the assets again on 23 October 2007. That decision was upheld by the District Court of Prishtinë/Priština on 17 December 2007.

Privatization procedure

15. On 13 December 2006 the KTA issued a press release stating that the only bid for the privatization of IMK on the second bidding round was for EUR 3.657.000.

16. On 17 December 2007 the SCSC rejected the request to prohibit the sale of the company but noted that the valid claim for unpaid wages, as stated in the final decision of 2002, did still exist. The appeal against the SCSC decision was rejected on 8 February 2008.

17. The IMK had, in the meantime, been fully privatized on 21 November 2007 for EUR 3.200.000. The attempts to annul the privatization of IMK were unsuccessful.

Liquidation proceedings

18. On 18 December 2007 the KTA declared IMK in liquidation. The credit request of the employees was presented to the liquidation Commission. To the Panel's knowledge these proceedings are still pending.

19. On 6 October 2008 the Municipal Court of Ferizaj/Uroševac, *ex officio*, suspended the execution of the final decision of 2002 after having been informed by the KTA that IMK had entered the liquidation process. This decision was notified to the employees only one year later.

Proceedings before the Constitutional Court

20. On 18 December 2010 the Constitutional Court held that the employees' rights had been violated when the final (*res judicata*)

decision of 2002 to pay their salaries remained non-executed 8 years after the decision.

21. According to the Constitution of the Republic of Kosovo, Article 159.2 "the socially owned interests in property and enterprises in Kosovo shall be owned by the Republic of Kosovo". The Constitutional Court held that this provision was to be understood in such a way that it was the Government of Kosovo which was responsible for all obligations of such enterprises, including the employees' salary claim.

22. The Constitutional Court ordered that the final decision of 2002 should be executed by the Government and the Privatization Agency of Kosovo, as legal successor of KTA, which were to inform the Constitutional Court, within six months, about the measures taken to enforce its judgment.

23. The Panel has no further information on these proceedings.

Contacts with EULEX

24. On 13 February 2009 a request for execution of the judgment of 11 January 2002 was lodged with EULEX Justice Component.

25. On 10 April 2009 a EULEX judge informed the Employees' Syndicate that EULEX judges were not competent to enforce judgments of Kosovo courts. The Syndicate was instructed to file an order for execution with the Municipal Court of Ferizaj/Uroševac.

26. In November 2009 the complainant submitted a request to a EULEX prosecutor in Prishtinë/Priština to investigate the case. He was informed that the case had been transferred to the District Court of Prishtinë/Priština. He has not received any further reply from the EULEX prosecutor and he submits that the EULEX officials working in the District Court have no knowledge of the matter.

27. On 17 June 2010 the complainant wrote to EULEX Justice Component submitting that there was no progress with regard to the execution of the judgment and requesting that EULEX use its authority to enforce the decision. According to the complainant no reply was received from the Justice Component.

III. COMPLAINTS

28. The complainant claims that EULEX has done nothing to enforce the final judgment of Municipal Court of Ferizaj/Uroševac, taken in January 2002.

IV. THE LAW

29. 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.

30. 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.

31. 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.

32. The Panel notes that the complainant requests, in essence, that the Panel finds a violation as EULEX has not taken any measures in order to ensure the execution of a decision by the Municipal Court of Ferizaj/Uroševac in 2002.

33. The mandate of EULEX does not authorize it to enforce judgments of Kosovo courts and the issue raised by the complainant does not therefore fall within the ambit of the executive mandate of EULEX Kosovo.

34. Therefore the issue does not fall within the ambit of the Panel's mandate, as formulated in Rule 25 of its Rules of Procedure and the OPLAN of EULEX Kosovo.

35. However, the Panel cannot but note that the Constitutional Court of Kosovo held in its judgment of 18 December 2010 that the execution of a judgment given by any court must be regarded as an integral part of the right to a fair trial guaranteed by the law (see, mutatis mutandis, ECHR, *Hornsby v. Greece*, judgment of 19 March 1997, Reports 1997-II, p. 510, para. 40). It further held that the former workers of the company should not have been prevented from benefitting from the decision, which had become *res judicata*, given in their favour.

36. It further held the final binding judicial decision in the complainant's favour must be executed by the competent authorities, in particular the Government of Kosovo and the Privatization Agency of Kosovo, as the legal successor of KTA. In this connection, the Panel can only reiterate that currently the responsibility for taking measures in order to comply with the judgment of the Constitutional Court rests with the Kosovo authorities. It is for them to examine what measures, be it legislative or administrative, should be taken in order to ensure compliance with that judgment and to consider the scope, time-frame and sequence of implementation of such measures.

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