



INADMISSIBILITY DECISION

Date of adoption: 20 March 2012

Case No. 2011-19

Mr. Sefer Sharku

Against

EULEX

The Human Rights Review Panel sitting on 20 March 2012 with the following members present:

Mr. Antonio BALSAMO, Presiding Member
Ms. Magda MIERZEWSKA, Member
Ms. Verginia MICHEVA-RUSEVA, 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 on 25 May 2011.

II. THE FACTS

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

Original ownership of the property

3. In 1955 the complainant's half brother Q.S. renounced his inheritance rights to a cadastral parcel and a house that is build on it in Rahovec/ Orahovac. This was verified by the Municipal Court of Rahovec/ Orahovac on 28 December 1955. Since then, the property, most recently, has belonged to the complainant, his two brothers and four nephews.
4. In 1995 the complainant and his brothers heard rumors that Q.S. might be selling half of the property using falsified documents to prove his ownership.
5. In May 1996, based on the complainant and his brothers' request, the Municipal Court of Rahovec/Orahovac found that Q.S. had renounced his rights of inheritance legally in 1955 and therefore he was not an owner of the property. The Court ordered the Administration of Geodesy to delete the defendants' ownership from the property registry. The interim measure obtained in 1995 remained in force until the end of the dispute. It is not known to the Panel whether this decision has become final.

Dispute as to the ownership of the property

6. In January 2001 M.S. and others, who claimed to have purchased half of the property from Q.S. in 1995, requested the Municipal Court of Rahovec/ Orahovac that the property, including the house, be divided in half.
7. As no agreement was reached between the parties in the non-contested procedure, the Municipal Court of Rahovec/ Orahovac obliged M.S. to initiate a civil procedure within a set time frame to enable the division of the property (in October 2001).
8. In February 2005 the Municipal Court of Rahovec/ Orahovac refused to annul the sales contract from 1995, as requested by the complainant, thereby legalising the ownership of M.S. and others, contrary to the court's earlier decision from 1996 (see para 5 above). It is not known to the Panel whether this decision has become final.

Procedure to vacate the property

9. At some point in March-April 2011 M.S. and others requested that the Municipal Court of Rahovec/ Orahovac order the complainant to vacate the house and remove all his possessions from it. They claimed that the complainant had started demolishing the house and they requested interim measure to prevent him doing so. It is not known to the Panel what the outcome of these proceedings were.
10. On 21 March 2011 the complainant requested that the Directorate for Urbanization, Planning and Environmental Protection (hereafter "the Directorate") in Rahovec/ Orahovac not grant M.S. and others permission to demolish the disputed house and that it would not grant building permission for the land in question. His request was denied

on 26 April 2011. The Directorate stated that the administrative decision was based on the facts presented and that the Directorate does not have jurisdiction to make a decision on the civil dispute.

11. On 19 April 2011 the complainant made a request with EULEX judges to dismiss the Kosovo judges from the case as it was suspected that the family of M.S. had influence over them. The request was denied on 29 April 2011 by the the Municipal Court of Rahovec/Orahovac.
12. On 21 April 2011, the complainant made a new request to the Municipal Assembly of Rahovec/Orahovac not to issue permission to M.S. to demolish the house. The request was denied on 26 April 2011 when the Municipal Assembly stated that the family of M.S. was the legal owner of the house.
13. On 13 May 2011 the complainant requested an interim measure from the Municipal Court of Rahovec/Orahovac to prevent the house from being demolished. No action was taken on the request. According to the complainant the house was demolished the same day.
14. On 16 May 2011 the complainant contacted EULEX in Prizren about the fact that he had earlier requested an interim measure and requested that EULEX takes over the examination of the complainant's case, but nothing was done. He also claims that no reply was received from EULEX on this occasion either.

III. COMPLAINTS

15. The complainant claims violations under Article 6 (right to a fair trial) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) and Article 1 of Protocol No. 1 to the Convention (right to peaceful enjoyment of possessions). He requests EULEX to take measures to prevent any activity on the property until a decision is taken by the Supreme Court. He also request that the examination of the case be taken over by EULEX due to the suspicion of bias in the Municipal Court of Rahovec/Orahovac.

IV. THE LAW

16. 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.
17. According to Rule 25, paragraph 1 of the Rules of Procedure the Panel can only examine complaints relating to the human rights violations by EULEX Kosovo in the conduct of its executive mandate.

18. 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.
19. The Panel notes that the complainant requests, in essence, that the Panel finds a violation as EULEX has not taken any interim measures in respect of his property while the case is being examined by the Supreme Court of Kosovo.
20. The mandate of EULEX does not authorize it to take such measures, which are within the sole competence of the Kosovo courts. Therefore the issue raised by the complainant does not fall within the ambit of the executive mandate of EULEX Kosovo.
21. Furthermore, the Panel notes that any complaint about alleged bias in the work of a Kosovo court could be raised as grounds for an appeal in regular appeal proceedings. However, in the present case, in so far as it relates to the executive mandate of EULEX, the Panel notes that EULEX does not have a mandate to act as a court of appeal within the Kosovo judicial system.
22. Therefore the issues concerned in the present case 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