



DECISION and FINDINGS

Date of adoption: 11 January 2017

Case No. 2013-21

Thomas Rüsche

Against

EULEX

The Human Rights Review Panel, sitting on 11 January 2017
with the following members present:

Ms Magda MIERZEWSKA, Presiding Member
Mr Guénaël METTRAUX, Member
Ms Elka ERMENKOVA, Member

Assisted by:
Mr John J. RYAN, Senior Legal Officer
Ms Noora AARNIO, 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:

PROCEDURE

1. The complaint was registered on 12 August 2013.
2. On 7 April 2014 the Panel decided to give notice of the complaint to the Head of Mission of EULEX Kosovo (HoM), inviting him to submit written observations. It was also decided to examine the merits of the application at the same time as its admissibility (pursuant to Rule 30 paragraphs 1 and 2 of the Rules of Procedure of the Panel, hereafter ROP).
3. The observations of the HoM were received on 3 December 2014 after which they were communicated to the complainant for his additional observations.
4. The complainant submitted his reply on 20 December 2014. The HoM submitted his additional observations on 23 March 2015.

I. FACTS

1. BACKGROUND TO THE CASE

1. On 28 April 2006, the complainant concluded a contract establishing a joint limited company MTI Stone and Building (MTI) (hereinafter “the company”) with I.F and M.L. It was agreed to have the company owned in equal shares (33% each). MTI was registered with the Ministry of Trade and Industry of Kosovo.
2. The company was granted a licence to exploit andesite resources. Over a period of time the complainant invested substantial resources into the search and detection of this resource within Kosovo. As a result, he reduced his working activities in Germany to a minimum.
3. On 4 April 2007, an Annex to the company’s Articles of association was signed by which the shares of the company were redistributed, giving the complainant and M.L. 47.5% of the shares each and I.F. 5% of the shares.
4. The complainant subsequently discovered the alleged criminal activities of his business partners. As a result, they attempted to drive him out of the company through the falsification of the company’s Articles of Association and through uttering threats against him. On 5 August 2009, a contract was drafted “on giving shares for free”, which was signed by M.L. and I.F. only. It provided that he was to transfer his shares to I.F. and M.L. with no consideration being paid. As a result M.L. and I.F. took 50% of the company’s shares each. M.L. was appointed as its director. The complainant was thereby deprived of his shares.
5. On 14 August 2009, the Kosovo Ministry of Trade and Industry registered these changes to the company’s Articles of Association.
6. The complainant alleges that from an unspecified date he was not allowed to perform his functions as the company’s Executive Director. Nor was he given access to its documents and financial statements. He was also refused access to the company’s premises.
7. On 3 November 2010, the complainant filed a request with the Kosovo Agency for Registration of Business to have him reinstated as the company’s shareholder and to have its previous decision (see para. 5 above) reversed as it was based on unlawful documents having been submitted by M.L. and I.F. Following this request, the Acting Chief Executive of the Agency, acting under Article 16 of the Law on Trade Society, returned the company to its previous legal status, with the complainant being reinstated as a shareholder holding his previous percentage of shares.
8. On 16 June 2015 the Commercial Court awarded the complainant EUR 874,000 in compensation for damage caused, including legal interest. The right of the defendants, M.L. and I.F., on ownership of shares in the company were terminated and they were excluded from it.

2. EULEX involvement

A. The First Complaint - Case No. PPS 26/2010

8. On 17 September 2009 the complainant sent a letter to the Head of Special Prosecutor of the Republic of Kosovo (SPRK) in which he requested that appropriate measures against the alleged reported wrongdoings of his shareholders be taken and that he be afforded protection.

10. On 10 February 2010 EULEX Special Prosecutor met the complainant. It was recommended that he provided a more detailed explanation of the situation complained of.

11. On 11 March 2010 the complainant's representative filed a supplementary criminal report to the SPRK against I.F. and M.L. and against the Acting Chief Executive Officer of the Kosovo Business Registration Agency for criminal offences of falsifying documents, legalization of false content, fraud, abuse of official position and entering into harmful contracts. Relevant documentary evidence was submitted.

12. On 25 May 2010 SPRK transferred the case to the EULEX Prosecutor N.A. at the District Prosecution Office in Mitrovica.

13. On 10 November 2010 the Chief EULEX Prosecutor assigned the case to EULEX Prosecutor P.K. following on a request from him to do so.

