



**INADMISSIBILITY DECISION
(*Re-examination*)**

Date of adoption: 15 January 2013

Case No. 2011-28

Y.

Against

EULEX

The Human Rights Review Panel sitting on 15 January 2013
with the following members present:

Ms. Magda MIERZEWSKA, Presiding Member
Ms. Verginia MICHEVA-RUSEVA, Member
Mr. Guénaél METTRAUX, Member

Assisted by
Mr. John J. RYAN, Senior Legal Officer
Ms. Joanna MARSZALIK, Legal Officer
Mr. Florian RAZESBERGER, 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 12 December 2011. The complainant asked for his name to be withheld as he was afraid of the repercussions which he or his family might suffer should his identity become public.
2. On 5 June 2012, the Panel decided to give notice of the complaint to the Head of Mission (the HoM) of EULEX Kosovo, inviting him to submit written observations on the complaint. The Panel also decided to examine the merits of the application at the same time as its admissibility (Rule 30 §§ 1 and 2 of the Rules of Procedure of the Panel, hereafter ROP). The observations of the HoM were received on 14 September 2012. They were subsequently communicated to the complainant for additional observations. On 4 October 2012, the complainant submitted his additional observations which were forwarded to HoM for information. No further observations were requested.
3. On 15 November 2012 the Panel found the complaint inadmissible.
4. On 13 January 2013 the complainant requested revision of the admissibility of his complaint within the meaning of Rule 43 of the Panel's Rules of Procedure. The Panel has determined however that the applicable rule is Rule 42 and it will consider the complainant's request under the latter provision.

IV. THE LAW

Request for revision

5. The complainant asked the Panel for a re-examination of its decision of 15 November 2012. He argued that the Panel in its ruling did not take into account some documentary evidence, namely his wife's medical certificates. In the complainant's opinion the documents proved that his wife's health deterioration was the consequence of EULEX actions.
6. The Panel acknowledges that the documents mentioned in the request for re-examination and originally sent by the complainant via e-mail on 8 March 2012 have never reached the Panel's Secretariat.
7. The Panel notes that the re-examination procedure under Rule 42 is not an opportunity for an unsuccessful complainant to re-litigate the case. Nor does it provide a mechanism to advance new arguments that were not part of his initial complaint.

8. Instead, the re-examination procedure provided for in Rule 42 is intended to provide a procedural mechanism whereby a complainant can seek re-examination of an inadmissibility decision where a new fact which he could not reasonably have known of at the time of the initial complaint would have had a decisive influence on the Panel's findings.
9. In the present case, the complainant has failed to establish that any new fact which could have had a decisive influence on the Panel's decision came to his knowledge after his initial complaint or that such a fact could not reasonably have been known to him at the time of the initial complaint. New evidence going to prove the same facts as were relevant to the Panel's admissibility decision do not in principle provide a sufficient basis for a re-examination. The Panel reserves its position regarding a case where new evidence would demonstrate that the Panel committed a factual error which impacted upon its decision.
10. In this case, the complainant has failed to point to any new fact relevant to Rule 42 and failed to establish how any of the new documents, individually or as a whole, would have a decisive influence on any of the material findings made by the Panel in its inadmissibility decision.
11. In his application, the complainant refers, however, to three documents which he had originally sent to the Panel but which, for technical reasons not attributable to him, did not reach the Panel members. The Panel has decided to re-examine the admissibility of the present complaint within the meaning of Rule 42 of its Rules, in light of these documents.
12. Accordingly, the Panel has now considered all three documents and considered whether these would have affected any of its findings as to the facts.
13. Having done so, the Panel has come to the unanimous conclusion that these documents do not impact materially on its decision to declare the complaint inadmissible. The Panel acknowledges, however, that the last sentence of paragraph 41 of its Inadmissibility Decision becomes inaccurate insofar as the complainant had in fact sent medical information (which did not reach the Panel).
14. Regarding the merit of the complaint, however, the medical documentation does not provide an adequate and sufficient basis to conclude that the condition from which the complainant's wife suffers is the consequence of any violation of the complainant's (or his wife's) fundamental rights which could be attributed to EULEX.
15. On that basis, the Panel confirms its inadmissibility decision.

FOR THESE REASONS, THE PANEL, UNANIMOUSLY

Accepts the complainant's request for re-examination

Re-examines its inadmissibility decision of 15 November 2012.

Declares the complaint inadmissible.

For the Panel,

John J. RYAN
Senior Legal Officer

Magda MIERZEWSKA
Presiding Member