



INADMISSIBILITY DECISION

Date of adoption: 5 June 2012

Case No. 2012-01

Mr. Qamil Hamiti

Against

EULEX

The Human Rights Review Panel sitting on 5 June 2012 with the following members present:

Ms. Magda MIERZEWSKA, Acting Presiding Member
Ms. Verginia MICHEVA-RUSEVA, 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 of 9 June 2010,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 7 February 2012.
2. The Panel examined the complaint on 5 June 2012. It decided upon the complaint with two members being present, pursuant to Rule 14 § 3 of the Rules of Procedure.

II. THE FACTS

3. The facts of the case, as submitted by the complainant, and as apparent from documents provided to the Panel, may be summarized as follows.

Background information

4. The complainant is the President of the Independent Syndicate of the Socially Owned Enterprise (SOE) "Jugotherm" in Gjilan/Gnjilane. He is looking after the interest of the employees of the company, who would benefit monetarily from the finalization of the company's privatization.

Tendering procedure of 2006

5. In June 2006 the Kosovo Trust Agency (KTA) instituted a tendering procedure for the SOE "Jugotherm", which consisted of a radiator factory in Gjilan/Gnjilane. The tender was won by private company "ENG Office", from amongst three bids.
6. Due to alleged illegal activities in connection of the tendering process by parties to the tender proceedings, the tender was declared invalid by the Special Chamber of the Supreme Court of Kosovo on KTA Related Matters (SCSC) on 8 August 2007. It was left, in accordance with the law, to the discretion of the KTA to reopen the tender, if it so chose.
7. On 5 February 2008 the SCSC rejected the review request made by the "ENG Office". It was held that the decision of 8 August 2007 was final. The "ENG Office" was not a party to the proceedings before the SCSC previously, except as an appellant in the request for review.

Injunction procedure

8. On 17 October 2008 the "ENG Office" submitted a request for an injunction against allowing the Privatization Agency of Kosovo (PAK) to reissue a tendering procedure for the SOE.
9. On 17 November 2008 the SCSC granted the requested preliminary injunction as in fact the "ENG Office" might suffer irreparable harm if the process was opened anew and the SOE tendered to another bidder.
10. On 9 December 2008 the SCSC rejected the review request made by the PAK.

New examination before the SCSC

11. On 22 October 2009 the SCSC decided that the "ENG Office" was confirmed as the winning bidder of the tender to privatize the SOE in question. The KTA and PAK were obliged to conclude the tender with the "ENG Office". In addition, the KTA was obliged to pay damages to the "ENG Office".

12. The KTA appealed the decision. On 7 October 2011 the Appellate Panel of the SCSC rejected the appeal.

III. COMPLAINTS

13. The complainant claims that due to the alleged illegal actions by the company “ENG Office” and others, the winning bid made by the “ENG Office” was some 20 % lower than it should have been. As a result the employees’ shares resulting from the privatization would be some 20 % lower than they should be if the bidding had been fair.
14. The complainant requests that the decision of 7 October 2011 by the Appellate Panel of the SCSC not be acted upon. He does not wish the company “ENG Office” to become the owner of the SOE in the privatization procedure.

IV. THE LAW

15. 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.
16. 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.
17. The issue raised in the present complaint relates to the dissatisfaction of the employees of the SOE “Jugotherm” with regard to the price of the company accepted in the privatization procedures of that company. It has not been shown or even argued that EULEX Kosovo has been involved in any capacity in the complainant’s case.

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

Magda MIERZEWSKA
Acting Presiding Member