



INADMISSIBILITY DECISION

Date of adoption: 23 November 2011

Case No. 2011-18

Ms. Mykereme Hoxha

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 16 May 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. The complainant received bills for her real estate tax for the year 2008. She disagreed with the amount and appealed to the Board of Appeals of Pejë/Peć Municipality on 7 May 2008.
4. As no appeal decision was taken within the legal time-limits, she appealed again, as stipulated by law, on 3 July 2008. Having received no reply to her second appeal, the complainant appealed to the Supreme Court of Kosovo under the Law on Administrative Conflicts (Law No. 02/L-202).

Proceedings before the Supreme Court

5. On 14 April 2009 the Supreme Court ordered the Director of Budget and Finance of Pejë/Peć to give a decision on the appeal within eight (8) days from receiving the Supreme Court's decision.
6. The Supreme Court stated that it was the obligation of a second instance administrative authority, according to the law, to decide on an appeal within sixty (60) days and, at the latest, within seven (7) days after a repeated second request. If such a decision was not made in time, the appellant was entitled to initiate legal proceedings against that authority.
7. Following that decision, instead of reviewing the taxation decision that was subject to the appeal, the Board of Appeals examined the decision of the Supreme Court of 14 April 2009.
8. The complainant appealed to the Supreme Court again, which on 16 October 2009 annulled the decision of the Board of Appeals stating that "...the decision was unclear, incomprehensible and controversial in itself and that the decision shows that the subject of the review was the earlier decision by the Supreme Court and not the appeal submitted by the complainant in the taxation matter. A review of a decision by the Supreme Court cannot be subject to a review by administrative bodies...".

Proceedings before the District Court of Pejë/Peć

9. On 30 December 2009 the complainant requested that the District Court of Pejë/Peć ordered execution of the Supreme Court decision, requesting at the same time that various officials from Pejë/Peć Municipality should be excluded from the examination of her tax appeal.
10. On 9 February 2010 the complainant received a letter from the District Court of Pejë/Peć stating that according to the Law on Administrative Procedure an appeal against an administrative act and a request to exclude certain officials from the examination of a specific case was to be decided by the administrative body or its director and not by a court. In addition, the complainant's request to have the court return her taxation status to its previous status was a matter for the administrative authorities to decide. However, the letter mentioned

that there could be court proceedings initiated in case of administrative silence, as stipulated by Articles 130 and 131 of the above mentioned Law.

11. The complainant submitted her complaints and request to the District Court of Pejë/Peć and the Chief Prosecutor of Kosovo. Her request was forwarded to the local prosecution office in Pejë/Peć for the investigation whether there was grounded suspicion that a criminal offence had taken place which could be prosecuted *ex officio*.
12. According to the complainant, she did not wish to initiate criminal proceedings, but her requests were treated as such.

Proceedings with the Ombudsperson Institution

13. On 4 June 2010 the complainant contacted the Ombudsperson Institution of Kosovo. Eventually, on 2 November 2010 the Ombudsperson found her complaint inadmissible.

Contacts with EULEX

14. In the meantime, on 1 September 2010, and again on 21 December 2010, the complainant requested that the EULEX prosecutors take over her case.
15. She received replies on 4 and 11 January and 21 February 2011 stating that her case did not fall within the scope of competences of the EULEX Prosecution Office. In one of the letters the complainant's name was misspelled in the Albanian language translation. According to the reply the complainant had not provided any information to show that there were grounds under the Law on Jurisdiction (Law on Jurisdiction, Case Selection and Case Allocation of EULEX judges and prosecutors in Kosovo, No. 03/L-053) for EULEX to take over the case.

III. COMPLAINTS

16. The complainant claims that her rights were violated and she was discriminated against based on her gender. She refers to the fact that her name was recorded incorrectly by EULEX officials. She complains that the EULEX prosecutors did not provide legal reasons for their decision not to take over her complaint against the civil servants and court employees.

IV. THE LAW

17. 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.

18. 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.
19. 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.
20. The Panel notes that the main issue in the complainant's case is the non-examination of her taxation appeal and the non-implementation of a decision by the Supreme Court. However regrettable it is that the proper examination of an appeal in a taxation matter has proven practically impossible to achieve, matters concerning taxation or implementation of decisions made by Kosovo courts do not fall under the ambit of the executive mandate of EULEX.
21. Furthermore, the complainant complains that the EULEX prosecutors did not provide legal grounds for the refusal to take over the examination of her complaint.
22. The Panel has previously found that the actions of a EULEX prosecutor taken while examining a case are part of the executive mandate of the EULEX Kosovo and therefore fall within the ambit of the Panel's mandate as long as no indictment has been filed with a court competent to examine the merits of a case (see *Sadik Thaqi v. EULEX*, 2010-02, paragraph 64).
23. However, in the present case it is not a decision of a EULEX prosecutor given in the context of an investigation of a case which is concerned, but a refusal to take over the investigation.
24. In this connection, the Panel finds that the complainant's case, concerning taxation matters, manifestly does not fall within the ambit of cases which can be taken over by EULEX prosecutors within the meaning of the Law on Jurisdiction. A decision to that effect is also at the discretion of the EULEX prosecutor and as such it cannot be subject to examination by the Panel.
25. In any event, it was noted by the EULEX prosecutor that no information had been given by the complainant to show that there had been grounds for EULEX taking over the case.
26. With regard to the misspelling of the complainant's name, the Panel notes, firstly, that the EULEX Chief Prosecutor apologized in writing for that unfortunate mistake in translation. In any event, the Panel fails

to see how, in the circumstances of the case, such a technical error might raise a human rights issue.

27. Therefore the issues in the present complaint do 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.

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