



INADMISSIBILITY DECISION

Date of adoption: 21 April 2015

Case No. 2014-05

Mazlam Ibrahimi

Against

EULEX

The Human Rights Review Panel sitting on 21 April 2015
with the following members present:

Ms Magda MIERZEWSKA, member
Mr Guénaél METTRAUX, Member
Ms Katja DOMINIK, Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Ms Joanna MARSZALIK, 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 as last amended on 15 January 2013,
Having deliberated, decides as follows:

PROCEDURE

1. The complaint was registered on 3 February 2014.
2. On 25 June 2014, the Panel decided to give notice of the complaint to the Head of Mission (HoM) of EULEX Kosovo, inviting him to submit written observations on the complaint. It was also decided to examine the merits of the application at the same time as its admissibility (Rule 30 paras 1 and 2 of the Rules of Procedure of the Panel).

3. The observations of the HoM were received on 13 October 2014 after which they were translated and communicated to the complainant for his additional observations.
4. On 28 November 2014, the complainant sent additional observations, which were forwarded to the HoM for information. No further observations were requested.

FACTS

I. CIRCUMSTANCES OF THE CASE

5. The complainant was employed in the "IT DRATEX" company in Dragash/ Dragaš from 1984 to June 1999 when he was forced to leave Kosovo for security reasons. He is now unemployed and lives in the Republic of Serbia.
6. On 30 October 2006, he lodged a request for payment of unpaid wages in the amount of EUR 6,000 (six thousand Euro) with the Kosovo Trust Agency office in Belgrade.
7. On 24 April 2013, the Privatization Agency of Kosovo (PAK; the successor of the Kosovo Trust Agency) rejected the request. PAK found that it had been lodged too early, because the "IT DRATEX" liquidation proceedings have not yet begun.
8. On 17 June 2013, the complainant lodged an appeal against the PAK decision with the Special Chamber of Supreme Court of Kosovo on the Privatization Agency Matters (SCSC). He also requested to be exempted from payment of the court fees and the costs of translation of submissions and accompanying documents into English (as required by Article 25.8 of the Annex of the Law No. 04/I-033 on Special Chamber of Supreme Court of Kosovo for issues related to the Privatization Agency of Kosovo, Rules of Procedure of the Special Chamber of Supreme Court of Kosovo for issues related to the Privatization Agency of Kosovo (Law on SCSC)). He argued that he was an internally displaced person, unemployed and disabled, in a difficult financial situation, so that payment of those expenses would jeopardise his and his family's existence. He also submitted relevant documents as the copies of IDP's registration card and the certificate of the National Employment Service. These confirmed that he received temporary monthly benefit of RSD 5,684.00 (approx. EUR 50.00).
9. On 5 November 2013, a single EULEX judge of a panel within the SCSC, rejected the complainant's request. The reasoning of the decision does not contain any reference to the facts presented by the complainant, nor does it provide any justification for the decision. It only states that according to "article 25.10, Annex to Law No.04/L-33 on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters the translation of

pleadings and supporting documents is undertaken by the Special Chamber at the Claimant's expense".

10. The complainant has lodged a complaint against the above decision which apparently has not yet been examined by the SCSC.
11. The case is still pending before the SCSC.

II. COMPLAINTS

12. The complainant alleges violations of the European Convention on Human Rights and Fundamental Freedoms (the Convention) and the Universal Declaration of Human Rights (the Declaration):
 - Article 6 of the Convention and Article 10 of the Declaration (a right to a fair trial, in particular a right to access to court). The complainant submits that prohibitive court fees and translation costs violate his right access to court. Moreover, the decision to deny him exemption from court fees and translation costs provided no justification and were thus violating his right to a reasoned decision;
 - Article 13 of the Convention and Article 32 of the Declaration (a right to an effective remedy). The complainant submits that no appeal is available against the decision of the SCSC and that this constitutes a violation of his right to an effective remedy;
 - Article 14 of the Convention and Article 2 of the Declaration (a right to equality before the law and non-discrimination). The complainant alleges that he was discriminated against on ethnic grounds, because he is of Serbian ethnicity.