14. On 25 November 2010 EULEX Prosecutor requested that EULEX assign a Judge of the District Court of Mitrovica to the case. During a hearing on 2 December 2010 EULEX Prosecutor stated that the reason for his request was based on "a strong interest of the society in the certainty of business and entrepreneuring in this area, the estimated damages in this case being around five million euro".

15. On 17 January 2011 the Presiding Judge at the Mitrovica District Court assigned the case (PPS. No. 26/2010) to EULEX judges.

16. A Ruling on Initiation of Investigation (ROI) was issued on 23 February 2011 against M.L. and I.M. for allegedly committing criminal offence of fraud in August 2009 (Case No. PPS. 26/2010).

17. On 25 February 2011 the EULEX Prosecutor filed an application for an order for a house search with the Mitrovica District Court. The application was granted on 1 March 2011. On 4 March 2011 searches were conducted by the investigating authorities. A number of items were seized including a desktop, an AK 47 rifle and a number of documents. A number of relevant reports were filed with the Prosecutor by the police. The Economic Crimes Investigation Unit was entrusted by the EULEX Prosecutor to carry out searches of the seized computers. The two suspects were interviewed.

18. On 30 March 2011 the EULEX Prosecutor sent a letter of entrustment to the Task Force Investigators Mitrovica to conduct a number of investigative steps and to report to him no later than 30 June 2011, providing interim reports if necessary. No evidence has been provided to the Panel as to whether that request was complied with.

19. On 4 August 2011 EULEX Prosecutor P.K. issued a Ruling on Suspension of Investigation in case PPS No. 26/10. The grounds for this Ruling read, *inter alia*, as follows:

"Despite efforts of EULEX Police, defendant M.L. could not be located neither in Kosovo nor in Germany by Public Prosecutor's Office in Siegel, Germany, where he is facing another criminal proceeding. Therefore, the Public Prosecutor assumes this defendant is hiding from investigation and has fled to an unknown place. Moreover, due to recent criminal acts in the North of Kosovo, EULEX Police focuses all of its resources on resolution of the new

most serious cases. Under these circumstances no further evidence are obtainable at the moment.

The International Public prosecutor considers that all obtainable evidence regarding the criminal offences and the criminal liability of the suspects, without them being available to the Prosecutor, have been collected and all investigation opportunities have already been exhausted. That means the requirement set forth in the Article 223 paragraph (2) of the CPCK is fulfilled."

20. On 4 April 2012 EULEX Prosecutor S.G. sent a Letter of Entrustment to the Kosovo Police Directorate for Economic Crime and Corruption ordering them to establish a number of facts in relation to case.

21. On 5 June 2012 the Kosovo Police Economic Crime and Corruption Investigation Unit provided a report to the EULEX Prosecutor, informing him, inter alia, of the contract the complainant's shareholders had signed on 5 August 2009 (see para. 4 above) and about that contract having been registered by the Kosovo Agency for Business Registration (see para. 5 above).

23. On 5 June 2012 the Tax Administration Office in Mitrovica provided a report on a tax inspection of the company to EULEX Prosecutor S.G. On 3 July 2012 this prosecutor interviewed F.I., the company's employee, as a witness.

24. As a result of a letter of the Chief EULEX Prosecutor dated 17 November 2014 to EULEX Prosecutor N.A., Basic Prosecution Office Mitrovica, on 16 December 2014 the latter issued a Ruling to Resume the Investigation. This investigation is currently ongoing. No formal decision to close it has been given.

B. Case PP 360/2012

25. In September 2012 the complainant informed EULEX Executive Police Financial Investigation Unit (FIU) that M.L., who owned another company, S-B, had rented two stone crusher machines from a German based company Apex-Lieben Crush & Screentec and that he subsequently had imported these machines into Kosovo and sold them to the company.

26. EULEX FIU commenced an investigation and on 9 October 2012 filed a report which established that the machines were owned by the German company Apex-Lieben Crush & Screentec which had made it clear that they wanted their machines returned to them.

27. On 10 October 2012 a Ruling on Initiation of Investigation against I.F. and M.L. was issued (case no. PP 360/2012). The case was handled by a mixed team within the Basic Prosecution Office in Mitrovica. It was initially assigned to EULEX Prosecutor P.P. (September-November 2012) and to Prosecutor M.G. from February 2013 onwards.

28. On 18 September 2012 the complainant and his representative met with the EULEX Prosecutor P.P. and a Legal Adviser. The Prosecutor outlined investigative steps to be undertaken.

