



INADMISSIBILITY DECISION

Date of adoption: 12 November 2015

Case No. 2014-02

Milica Radunovic

Against

EULEX

The Human Rights Review Panel sitting on 12 November 2015 with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaél METTRAUX, Member
Ms Katja DOMINIK, Member

Assisted by
Mr John J. RYAN, Senior Legal Officer
Mr Paul J. LANDERS, 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 as last amended on 15 January 2013,

Having deliberated, decides as follows:

I. PROCEEDINGS BEFORE THE PANEL

1. The complaint was registered on 3 February 2014.

II. FACTS

2. The complainant was employed by the Socially Owned Enterprise (SOE) in Pec/Peje from 17 November 1976 up to June 1999 when she was forced to leave Kosovo during the conflict for security reasons.
3. The complainant submits that her working relationship with the SOE was never terminated. The complainant had submitted a request for the payment of unpaid wages in the amount of 1,650 Euro when she learned about the liquidation of the SOE. This request was lodged with the Kosovo Trust Agency (KTA) in Belgrade on 10 August 2006.
4. On 8 May 2013, the Kosovo Privatization Agency (KPA) issued a decision rejecting the complainant's request as invalid as the complainant did not comply with applicable time limits.
5. On 11 June 2013, the complainant lodged a complaint against this decision with the Special Chamber of the Supreme Court (SCSC). Together with the complaint, the complainant submitted a request to be exempted from paying the translation of the submissions into English and court fees. The complainant reasoned her request for exemption of fees with the fact that she was an internally displaced person (IDP) in a poor financial situation and those expenses would endanger the financial situation of her family. Her request was accompanied by copies of her IDP registration card and a pension check.
6. On 2 October 2013, the complainant received a request from the SCSC to submit a translation of her request into English pursuant to Article 25.8 of the Annex of the Law no 04/I-033 of the SCSC.
7. On 16 October 2013, the complainant filed a complaint against the order of the SCSC, arguing that the SCSC was obliged to first decide on the complainant's request for exemption of translation costs and court expenses, prior to scheduling and holding a court session on the merits of her case, pursuant to Article 387.1 and 468 par 5 of the Law on Civil Procedure.
8. On 17 December 2013, the EULEX SCSC single judge rejected the complainant's request for legal assistance. The complainant alleged that the reasoning of this decision was unclear, did not contain the facts which were determined or any facts which were considered important and decisive for the decision.
9. In the instant case, the payment of a fee or translation costs has not been placed as a condition precedent for the initiation of the proceedings before the SCSC and the requirement in the instant case has only resulted in a delay. The case itself has proceeded and a decision is awaited.

III. COMPLAINTS

10. The complainant alleges violations of the European Convention on Human Rights and Fundamental Freedoms (the Convention) and the Universal Declaration of Human Rights (the Declaration):
- Article 6 of the Convention and Article 10 of the Declaration: a right to a fair trial, in particular a right to access to court (prohibitive court fees and translation costs) and right to a reasoned decision (decision not to grant exemption from court fees and translation costs provides no justification);
 - Article 13 of the Convention and Article 32 of the Declaration: lack of effective remedy (no appeal available against the above decision);
 - Article 14 of the Convention and Article 2 of the Declaration: a right to equality before the law and non-discrimination (the complainant alleges discrimination on ethnic grounds).

IV. RELEVANT APPLICABLE LAW

ANNEX OF THE LAW No.04/L-033 OF THE SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY MATTERS

RULES OF PROCEDURE OF THE SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON PRIVATIZATION AGENCY MATTERS

Article 25 Filing of Pleadings

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8. Pleadings and supporting documents may be submitted in either the Albanian or Serbian language and accompanied by an English translation. Such translation shall be at the expense of the person or party submitting such pleading or document.

9. A natural person may submit an application to the Presiding Judge for assistance in developing the English translation of pleadings and supporting documents. Such application shall be submitted with the pleadings and include a statement of the party's financial means and any supporting evidence that the party wishes the Presiding Judge to take into account.

10. The Presiding Judge may direct that the translation of pleadings and supporting documents required by paragraph 8 of this Article be undertaken at the expense of the Special Chamber where he or she determines that it is reasonable to so direct having regard to the means of the natural person. If the Presiding Judge rejects such an application, he or she shall so inform the natural person by decision in writing and shall order that person to provide English translations at such person's expense within a period to be specified in the decision. If such translations are not so provided within that period, the Special Chamber shall order that translations be undertaken and that the costs thereof be assessed against that person.

11. On 29 March 2014, the above Law was amended as follows:

Law No. 04/L-246
ON AMENDING AND SUPPLEMENTING THE LAW No. 04/L-033 ON THE
SPECIAL CHAMBER OF THE SUPREME COURT OF KOSOVO ON
PRIVATIZATION AGENCY OF KOSOVO RELATED MATTERS

Article 2

1. Article 25 of Annex of the basic Law paragraph 8 shall be reworded with the following text:

8. All claims and accompanying documents shall be submitted in Albanian or Serbian language, whereas the Special Chamber of the Supreme Court of Kosovo on Privatization Agency of Kosovo Related Matters shall, upon its proposal and resources, provide their translation into English.

2. Article 25 of the Annex of the basic Law, paragraphs 9 and 10 shall be deleted entirely.

Article 67

Costs

1. In its Decision or Judgment on an appeal, the Appellate Panel shall make a decision as to costs, both as to the proceedings at first instance and at appeal. The provisions of Articles 56 and 57 of this Annex shall apply *mutatis*

2. In its decision on costs the Appellate Panel shall calculate separately costs for the proceedings at first instance and at appeal.

