



DECISION

Date of adoption: 14 May 2010

Case No. 11/10

Lulzim GASHI

against

UNMIK

The Human Rights Advisory Panel sitting on 14 May 2010,
with the following members present:

Mr. Marek NOWICKI, Presiding Member
Mr. Paul LEMMENS
Ms. Christine CHINKIN

Assisted by

Mr. Rajesh TALWAR, Executive Officer

Having considered the aforementioned complaint, introduced pursuant to Section 1.2 of UNMIK Regulation No. 2006/12 of 23 March 2006 on the establishment of the Human Rights Advisory Panel,

Having deliberated, decides as follows:

I. THE FACTS

1. The complainant was a local staff member of UNMIK. When it was announced that UNMIK would be downsizing, the complainant, like many of his colleagues, applied for a position with the European Union Rule of Law Mission in Kosovo (EULEX) in 2008.

2. Having heard that some of his colleagues had been invited for an interview and were eventually selected, while he himself did not receive any positive reaction to his application, he complained in the beginning of 2009 to EULEX about the fairness of the selection procedure. It seems that, because of the general nature of the allegations, the EULEX Internal Investigations Unit could not properly investigate that complaint.
3. On 23 February 2009 the complainant filed a complaint with the European Ombudsman. On 19 March 2009 the European Ombudsman replied that his mandate did not extend to EULEX.
4. On 23 March 2009, following a suggestion by the European Ombudsman, the complainant directed himself to the Civil Operations Commander for Kosovo in the General Secretariat of the Council of the European Union. On 7 April 2009 the Civilian Operations Commander sent a reply, explaining the selection process and concluding that he did not share the complainant's concerns about the integrity of the members of the selection panels and about external influences in the selection procedure.
5. On 27 August 2009 the complainant, together with thirteen other former UNMIK staff members, sent a letter to EULEX expressing the view that some irregularities might have happened in the process of recruiting local staff. On 7 October 2009 the head of the Office of Human Resources of EULEX replied that the selection of staff was based on the principles of fairness, transparency and non-discrimination. The selection of candidates for a shortlist and for appointments was entirely based on merit. Over 11,000 applicants competed for less than 400 vacancies. The EULEX Management did not share the complainant's general concern about the integrity of the members of the selection panels. Nevertheless, should there be any specific evidence supporting the complainant's claim, he was welcome to communicate that evidence to EULEX.
6. On 13 October 2009 the complainant and the other former UNMIK staff members sent detailed information about the selection of interpreters for a number of EULEX police stations. They accused some named former UNMIK Police officers, now working for EULEX, to favour certain local staff members and to put their names on a list of selected applicants without prior interview. It seems that the complainants were heard on 16 November 2009 by a member of the Human Resources Office of EULEX. It is unclear what action has followed their complaint.
7. On 8 January 2010 the complainant and two other former UNMIK staff members sent another complaint to the Civil Operations Commander for Kosovo in the General Secretariat of the Council of the European Union. They repeated their complaints about favourism of certain applicants for a job, and gave a list of 19 persons who had been hired without ever being interviewed. According to the complainant, he did not receive any positive reaction to this complaint.

II. COMPLAINT

8. The complainant complains that he has been discriminated against. He invokes the Universal Declaration of Human Rights.

III. PROCEEDINGS BEFORE THE PANEL

9. The complaint was introduced on 11 March 2010 and registered on 12 March 2010.

IV. THE LAW

10. 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 Sections 1, 2 and 3 of UNMIK Regulation No. 2006/12.
11. According to Section 1.2 of the Regulation, the Panel has jurisdiction over complaints relating to alleged violations of human rights by UNMIK.
12. EULEX is a mission launched in 2008 by the Council of the European Union, under the Common Security and Defence Policy of the European Union (see Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO).
13. The European Union is an international organisation, different from the United Nations and from UNMIK. It is true that, in line with the Statement made by the President of the United Nations Security Council on 26 November 2008 (S/PRST/2008/44) and the report of the Secretary-General of the United Nations of 24 November 2008 on the United Nations Interim Administration Mission in Kosovo (S/2008/692, § 23), EULEX operates under the overall authority of the United Nations and within its status-neutral approach to Kosovo's status (see, for a recent confirmation, Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 6 April 2010, S/2010/169, § 3). However, the present dispute does not concern any of the functions for which UNMIK bears final responsibility under Security Council resolution 1244 (1999). It concerns a matter exclusively related to a EULEX employment selection procedure and the application of EULEX internal principles. The facts complained of are not attributable to UNMIK (see Human Rights Advisory Panel, *Jovanović*, no. 39/08, decision of 17 October 2008, with respect to a complaint regarding the internal rules of the Kosovo Mission of the Organisation for Security and Cooperation in Europe).
14. It follows that the complaint falls outside the jurisdiction *ratione personae* of the Panel.

FOR THESE REASONS,

The Panel, unanimously,

DECLARES THE COMPLAINT INADMISSIBLE.

Rajesh TALWAR
Executive Officer

Marek NOWICKI
Presiding Member