



INADMISSIBILITY DECISION

Date of adoption: 23 November 2011

Case No. 2011-06

Mr. Milazim Blakqori

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 1 April 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.

Background

3. On 17 February 2005 the complainant and a third party concluded an agreement for the sale of the "Park Hotel" and the attached parking lot on Gustav Majer Street in Prishtinë/Priština. The complainant, in the belief that he had become the rightful owner, started to invest in the property.
4. For unknown reasons a dispute over the property arose between the complainant and the third party. This prevented the complainant from using the property as foreseen and also led to considerable financial losses.

Administrative and judicial proceedings

5. On 4 December 2006, the complainant filed a request with the Municipal Court of Prishtinë/Priština, asking for temporary/preventive measures with regard to the disputed property.
6. By a decision of 23 January 2007 the Municipal Court of Prishtinë/Priština approved the complainant's request and ordered as a temporary measure the postponement of the transfer or the sale of the disputed property for a period of thirty (30) days. The court further stated that this decision should be implemented by local institutions and that the complainant should file a lawsuit in order to proceed with the case, which he did with submissions from 24 January and 21 February 2007.
7. On 1 March 2008 the complainant and the third party apparently concluded another agreement concerning the property. The content of the agreement is unknown to the Panel.
8. Nevertheless, on 5 May 2008 the third party filed a request with the Directorate of Urbanism, Cadaster and Environmental Protection of the Municipality of Prishtinë/Priština for a construction permit, which was issued on 16 July 2008.
9. The complainant's attempt to nullify the construction permit and to stop the construction on the disputed property was dismissed by the very same Directorate on 2 December 2008.
10. On 17 December 2008 the complainant filed an identical request with the Governmental Office of the Secretariat of the Ministry of Environment and Spatial Planning. On 17 March 2009 this request was also rejected on the basis that the case could only be resolved in judicial proceedings.
11. On 5 March 2009 the Municipal Court of Prishtinë/Priština issued a decision, the content of which is unknown to the Panel. This decision was subsequently declared null and void by the District Court of Prishtinë/Priština on 18 January 2010 and the case was remitted to the Municipal Court.

12. On 24 August 2010 the complainant filed a lawsuit with the Municipal Court against the Municipality of Prishtinë/Priština asking for compensation due to the failure of the public institutions to implement the Court decision of 23 January 2007.

EULEX involvement

13. During the administrative and judicial proceedings the complainant sent a letter to the President of the Assembly of EULEX judges claiming that the initial decision of the Municipal Court of Prishtinë/Priština of 23 January 2007 had neither been implemented nor respected by the local institutions.
14. On 26 January 2010 a EULEX Civil Judge at the District Court of Prishtinë/Priština replied to the request of the complainant stating that EULEX would not take over the case since the conditions stipulated in Art. 5.1 (c) under (i) to (iii) Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, Law No. 03/L-053, were not complied with.

III. COMPLAINTS

15. The complainant claims that local institutions neither respected nor implemented the decision issued by the Municipal Court of Prishtinë/Priština from 23 January 2007.

IV. THE LAW

16. 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 (ROP).
17. 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 ROP.
18. 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. In particular, it is not its function to deal with errors of fact or law allegedly committed by the Kosovo courts unless and in so far as they may have infringed rights and freedoms protected by international human rights law applicable in Kosovo. Hence, the Panel lacks jurisdiction to examine the acts and omissions of the Kosovo courts and other authorities.

19. In accordance with Rule 25, paragraph 3 of the Rules of Procedure¹, complaints must be submitted within three months from the date the Panel may receive complaints (9 June 2010), or within six months from the date of the alleged violation, whichever is more favourable to the Complainant.
20. The Panel notes that the decision of EULEX Kosovo not to take over the complainant's case was communicated to him on 26 January 2010. The complaint should have been lodged at the latest on 9 September 2010. The complaint was lodged 1 April, 2011. Thus, the complaint does not comply with the requirement of Rule 25, paragraph 3 of the Rules of Procedure.
21. With regard to the administrative proceedings in this case, the Panel states that EULEX in any event is not involved and that it has no jurisdiction to examine the decisions and actions of the local administrative institutions.

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 Rule 29 (d) and Rule 25, paragraph 3 of its Rules of Procedure, and

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Senior Legal Officer

Antonio BALSAMO
Presiding Member

¹ As formulated in the version of 9 June 2010, in force at the time of lodging the current complaint.