V. The Panel's assessment

12. As a matter of substantive law, the Panel is empowered to apply human rights instruments as reflected in the EULEX Accountability Concept of 29 October 2009, on the establishment of the Human Rights Review Panel. Of particular importance to the work of the Panel are the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.
13. Before considering the complaint on its merits the Panel must decide whether to accept the complaints, taking into account the admissibility criteria set out in Rule 29 of its Rules of Procedure.
14. According to Rule 25, paragraph 1, the Panel can only examine complaints relating to alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. The executive mandate refers to certain matters pertaining to justice, police and customs.

15. The Panel notes that the complainant's grievance pertains to her access to the proceedings before the Special Chamber of the Supreme Court of Kosovo.
16. The Panel has repeatedly found that, according to Rule 25 paragraph 1, based on the accountability concept in the OPLAN of EULEX Kosovo, it cannot, in principle, review judicial proceedings before the courts of Kosovo. It has no jurisdiction in respect of either administrative or judicial aspects of the work of Kosovo courts. The fact that EULEX judges sit on the bench of any given court does not detract from the fact that this court forms part of the Kosovo judiciary (see, among many other authorities, E against EULEX, 2012-17, 30 August 2013, para. 23; Fahri Rexhepi against EULEX, no. 2014-19, 10 November 2014, § 12; Gani Zeka against EULEX, 2013-15, 4 February 2014, para. 13).
17. Therefore, the Panel cannot, in principle, review decisions of EULEX judges as such. The Panel has already held, however, that in certain circumstances its jurisdiction would cover decisions and acts of judicial authorities as such, in particular where credible allegations of human rights violations attributed to EULEX judges have not been fully addressed by the competent judicial authorities in the appellate proceedings (see Tomë Krasniqi against EULEX, 2014-04, 27 May 2014, para. 15).
18. The Panel recalls that the right of access to a court, namely the right to institute proceedings before the court, is, in principle, guaranteed by Article 6 of the Convention (see, among many other authorities, ECHR, Tolstoy Miloslavsky v UK, Series A, No 323, judgment of 13 July 1995, para. 59; Golder v. the United Kingdom, 21 February 1975, paras. 34-36, Series A no. 18; Z. and Others v. the United Kingdom [GC], no. 29392/95, paras. 91-93, ECHR 2001-V; and Kreuz v. Poland, no. 28249/95, para. 52, ECHR 2001). An individual may not benefit from the further guarantees laid down in paragraph 1 of Article 6, namely fair, public and expeditious judicial proceedings if such proceedings are not first initiated. And in civil matters one can scarcely conceive of the rule of law without there being a possibility of having access to the courts. Although the right of access to court may be subject to limitations in the form of regulation by law, they must pursue a legitimate aim and there must be a reasonable relationship of proportionality between them and the aim sought to be achieved (Tolstoy Miloslavsky v UK, Series A, No 323, cited above).
19. The requirement to pay fees to civil courts cannot be regarded as a restriction on the right of access to a court that is incompatible, per se, with Article 6 § 1 of the Convention (see Stankov v. Bulgaria, no. 68490/01, para. 52, 12 July). It largely depends on the amount of the fees assessed in light of the particular circumstances of a given case, including the applicant's ability to pay them, and the phase of the proceedings at which that restriction has been imposed that are material in determining whether or not a person has enjoyed his/her right of access (see ECHR, Kreuz v. Poland, cited above, para. 60, ECHR 2001-VI; Harrison McKee v. Hungary, no. 22840/07, para. 29, 3 June 2014).

The Panel notes that a requirement to provide translations of relevant documents into English may constitute a serious financial burden for some claimants, such as the complainant, who is an unemployed IDP and is living on modest benefit. This might undermine the claimant's ability to seek and obtain a relief to which she would otherwise be entitled by law. It is noteworthy in this context that the provisions of Law No. 04/I-033 were amended on 29 March, 2014 to give effect to the demands of Article 5 of the Kosovo Constitution and Article 13 of the Law on the Use of Languages, which both provide that Albanian and Serbian are official languages in Kosovo, to be used in all its institutions.

20. The Panel notes that the decision taken by the EULEX SCSC single judge did not end the proceedings. In the instant case, the payment of a fee or translation costs has not been placed as a condition precedent for the initiation of the proceedings before the SCSC and the requirement in the instant case has only resulted in a delay. The activity of the court is not dependent on the payment of these costs. The case itself has, therefore, proceeded and a decision is awaited regarding the merits of the complainant's case. It follows that the decision not to exempt the complainant from costs of translation has not prejudiced her right to have access to court (see ECHR, *Urbanek v. Austria*, no. 35123/05, paras. 55-56, 9 December 2010).
21. The Panel notes furthermore that the legal basis for a decision on costs is provided for in Article 12 of the Law of the SCSC. Such a decision may be rendered in favour of the defendant who then may not be obliged to bear the costs. Should the complainant be held liable for the costs, she still has a legal remedy, namely, the option of filing an appeal before the SCSC trial panel. Should the complainant be ordered to pay these costs and having exhausted these procedural avenues, she can again file a new complaint before the Panel if she considers that her rights have been violated and that all relevant jurisdictional requirements have been met to seize the Panel anew. The trial panel will then decide on the final costs of the proceedings according to Article 67 of the Law.
22. In such circumstances the complaint to the Panel is premature.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member