



INADMISSIBILITY DECISION

Date of adoption: 14 September 2011

Case No. 2011-10

Dejan Jovanovic

Against

EULEX

The Human Rights Review Panel sitting on 14 September 2011 with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, Member
Ms. Verginia MICHEVA-RUSEVA, Substitute 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 14 April 2011.
2. The complaint concerns proceedings before the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency Related Matters (hereafter SCSC). Ms. Bednarek is a Panel Member and also a EULEX judge serving at the SCSC. Therefore Ms. Bednarek cannot participate in the examination of the present case as a member of the Panel. She has been replaced by Ms. Micheva-Ruseva, the Substitute Member.

II. THE FACTS

Background information

3. The complaint concerns a dispute over property rights in Graçanicë/Gračanica Municipality. The complainant and his relatives are the co-owners of the land in question.
4. In 1936 the Agricultural Court of Graçanicë/ Gračanica transferred the possession of the land concerned to the complainant's grandfather. The ownership of the complainant's relatives at the time has not been contested.
5. In 1953 the District Committee for Agricultural Land Fund, under Resolution no. 62/53, expropriated 17.92 hectares of the owners' land for the benefit of the agricultural fund as general national property.
6. On 12 September 1991, one of the complainant's relatives made a request to Prishtinë/Priština Municipal Committee to receive restitution of the land concerned, based on the Law on Restitution of Land, dated March 1991. The request was made against the Socially Owned Enterprise (SOE) "*Farming and Cattle Breeding*". As the complainants did not accept the proposal made by the SOE, the proceedings remained pending (see paragraph 8 below).
7. The land allegedly owned by the complainant was subsequently included in the privatization process of the SOE "*Lavertari-Blegtori*" which had emerged from the dissolution of a large agricultural cooperative "*Kosmet Export*" in the 1970s. The privatization offer for sale was opened by the Privatization Agency of Kosovo (PAK) under Wave 6-sale in 2005. The land was eventually sold to the company "*Victoria Invest*" in November 2006.

Proceedings before the SCSC

8. On 16 May 2008 the complainant requested the SCSC to restore the land in question. He submitted in his request that in the proceedings before Prishtinë/Priština Municipal Committee in 1992, the respondent, SOE "*Farming and Cattle Breeding*", had offered to reconstitute 10 of the expropriated hectares of the original property and 8 hectares of replacement property. The complainant did not accept this offer. Article 9 of the Law on Restitution of Land provides that if no agreement is reached in the proceedings before the Municipal Committee the case shall be submitted for further proceedings to a regular court.
9. On 30 June 2008 the Department of Cadastre of Real Estate Priština (Republic of Serbia) granted a certificate confirming the original ownership of the land in question
10. On 27 May 2009 the complainant requested the PAK to exclude the land concerned from the privatization.

11. On 1 September 2009 the complainant requested the annulment of the privatization contract.
12. On 27 January 2010 the complainant requested the SCSC to issue a preliminary injunction staying the construction of buildings which had started on the land that had been under dispute before the SCSC since May 2008.
13. On 1 February 2010 the SCSC served the request for a preliminary injunction on the PAK. On 5 February the PAK informed the SCSC that the new owner of the land, the respondent in the complainant's case SOE "*Farming and Cattle Breeding*", had been put in liquidation. The PAK requested that the examination of the complainant's case be suspended.
14. On 9 March 2010 the complainant was requested by the SCSC to clarify whether he was requesting restitution of land or challenging the privatization procedure, or both, and to clarify who were the respondents and third parties in question..
15. On 25 March 2010 the complainant requested the Municipal Cadastral Agency of Prishtinë/Priština to provide information about the ownership of the land in question.
16. On 30 March 2010 the complainant requested the PAK, and the known owner of certain plots of the land concerned, to provide information on who owned the land.
17. On 2 April 2010 the complainant requested the SCSC to order such information to be provided, as he had received no reply to his requests.
18. On 22 April 2010 the SCSC ordered the PAK to provide within 14 days information on the new owners of the land and documentation on the transfer of ownership of that property
19. On 7 May 2010 the PAK informed the SCSC that the land had been transferred to the company "*Victoria Invest*" on 1 November 2006. PAK further informed the SCSC that on 28 April 2010 the Mayor of Prishtinë/Priština decided that due to the establishment of new municipality of Graçanicë/Gračanica, the municipality directorates of Prishtinë/Priština were forbidden to perform any administrative work concerning the Graçanicë/Gračanica municipality, which was not yet operational. As a result, no official cadastral documents could be provided.
20. By its decision of 27 August 2010, the SCSC summoned the "*Victoria Invest*" to participate as the second respondent in the case instituted in 2008 by the complainant. At the same time it rejected his request for an injunction as the complainant had failed to show that he would suffer irreparable loss.

Proceedings before the Appellate Panel of the SCSC

21. On 20 September 2010 the complainant appealed against the decision rejecting his request for an injunction to the Appellate Panel of the SCSC. He provided photographic evidence of the ongoing construction on the land which, if completed, would prevent the use of the land as farm land.

Requests to speed up the proceedings

22. On 28 February 2011 the complainant requested the SCSC to speed up the proceedings on the merits of his claim as well as the proceedings with regard to his appeal against the refusal to issue an injunction.
23. Both the appeal proceedings and the original proceedings are still pending before the SCSC's panels.

Contacts with EULEX

24. In the meantime, on 3 December 2009 the complainant approached the President of the EULEX Assembly of Judges requesting her to schedule a hearing in the proceedings pending before the SCSC. He received a reply on 17 December 2009 stating that there were difficulties in the staffing situation of the SCSC.
25. He repeated his request on 11 March 2011.

Relevant legislation

26. Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo, Chapter II, Article 2.1 reads as follows:

An EULEX judge will have the authority and responsibility to perform the functions for cases falling within the jurisdiction of the courts to which he or she is assigned to by the President of the Assembly of EULEX judges, and according to the modalities as established by the present law and by the EULEX KOSOVO.

III. COMPLAINTS

27. The complainant alleges violations of the European Convention on Human Rights and Fundamental Freedoms (ECHR, 1950), and namely violations under Article 6 of the Convention (right to fair trial, length of the proceedings); and Article 1 of Protocol no. 1 to the Convention (protection of property rights).
28. He requests the Panel to make recommendations to conclude the examination of his case before the SCSC as soon as possible.

IV. THE LAW

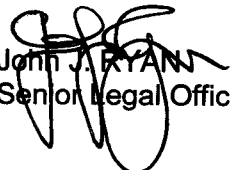
29. Before considering the complaint on its merits the Panel has to decide whether to accept the complaint, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
30. The Panel can only examine complaints relating to human rights violations by EULEX Kosovo in the conduct of its executive mandate in the justice, police and customs sectors as outlined in Rule 25, paragraph 1 of its Rules of Procedure.
31. 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.
32. The Panel notes that the complainant requests, in essence, that the Panel takes measures in order to speed up the proceedings in his cases which are pending before the SCSC and the appellate panel of the SCSC, Kosovo institutions.
33. The Panel has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. Consequently, the Panel cannot influence the order and speed with which the pending complaints are examined by the SCSC. The fact that EULEX judges sit on the bench of the SCSC and the Appellate panel of the SCSC assigned to examine the case does not detract from the SCSC its character as part of the Kosovo judiciary.
34. As a result, the issue raised in the present complaint does not fall within the ambit of the executive mandate 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