29. Between the date of the ROII, i.e. 10 October 2012, and 30 October 2012, the Prosecution filed an Application for Disclosure of Financial Data, an Application for a Search Order of a house and other premises, an Order for the Disclosure of Tax Data, eight Letters of Entrustment, an Application for an Order of Arrest of both defendants and an Application for International

Wanted Notice against both defendants. In the same period, the EULEX FIU and Kosovo Police filed a number of reports regarding actions taken.

30. On 17 October 2012 searches were conducted of premises in Mitrovica in a joint Kosovo Police/EULEX Police operation during which a number of documents, equipment and other items were seized. On 22 October 2012, EULEX Prosecutor P.P. instructed the Head of the Agency on the Management of Sequestered or Confiscated Assets (AMSCA) to facilitate storage of the seized items.

31. On 8 November 2012, the complainant was again interviewed by EULEX Police.

32. On 15 November 2012, upon an application of Prosecutor P.P., the Pre-Trial Judge, District Court, Mitrovica issued International Arrest Warrants in respect of I.F. and M.L.

33. On 28 November 2012 EULEX Prosecutor issued a Ruling to Suspend the Investigation pursuant to the then applicable Article 223 of the CPCK (currently Article 157 of the CPC 2013). The reasons relied on were that both defendants were believed to be outside Kosovo as they were both German citizens and resided in Germany. The defendants had indicated that they were not willing to respond to any request to be interviewed. As foreign citizens, they were likely to continue to refuse to submit to the jurisdiction of Kosovo. All efforts by the Police to invite the defendants to be interviewed had, thus far, been unsuccessful.

34. On 12 February 2013 EULEX Prosecutor M.G. instructed EULEX FIU/KP Economic Crimes and Corruption Unit, Mitrovica, to facilitate the release and transfer of one of the temporarily seized items stored in the AMSCA premises in Mitrovica to the complainant, he being the lawful owner of the truck.

35. On 13 February 2013 EULEX Prosecutor M.G. resumed the investigation against I.F. and on 14 February 2013 against M.L. On 14 February 2013, upon an application of EULEX Prosecutor, the warrants for arrest against the two defendants were withdrawn by the Pre-Trial Judge of the Basic Court Mitrovica.

36. On 15 February 2013 M.L. and I.F. were interviewed at EULEX Log Base in Mitrovica by a EULEX and Kosovo Police officer in the presence of their defence lawyers. They were informed of the legal qualification of the criminal offences for which they were being questioned, namely, misuse of economic authorization, fraud and misappropriation. On 26 February 2013, M.L. was interviewed again.

37. On 1 March 2013 the EULEX Prosecutor, M.G. issued a Ruling to Suspend the Investigation. It was noted that due to the transnational nature of the investigation against both defendants who were not permanent residents of Kosovo, the continuing investigation presented circumstances which prevented their successful prosecution.

38. On 16 May 2012 the EULEX Prosecutor M.G. issued a Ruling to Terminate the Investigation. Having regard to the evidence, he concluded that there was no longer compelling grounded suspicion that the criminal offences had been committed by the defendants. It was deemed unlikely that any further investigation would provide a sufficient basis for a continuation of the investigation.

39. On 3 June 2013 the complainant wrote to the EULEX Prosecutor, M.G., requesting him to change his decision to terminate the investigation. He

provided the Prosecutor with new materials regarding the case. The EULEX Prosecutor responded by way of a letter dated 24 June 2013, in which he informed the complainant that he was not willing to reconsider his decision or to examine the new material provided. He further stated that the material should be sent to the local authorities as the matter no longer fell within the priorities of EULEX. He also requested the complainant not to contact him or the EULEX Police any further.

III. RELEVANT APPLICABLE LAW

40. Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (as applicable until 30 May 2014)

Relevant provisions of this law read:

Article 3 Jurisdiction and competences of EULEX judges for criminal proceedings (...)

3.3. Before the commencement of the relevant stage of the proceeding, upon petition of the EULEX Prosecutor assigned to the case or working in the mixed team identified in Articles 9 and 10 of this law, or upon petition of any of the parties to the proceeding, or upon a written request of the President of the competent court or of the General Session 5 of the Supreme Court of Kosovo (...) the President of the Assembly of EULEX Judges will have the authority, for any reason when this is considered necessary to ensure the proper administration of justice, to assign EULEX judges to the respective stage of a criminal proceeding, according to the modalities on case selection and case allocation developed by the Assembly of the EULEX Judges and in compliance with this law, for the following crimes, when the investigation or prosecution is not conducted by the SPRK: (...)

