



INADMISSIBILITY DECISION

Date of adoption: 8 December 2010

Case No. 2010 - 16

Ms. Cyma Agovic

Against

EULEX

The Human Rights Review Panel sitting on 8 December 2010 with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, member
Mr. Francesco FLORIT, member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Leena LEIKAS, 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 with EULEX on 16 August 2010 and forwarded to the Panel on 06 October 2010.

II. THE FACTS

Background

2. The Kosovo Trust Agency (KTA) was established in 2002 to prepare privatization of the Socially Owned Enterprises (SOEs) and the administration of Publicly Owned Enterprises (POEs).
3. In the process of privatization the KTA publishes a list of employees deemed eligible to receive a share of the proceeds from the privatization of the company in question. Such a list is published in the media.
4. According to the Section 10.6 of UNMIK Regulation (REG) 2003/13 an individual could request the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (SCSC) to review the list of eligible employees made by the Kosovo Trust Agency (KTA). Such a request had to be filed with the SCSC within 20 days after the final publication of the list by the Agency in the media.
5. According to Article 117 of the Law on Contested Procedure (LCP) if a party fails to take an action in the proceedings within a set time limit and, as a result of that, loses the right to take that action, the court can, on the party's motion, and if justifiable reasons exist, allow the action to be taken. According to Article 118 of LCP such a motion for restoration to the previous position has to be submitted within 15 days from the day when the reasons for the omission ceased to exist. The ultimate time limit for such a motion is three months from the original time limit.
6. In cases involving the SCSC, such a restoration motion is to be made to the Appellate Panel of the SCSC.

Facts

7. The complainant worked in the laundry of the Hotel Rugova in Pejë/Peć from 1978 until 1999, a total of some 21 years.
8. In July 2003 a meeting was held between the employees and Labour Union of the Enterprise Rugova. A decision was taken to allow all the employees to maintain all rights arising from employment contracts, including the right on the privatization process even if they were not receiving salaries or were not assigned to any specific post.
9. According to the rules governing the privatization of Socially Owned Enterprises, the eligible employees were entitled to 20 % share of the proceeds of the privatization.
10. A list of eligible employees was drawn up by the Hotel Management on 3 September 2003. The complainant was included in that list of

employees who were on the salary list for more than three years before the war, but who were not assigned to any job position because the facilities of the Hotel were burned during the war and later occupied by KFOR. The list states that she was employed since 1978, that her employment contract was not terminated and that she had no working experience after 1999. The lists were forwarded to KTA for processing on 3 September 2003.

11. KTA published the final list of eligible employees of the SOE "Rugova" in Pejë/Peć on 7, 8, 10 and 11 May 2008. It followed that the time limit for filing complaints ended 2 June 2008.
12. The complainant filed a complaint with the SCSC on 6 May 2009. Her complaint was rejected as inadmissible on 9 July 2009 by the SCSC in accordance with Section 10.6 (a) of UNMIK REG 2003/03 as the complainant had submitted her complaint with the SCSC after the expiry of the set time limit for complaints, i.e. 2 June 2008.
13. On 12 August 2009 the complainant lodged an appeal with the Appellate Panel of the SCSC to have the earlier decision quashed and to have herself restored to the previous position as she had been hospitalized at the time when the complaint should have been submitted.
14. The complainant presented documents to the Appellate Panel of the SCSC which showed that she was treated as an in-patient in a local hospital from 4 until 14 April 2008, from 25 April until 1 May 2008 and from 25 until 28 May 2009. On 29 May 2009 she was treated in a hospital in Belgrade.
15. On 8 March 2010 the Appellate Panel of the SCSC dismissed her appeal as she had originally lodged her complaint too late and the decision of SCSC was correct in that regard. Her motion for restoration, in accordance with the Article 118 of the LCP, should have been lodged at the latest within three months from the original time line, thus latest on 2 September 2008. The motion was also dismissed.
16. The complainant sent a letter to the HoM of EULEX Kosovo on 16 August 2010. With his letter of 30 September 2010 the HoM referred the complaint to the HRRP for examination.

III. COMPLAINTS

17. The complainant alleges that she has been discriminated against in connection to her work related benefits as well as the fact that her illness was not taken into consideration when examining his motion.

IV. THE LAW

18. 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.
19. 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. The panel will not review judicial proceedings before the courts in Kosovo.
20. The complainant's case concerns the fact that her appeal was dismissed by the SCSC and the Appellate Panel of the SCSC as they found that the relevant time limits for the submission of her appeals had already expired.
21. The present complaint concerns judicial proceedings conducted by the courts in Kosovo. The Panel therefore finds, under Rule 25 of its Rules of Procedure, that it lacks jurisdiction to examine the present complaint.

FOR THESE REASONS,

The Panel, unanimously, finds the complaint manifestly ill-founded, and

DECLARES THE COMPLAINT INADMISSIBLE.

John J. RYAN
Senior Legal Officer

Antonio BALSAMO
Presiding Member