III. RELEVANT APPLICABLE LAW

ANNEX OF THE LAW No.04/L-033 OF THE SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY MATTERS

RULES OF PROCEDURE OF THE SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY MATTERS (as applicable at the material time)

Article 25 Filing of Pleadings

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8. Pleadings and supporting documents may be submitted in either the Albanian or Serbian language and accompanied by an English translation. Such translation shall be at the expense of the person or party submitting such pleading or document.
 9. A natural person may submit an application to the Presiding Judge for assistance in developing the English translation of pleadings and supporting documents. Such

application shall be submitted with the pleadings and include a statement of the party's financial means and any supporting evidence that the party wishes the Presiding Judge to take into account.

10. The Presiding Judge may direct that the translation of pleadings and supporting documents required by paragraph 8 of this Article be undertaken at the expense of the Special Chamber where he or she determines that it is reasonable to so direct having regard to the means of the natural person. If the Presiding Judge rejects such an application, he or she shall so inform the natural person by decision in writing and shall order that person to provide English translations at such person's expense within a period to be specified in the decision. If such translations are not so provided within that period, the Special Chamber shall order that translations be undertaken and that the costs thereof be assessed against that person.

On 29 March 2014, the above Law was amended as follows:

Law No. 04/L-246
ON AMENDING AND SUPPLEMENTING THE LAW No. 04/L-033 ON THE
SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON
PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS

Article 2

1. Article 25 of Annex of the basic Law paragraph 8 shall be reworded with the following text:

8. All claims and accompanying documents shall be submitted in Albanian or Serbian language, whereas the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters shall, upon its proposal and resources, provide their translation into English.

2. Article 25 of the Annex of the basic Law, paragraphs 9 and 10 shall be deleted entirely.

THE LAW

Submissions by the parties

13. In his submissions, the HoM maintains that neither the SCSC nor the Supreme Court of Kosovo are EULEX institutions, but courts within the Kosovo judiciary system, even though a number of EULEX judges work in SCSC and a EULEX judge has decided in this case. However, neither the HoM nor any other EULEX staff member may influence the decisions of independent judges. Therefore, the SCSC decision of 5 November 2013 is purely a decision of a Kosovo court. Since the Panel cannot review judicial proceedings before the Kosovo courts, the complaint falls outside its jurisdiction. It should, therefore, be declared inadmissible.

14. Notwithstanding these submissions, the HoM addresses the alleged violation of Article 6 of the Convention and Article 10 of the Declaration. The HoM submits that the right to access to court is not

absolute and is subject to certain limitations. A scheme of fees connected to civil proceedings is generally accepted as a legitimate limitation to the right to a court. In the present case, the complainant has not been denied legal aid by the court's decision to reject his request for exemption from the costs. He will therefore have to pay a fee, the amount of which will be determined at the end of the proceedings. That fee may also be reimbursed if his claim is successful.

15. The HoM further maintains that the Law on SCSC has been amended and applicants no longer have to bear the costs of translations. The HoM does not specify whether the new provisions apply to proceedings instituted before the amendments.
16. In reply to the HoM's observations the complainant submits that he maintains his submissions. He does acknowledge that the Law on SCSC has been amended and that the burden of the translation costs is no longer borne by the parties to the proceedings. This, however, in this opinion, shows that his complaint was grounded.
17. As regards the Panel's mandate to review his case, the complainant notes that the rejection of the complaint for lack of jurisdiction would lead to a legal gap, as there would be no control mechanism over the work of EULEX judges. Neither the Kosovo Judicial Council nor any other Kosovo authority would have jurisdiction over the case. As a consequence, there would be no judicial security, no limits of discretionary actions of judges or any efficient control over their work.
18. As regards the alleged violation of Article 6 of the Convention, the complainant submits that lack of sufficient reasoning of the relevant decision leads to a violation of principle of legality and to legal uncertainty, as parties to the proceedings have no access to sufficiently precise regulations on exemption from payment of courts fees and costs.