h) violating equal status of residents of Kosovo (Art. 158, PCCK)

Article 12 Authority of EULEX prosecutors in case of unwillingness or inability of Kosovo Public Prosecutors

12.1. At any stage of any criminal proceeding, if a Kosovo Public Prosecutor is unwilling or unable to perform his or her duties and this unwillingness or inability might endanger the proper investigation or prosecution of a criminal offence, or whenever there is a grounded suspicion of attempts made to influence the investigation or prosecution of a criminal offence, the Chief EULEX Prosecutor will have the authority to request the Chief Prosecutor of the competent office to assign the case a) to another Kosovo Public Prosecutor working within the same prosecution office, b) or to any EULEX prosecutor who will take the responsibility over the relevant investigation or prosecution. (...)

41. Law No. 04/L-273 on Amending and Supplementing the Laws Related to the Mandate of the European Union Rule of Law Mission in the Republic of Kosovo

Article 3 Amending and Supplementing the Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (as applicable as of 31 May 2014).

.....

9. Article 7 of the basic Law is reworded as following:

Article 7 General authority and competences of EULEX prosecutors

7.1. EULEX prosecutors will have the authority and responsibility to perform their functions, including the authority to conduct criminal investigations as stipulated in Article 2.1 of this Law, unless foreseen different by this Law.

7.2. The EULEX prosecutors will be competent to investigate and prosecute the crimes that fall under the competence of the SPRK in accordance with the law on SPRK.

7.3. EULEX prosecutors are integrated into Kosovo Prosecutorial system and will discharge their functions in compliance with the applicable legislation in Kosovo.

7.4. Cases conducted by EULEX prosecutors as stipulated in Article 2.1 of this Law will continue to be managed in accordance with relevant provisions of the Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (2008) and Law on SPRK (2008).

7.5. EULEX KOSOVO will appoint prosecutors to assist in the implementation, according to the agreement, of the EU-facilitated Dialogue between Kosovo and Serbia.

7.6. In carrying out their functions, EULEX prosecutors will closely consult and coordinate their activities with the Chief Prosecutor in charge of the office, where they are assigned.(...)

II. COMPLAINTS

42. The complainant alleges that EULEX Kosovo failed to protect his right to the peaceful enjoyment of his possessions guaranteed under Article 1 of Protocol No. 1 to the Convention. He also complains that EULEX breached his right to an effective remedy guaranteed by Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention").

II. THE LAW

ALLEGED VIOLATION OF ARTICLE 13 AND ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

43. The complainant complains under Article 13 of the Convention and Article 1 of Protocol No. 1 to the Convention (see para. 42 above). The relevant provisions, in so far as relevant, read as follows:

Article 1 Protocol 1, Protection of property

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by general principles of international law [...]”

Article 13, Right to an effective remedy

“Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

44. 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 and the International Covenant on Civil and Political Rights, which set out minimum standards for the protection of human rights to be guaranteed by public authorities in all democratic legal systems.

Submissions by the Parties

45. In his submissions of 3 December 2014, the HOM submitted that the files of Case No. PPS 26/2010 did not adequately reflect the investigative activities undertaken by EULEX between 17 September 2009 when the complainant first contacted the Head of SPRK and 10 February 2010 (see para. 9). The complainant asked for a further period of about three weeks to amend his original submissions.

46. The HOM submits that a number of investigative measures were undertaken by the EULEX Prosecutor pursuant to the Ruling on Initiation of Investigation of 23 February 2011. These measures included house searches and the delivery of Letters of Entrustment to the Economic Crimes Investigation Unit and to the Task Force Investigators. Upon the completion of these steps, the EULEX Prosecutor suspended the investigation on 4 August 2011 as defendant M.L. could not be found.

47. It is submitted that the complainant’s representative was granted access to the entire case file. He reviewed the files at the EULEX Log Base, Mitrovica. He did not request copies of any documents.

48. The HOM acknowledged that, pursuant to the decision of the EULEX Prosecutor to suspend the investigation in the case PPS 26/2010, additional investigative measures were undertaken by the EULEX Prosecutor. In particular, on 4 April 2012 a Letter of Entrustment was sent to the Kosovo Police Directorate for Economic Crimes and Corruption in order to establish additional facts. This resulted in a report, which contained a number of

findings made by the Kosovo Police. Further, the EULEX Prosecutor requested the Tax Administration of Kosovo to provide a report to him on MTI Stone and Building Ltd. This report was provided to the EULEX Prosecutor on 5 June 2012. On 3 July 2012, the EULEX Prosecutor interviewed the company's employee as a witness.

