



C/2024/6219

28.10.2024

**Judgment of the Court (Grand Chamber) of 10 September 2024 – KS, KD v Council of the European Union, European Commission, European External Action Service**

**(Joined Cases C-29/22 P and C-44/22 P) <sup>(1)</sup>**

***(Appeal – Common foreign and security policy (CFSP) – Joint Action 2008/124/CFSP – European Union Rule of Law Mission in Kosovo (Eulex Kosovo) – Action for damages – Damage allegedly suffered as a result of various acts and omissions by the Council of the European Union, the European Commission and the European External Action Service (EEAS) in the implementation of that joint action – Insufficient investigation of the torture, disappearance and killing of persons – Jurisdiction of the Court of Justice of the European Union to rule on that action – Last sentence of the second subparagraph of Article 24(1) TEU – Article 275 TFEU)***

(C/2024/6219)

Language of the case: English

**Parties**

*(Case C-29/22 P)*

*Appellants:* KS, KD, (represented by: P. Koutrakos, dikigoros, F. Randolph KC and J. Stojsavljevic Savic, Solicitor)

*Other parties to the proceedings:* European Commission (represented initially by: M. Carpus Carcea, L. Gussetti, Y. Marinova and J. Roberti di Sarsina, subsequently by M. Carpus Carcea, L. Gussetti and Y. Marinova, and last by M. Carpus Carcea and Y. Marinova, Agents), Council of the European Union (represented initially by: P. Mahnič, R. Meyer and A. Vitro, and subsequently by P. Mahnič and R. Meyer, Agents), European External Action Service (represented by: L. Havas, S. Marquardt and E. Orgován, Agents)

*(Case C-44/22 P)*

*Appellant:* European Commission (represented initially by: M. Carpus Carcea, L. Gussetti, Y. Marinova and J. Roberti di Sarsina, subsequently by M. Carpus Carcea, L. Gussetti and Y. Marinova, and last by M. Carpus Carcea and Y. Marinova, Agents)

*Other parties to the proceedings:* KS, KD, (represented by: P. Koutrakos, dikigoros, F. Randolph KC and J. Stojsavljevic Savic, Solicitor), Council of the European Union (represented initially by: P. Mahnič, R. Meyer and A. Vitro, and subsequently by P. Mahnič and R. Meyer, Agents), European External Action Service (EEAS) (represented by: L. Havas, S. Marquardt and E. Orgován, Agents)

*Interveners in support of the European Commission (C-29/22 P and C-44/22 P):* Kingdom of Belgium (represented by: M. Jacobs, C. Pochet and L. Van den Broeck, Agents), Grand Duchy of Luxembourg (represented by: A. Germeaux and T. Schell, Agents), Kingdom of the Netherlands (represented by: M.K. Bulterman and J. Langer, Agents) Republic of Austria (represented by: A. Posch, J. Schmoll, M. Meisel and E. Samoilova, Agents) Romania (represented by: R. Antonie, L.-E. Bațagoi, E. Gane and L. Ghiță, Agents), Republic of Finland (represented by: H. Leppo and M. Pere, Agents), Kingdom of Sweden (represented by: H. Eklinder, F.L. Göransson, C. Meyer Seitz, A. Runeskjöld, M. Salborn Hodgson, R. Shahsavan Eriksson, H. Shev and O. Simonsson, Agents)

*Interveners in support of the Council of the European Union (C-29/22 P and C-44/22 P):* Czech Republic (represented by: D. Czechová, K. Najmanová, M. Smolek, O. Šváb and J. Vlácil, Agents), French Republic (represented initially by: J. L. Carré, A. L. Desjonquères, T. Stéhelin and W. Zemamta, then by J. L. Carré, T. Stéhelin and W. Zemamta, next by J. L. Carré, B. Fodda, E. Leclerc, T. Stéhelin and W. Zemamta, subsequently by J.-L. Carré, B. Fodda, E. Leclerc, S. Royon, T. Stéhelin and W. Zemamta, further by J. L. Carré, M. de Lisi, B. Fodda, E. Leclerc, S. Royon and T. Stéhelin, and last by M. de Lisi, B. Fodda, S. Royon, T. Stéhelin and B. Travard, Agents)

<sup>(1)</sup> OJ C 109, 7.3.2022.

**Operative part of the judgment**

The Court:

1. Sets aside the order of the General Court of the European Union of 10 November 2021, *KS and KD v Council and Others* (T-771/20, EU:T:2021:798), to the extent that the General Court declared that it manifestly lacked jurisdiction to hear and determine the action brought by KS and KD on the ground that it related to political or strategic issues concerning the definition and implementation of the common foreign and security policy (CFSP) in so far as that action concerned:
  - a breach of Articles 2 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and of Articles 2 and 4 of the Charter of Fundamental Rights of the European Union, committed by the Eulex Kosovo mission, on account of the insufficient investigation of the disappearance and killing of their family members, owing to that mission's lack of appropriate personnel to perform its executive mandate, a breach found on 11 November 2015 in respect of KS and on 19 October 2016 in respect of KD, by the Human Rights Review Panel established on the basis of Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO;
  - a breach of Article 6(1) and Article 13 of that convention and of Article 47 of that charter, owing to the absence of provisions for legal aid for qualifying applicants in proceedings before that review panel and to the establishment of that panel without the power to enforce its decisions or a remedy for breaches of human rights committed by Eulex Kosovo;
  - the failure to take remedial action to remedy some or all of the breaches referred to in the first and second indents, despite the fact that the findings of that review panel were allegedly brought to the European Union's attention by the Head of Eulex Kosovo on 29 April 2016;
  - the misuse or abuse of executive power by the Council of the European Union and the European External Action Service on 12 October 2017 owing to their assertions that Eulex Kosovo had done the best that it could to investigate crimes of which members of the families of KS and KD were victims and that the same review panel was not intended to be a judicial body; and
  - the misuse or abuse of executive or public power for failing to ensure that the case of KD, concerning a war crime, be subject to a legally sound review by Eulex Kosovo and/or the Specialist Prosecutor's Office for investigation and prosecution before the Kosovo Specialist Chamber;
2. Dismisses the appeals in Cases C-29/22 P and C-44/22 P as to the remainder;
3. Refers the case back to the General Court of the European Union for a ruling on the admissibility and, if necessary, the merits of the action brought by KS and KD, as well as on their application for measures of inquiry seeking the production of the full version of the Operation Plan (OPLAN) of Eulex Kosovo, beginning from the creation of that mission;
4. Reserves the costs.