The Panel's assessment

19. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009 on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms and the International Covenant on Civil and Political Rights which set out minimum standards for the protection of human rights which must be guaranteed by public authorities in all democratic legal systems.
20. Before considering the complaint on its merits the Panel has to decide whether to accept the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
21. According to Rule 25, paragraph 1, the Panel can only examine complaints relating to the human rights violations by EULEX Kosovo

in the conduct of its executive mandate. The executive mandate refers to certain matters pertaining to justice, police and customs.

22. The Panel notes that the complainant's grievance pertains to his access to the proceedings before the Special Chamber of the Supreme Court of Kosovo.
23. The Panel has repeatedly found that, according to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot in principle review judicial proceedings before the courts of Kosovo. It has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts, the Special Chamber of the Supreme Court of Kosovo among them. The fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, among many other authorities, *Fahri Rexhepi against EULEX*, no. 2014-19, 10 November 2014, § 12; *Gani Zeka against EULEX*, 2013-15, 4 February 2014, § 13).
24. Therefore, the Panel cannot, in principle review decisions of EULEX judges as such. The Panel has already held, however, that in certain circumstances the Panel's jurisdiction would cover decisions and acts of judicial authorities as such, in particular where credible allegations of human rights violations attributed to EULEX judges have not been fully addressed by the competent judicial authorities in the appellate proceedings (*Tomë Krasniqi against EULEX*, no. 2014-04, 27 May 2014, § 15).
25. The Panel recalls in this place that Article 6 § 1 embodies the "right to a court", of which the right of access, that is, the right to institute proceedings before a court in civil matters, constitutes one aspect only; however, it is an aspect that makes it in fact possible to benefit from the further guarantees laid down in paragraph 1 of Article 6. The fair, public and expeditious characteristics of judicial proceedings are indeed of no value if such proceedings are not first initiated. And in civil matters one can scarcely conceive of the rule of law without there being a possibility of having access to the courts (see, among many other authorities, *Golder v. the United Kingdom*, 21 January 1975, §§ 34 in fine and 35-36, Series A no. 18; *Z. and Others v. the United Kingdom* [GC], no. 29392/95, §§ 91-93, ECHR 2001-V; and *Kreuz v. Poland*, no. 28249/95, § 52, ECHR 2001-VI).
26. However, this right is not absolute and may be subject to limitations. Guaranteeing to litigants an effective right of access to a court for the determination of their "civil rights and obligations", Article 6 § 1 leaves to the authorities a free choice of the means to be used towards this end. However, the limitations applied must not restrict or reduce the access afforded to the applicant in such a way or to such an extent that the very essence of that right was impaired (see *Kreuz*, cited above, §§ 53-54).
27. The Panel notes that a requirement to provide translations of relevant documents into English may constitute a serious burden for some claimants, such as the complainant, who is an unemployed IDP and is living on modest benefit. As an aside, the provisions of Law No. 04/I-

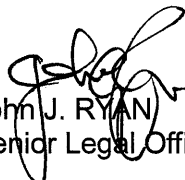
033 were found to be incompatible with the Kosovo Constitution and Law on the Use Languages, which both provide that Albania and Serbian are official languages in Kosovo, to be used in all its institutions. Consequently, the Law was changed in a way that it complies with the constitutional demands. It would not appear that the amendments would have any bearing on the complainant's present situation.

28. However, the Panel notes that the decision taken by the EULEX SCSC judge does not end the proceeding. The main case is in fact pending and will be decided at a later stage. In this case, there is a difference with the *Kreuz* case quoted above in par. 23 in that the initiation of the proceedings before the SCSC is not dependent on the payment of a fee or translation costs, but they are only delayed. It follows that the decision not to exempt the complainant from costs of proceedings does not violate his right to access to court (see *Urbanek v. Austria*, no. 35123/05, §§ 55-56, 9 December 2010). Moreover, it would appear that the merits of the complainant's appeal against the decision in question has not yet been examined.
29. Should his appeal be unsuccessful, the complainant has the chance to bring his grievance before the SCSC trial panel. A final decision on the costs will then be taken. This decision according to Article 12 of the Law of the SCSC may be in favour of the defendant who then might not be obliged to bear the costs.
30. This makes his complaint to the Panel premature, therefore, it holds the complaint - for the time being - as inadmissible.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member