



DECISION ON THE IMPLEMENTATION OF THE PANEL'S RECOMMENDATIONS

Date of adoption: 13 June 2017

Case No. 2013-21

Thomas Rüsche

Against

EULEX

The Human Rights Review Panel sitting on 13 June 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:

I. DECISIONS OF THE PANEL OF 11 JANUARY 2017

1. On 11 January 2017, the Panel rendered its Decision in this case, finding a violation of the complainant's rights and making the following recommendations:

"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;

2. **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."

II. INFORMATION RECEIVED FROM THE HEAD OF MISSION OF EULEX REGARDING THE IMPLEMENTATION OF THE RECOMMENDATIONS OF THE PANEL

2. By letter of 9 February 2017, the HoM provided her response to the Panel's recommendations.

3. In her letter of 9 February 2017, the HoM said, amongst others, the following:

"[...] I can inform you that the Panel's Decision has been forwarded to the Chief EULEX Prosecutor."

4. The Panel is satisfied that the HoM has taken effective steps to implement the second of the Panel's recommendations.

5. On the other hand, the Panel notes that the HoM did not implement its recommendation to make a declaration acknowledging that the circumstances of the case amounted to a breach of the complainant's rights attributable to EULEX Kosovo in the performance of its executive mandate.

6. The Panel cannot but express regret that such a declaration has not been made.

7. It should be noted that, in accordance with the EULEX Accountability Concept Paper of October 2009 on the establishment of the Human Rights Review Panel, the Panel has no jurisdiction to make *binding* orders to the Mission. Nor do the terms of its mandate cover the possibility for the Panel to recommend to the Mission to pay damages to a successful complainant. In the absence in the Panel's legal framework of such avenues for redress, a declaration by the HoM acknowledging the violation of the complainant's rights would in many instances go some way towards offering some redress to a complainant whose rights have been violated by the Mission.

THE PANEL THEREFORE UNANIMOUSLY,

Declares that the HoM has implemented its recommendations in this case in part only,

Welcomes the HoM's dissemination of the Panel's Decision to EULEX Prosecutors through relevant channels, and

Decides to close the examination of this case.

For the Panel,


John J. RYAN
Senior Legal Officer




Magda MERZEWSKA
Presiding Member