49. The HOM further stated that the investigation in case PPS 26/2010 remained suspended at that time as no decision to resume it had been given.

50. The complainant submitted that Case No. PPS 26/2010 and Case No. PP 360/2012 should have been examined together as their subject-matter was closely intertwined. The complainant as the injured party and his lawyer should have been invited to participate in the examination of the defendants by the EULEX Police and Prosecutor. It was further argued that number of different prosecutors were assigned to the cases which hampered the reasonable progress of the investigation. The actions of the EULEX Prosecutors were "political actions" and had no legal basis.

51. In so far as the complainant submitted that the cases should have been examined together, the HOM referred to, in his additional submissions of 23 March 2015, the legal basis for the establishment of joint proceedings as laid down in Article 33 (6) and (7) and Article 305 (3) of the Kosovo Criminal Procedure Code, (KCPC). The conditions laid down in the KCPC for the joinder of cases had not been met. It was further acknowledged that Article 151-155 of the KCPC authorized the injured party or his/her authorized representative to be present at the examination of a defendant. In so far as the complaint related to the number of prosecutors assigned to the cases, the HOM argued that whilst it might appear that the number of prosecutors handling each case might have adverse consequences for the efficiency, in reality the appointed EULEX Prosecutor in Case no. PPS 26/2010 was familiar with the case from the outset and the assignment of Case no. PP360/2012 to another prosecutor did not result in further delays in the investigation.

ADMISSIBILITY

52. Before considering the complaint on its merits, the Panel has to decide whether to accept the complaints, taking into account the admissibility criteria set out in Rules 25 and 29 of its Rules of Procedure.

53. According to Rule 25, paragraph 1, complaints may be filed with the Panel by any person other than EULEX Kosovo personnel who claims to be the victim of a human rights violation by EULEX Kosovo in the conduct of its executive mandate.

54. The Panel has previously repeatedly held that the actions of a EULEX Prosecutor taken in the examination of a case are part of the executive mandate of the EULEX Kosovo and that such actions fall within the ambit of the mandate of the Panel up to and including a bill of indictment filed with a court which is competent to examine the merits of a case (see, e.g., *B.Y against EULEX*, 2014-06, par. 12; *I against EULEX*, 2013-01, 27 November 2013, par. 12; *E against EULEX*, 2012-17, 30 August 2013, at pars. 20-22; *Z against EULEX*, 2012-06, 10 April 2013 at par. 32; *W against EULEX*, 2011-07, 5 October 2012 at par. 21; *Hoxha against EULEX*, 2011-18, 23 November 2011 at par. 22; *S.M. against EULEX*, 2011-11, 23 November 2011 at par.15, *Sadik Thaqi v. EULEX*, 2010-02, par. 64).

55. The Panel notes that in the present case the conduct complained of relates directly to the actions of EULEX Prosecutors in the discharge of their executive functions. The Panel is satisfied that the complaint falls within the ambit of its mandate and meets the admissibility criteria as set out in its Rules of Procedure. It is further noted that the judicial mechanisms available in Kosovo ultimately offered redress to the applicant by way of the judgment of the Commercial Court given in 2015. However, the Panel has already held that this fact alone does not absolve EULEX from its own obligations regarding effective protection of human rights (see *Becic v. EULEX*, no. 2013/03, 12 November 2014, par. 59).

ASSESSMENT BY THE PANEL

56. In so far as the applicant complains under Article 13 of the Convention, the Panel has already had occasion to note that the EULEX mission is not a State and that its ability to guarantee the effective protection of human rights cannot be compared, in all relevant respects, to what may be expected of a State (see the Panel's decision in *A,B,C,D against EULEX* nos 2012-09 to 2012-12, 20 June 2013, § 50; *K to T against EULEX*, cited above, par. 53; compare also the Human Rights Advisory Panel's (hereafter HRAP) decision in cases nos. 248/09, 250/09 and 251/09, 25 April 2013, par. 35).

57. The expectations which are placed upon the ability of EULEX Kosovo to conduct investigations and to resolve complex criminal cases should therefore be realistic. The Panel would not impose on the EULEX investigative authorities obligations to investigate to an extent that exceeds its mandate and resources (see Human Rights Review Panel, hereinafter: HRAP; decision in case nos. 248/09, 250/09 and 251/09, *mutatis mutandis*). The Panel therefore is called upon to consider if there are concrete and real obstacles in its path that might undermine the capacity of EULEX to conduct a prompt and effective investigation. Such an evaluation is not intended to justify operational shortcomings unrelated to concrete and demonstrable challenges, but rather to ensure that EULEX is not expected to do more than what its mandate would reasonably enable it to do.

58. In the present case, the Panel first notes that a request to assign a EULEX judge to the case was made by the prosecution on 25 November 2010. The prosecutor referred in his request to the seriousness of the case and what was at stake as circumstances justifying the case being assigned to EULEX judge (see paragraph 14 above) and the judge accepted this request. Hence, it is not in dispute that the case was sufficiently serious to be taken over by EULEX, a course of action reserved for most serious criminal cases.

59. However, it is further noted that the complainant first contacted EULEX in September 2009. After he supplemented his submissions on 11 March 2010, case No. PPS 36/2010 was transferred to the District Prosecution Office in Mitrovica after two months. It was subsequently assigned to EULEX prosecutor P.K. on 10 November 2010. It has not been shown or argued by the Head of the Mission that any investigative measures in the case were carried out prior to that date. Nor has an explanation been provided therefor.

60. Subsequently the case was assigned to EULEX judges on 17 January 2011 and investigation was ultimately initiated on 23 February 2011, one year and four months after the complainant had first contacted EULEX. The Panel

acknowledges that an order for a house search was given shortly afterwards and that this search was carried out promptly, in March 2010. However, no evidence has been provided that any other investigative measures were subsequently taken, until a decision to stay the proceedings was given on 4 August 2011, and this despite a letter of entrustment of 30 March 2011, obliging the investigators to conduct a number of investigative measures.

61. It is further noted that certain investigative measures were taken between 4 August 2011 when the case was formally stayed and 17 November 2014 when it was formally resumed. Namely, a witness was heard, a report of the tax inspection was submitted by the Kosovo authorities and the Kosovo Police was charged to carry out certain measures (see paras. 20-23 above). No explanation has been provided to the Panel as to the legal basis pursuant to which these measures were taken whilst the case remained formally stayed.

62. The investigation was resumed on 14 December 2014. It is apparently pending to this day. No submissions were made to the Panel to show what investigative measures, if any, have been adopted since; or as to the reasons for which no measures have been taken until the complainant's situation was remedied in June 2015 by the judgment of the Commercial Court.

63. It is further noted that this investigation was stayed as well on the ground that the suspects were not likely to submit to the jurisdiction of the Kosovo authorities. It was resumed on 13 and 14 February 2014 and the warrants of arrest against the suspects were withdrawn on the next day upon the application of the EULEX Prosecutor. The Panel is of the view that given the previous difficulties in bringing the suspects to justice, as referred to in the decision to stay the proceedings, a decision to withdraw the arrest warrant and to decide to do so prior to a demonstrable attempt at questioning the suspects is open to criticism.

64. The Panel observes that neither complainant nor his lawyer were invited to attend the questioning of both suspects when they were interviewed in the context of the second set of investigation (PP 360/2012) on two occasions in February 2013, despite the fact that the applicable law expressly allowed for such opportunity. It has not been explained to the Panel whether the complainant or his lawyer were informed of these interviews or not and if not, for what reasons. No arguments have been presented to the Panel to explain why no decision to interview them in the context of the first set of the investigation was given or envisaged when both suspects were at that time in Kosovo and available for interviewing.

65. Having regard to the circumstances of the case seen as a whole, the Panel finds that there was a violation of the complainant's right to an effective remedy guaranteed by Article 13 of the Convention.

66. Having regard to its findings under Article 13, the Panel considers that it is not necessary to examine the complaint under Article 1 of Protocol No. 1 to the Convention (see for a similar approach *Becic v. EULEX*, cited above, par. 62).

FOR THESE REASONS, THE PANEL, UNANIMOUSLY

1. **Holds** that there has been a violation of Article 13 of the Convention;
2. **Holds** that it is not necessary to examine the complaint under Article 1 of Protocol No. 1 to the Convention;
3. **Finds it appropriate**, in the light of its above findings of fact and law, to make the following recommendation to the Head of Mission under Rule 34 of its Rules of Procedure:
 - a. That the HOM makes a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant's rights attributable to the acts and /or omissions of EULEX Kosovo in the performance of its executive mandate;
 - b. That the HoM should provide copy of the present Decision to the EULEX Prosecutors through relevant channels, for information.


John J. RYAN
Senior Legal Officer




Magda MIERZEWSKA
Presiding Member