



GUIDELINES ON MONITORING, MENTORING AND ADVISING (MMA) FOR EULEX JUDGES

**Approved by the Assembly of EU Judges on the 23rd September 2010, in Mitrovica,
Kosovo**

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INTRODUCTION

On 23rd October 2008, the Assembly of EULEX Judges has determined the first Guidelines on Monitoring, Mentoring and Advising (MMA) for EULEX judges. The guidelines contained definitions of MMA activities and suggested guidelines on how to MMA in practice.

The first 6 months of mission activities were focused on assessment, followed by 6 months of project design, concluded by the Action Fiche for Judges. The Action Fiche lays down the key MMA goals. Therefore, the Assembly of Judges amended the guidelines on the 23 September 2010.

1. MONITORING

Monitoring is understood to be a professional observation and assessment of the judicial system to identify weaknesses in the administration of justice and the application of the Rule of Law and contradictions to European standards, and best practices.

Monitoring does not include the exercise of individual control or any other form of supervision of the functioning of domestic courts

In case a EULEX judge is observing misconduct by one of the domestic peers during the monitoring activity, this conduct shall duly be reported to the EULEX line manager and the relevant domestic disciplinary and prosecutorial authorities.

Monitoring aims at developing a fair and objective assessment of the efficiency of the judiciary in Kosovo in the application of the relevant principle of justice and international Human Rights standards. Moreover, monitoring process should not be seen as being an opportunity for further appeal process for litigants dissatisfied with the outcome of their cases.

In executing this objective EULEX judges will seek to share experience with other national and international counterparts in the field of court monitoring such as the KJC, OSCE, USAID, UN and the Ombudsperson.

2. MENTORING

If during the monitoring activity, some recurrent gaps or violations of the international and European standards or weaknesses in the administration of Justice and the application of the Rule of Law have been detected, the EULEX judges shall accordingly proceed with the mentoring activity.

Mentoring is an informal support, based on mutual trust and professional respect, through the exchange of experiences, information, opinions and best practices. Mentoring includes coaching, showing how to deal with a specific task, sharing the “know how”, encouraging.

Mentoring techniques may be: coaching (sharing experience regarding the carrying out of a specific task); counseling (assisting domestic judges in exploring the consequences of potential decisions); creating networks (referring domestic judges to other domestic or international colleagues with more significant experience in similar cases or issues); offering experiences, information and opinions; providing relevant legal sources or doctrinal essays or international jurisprudence; proposing the organization, with the support of the competent actors (such as OSCE, USAID, etc.), short and focused training programmes.

The mentoring activities should be based on a relationship of equality, “between colleagues”. EULEX judges will work side by side with the local counterparts and are integrated in the local judicial system.

3. MONITORING and MENTORING ACTIVITIES

The following monitoring and mentoring activities are only suggestions:

a. Monitoring and Mentoring during the conduct of executive functions

The performance of the executive functions bears a good potential to conduct monitoring and mentoring. During the co-operation with the domestic judges and court staff EJU staff can monitor and mentor without appearing intrusive or supervisory, but rather in an interactive manner.

b. Individual meetings between judges

It could be a possible team strategy to assign specific domestic counterparts to specific international mentors, in order to allow a personal approach to individual working problems and subsequent individual monitoring and mentoring activity, as adequate in a peer-to-peer basis,

The meetings should not be conducted as structured and formal interviews but rather as informal chats and discussions between colleagues. The use of a checking list approach could be useful to take quick notes on numbers or statistics or names that could be easily forgotten.

With regard to the monitoring, during the meetings following information on a number of issues may be gathered:

- Case allocation system (CMIS);

- Backlog reduction system;
- Workload distribution;
- Witness protection program;
- Access to the court;
- Absence of corruption or discrimination;
- Intimidation incidents;
- External interference incidents;
- Pre-trial detention and alternative measures;
- Respect of the reasonable time to take decisions;
- Execution/enforcement of judicial decisions, prison-sentences, and fines;
- Ongoing investigations against the same suspect/accused in a different district.
- Civil property related cases
- Backlog of the so-called “suspended cases”

With respect to the mentoring, a meeting is already a mentoring activity, with the EULEX judge offering professional opinions, providing suggestions and fostering best practices.

A case-based approach maybe recommendable by asking the Kosovo judge to look into files and cases that he or she refers to be more sensible or complex. This would allow the EULEX judge to bring the discussion on a more practical level with the EULEX judge’s possible involvement in the solution of the problems related to specific cases.

During the meetings, EULEX judges should always keep in mind the risk for disqualification especially in the pre-trial stage. Those files should be handled with extreme care avoiding formal interventions on the case and keeping the level of the mentoring at a very informal level, with the less possible exposure.

c. Collective meetings between judges

Specific problems of the respective court or a thematic topic may be discussed in a broader college.

It might be useful to join weekly meetings of the domestic judges.

d. Meetings with other court staff

EJU staff may meet court personnel. EULEX legal officers should especially focus their attention on the registry staff,

e. Reviewing court files

EULEX judges may select files (criminal or civil) from a Court and check these files on :

- their allocation grounds/practice;
- delays in their progress;
- remittals;

- registration in CMIS;
- compliance with the law ;
- compliance with best European practices;
- compliance with EULEX recommendations;

and discuss the findings, if necessary , with the local judges.

f. Attending court sessions

EJU staff may attend court sessions. It might be advisable to arrange attendance with the local judge in advance and to avoid unexpected visits, in order not to make the local judge feel inspected or scrutinized by the EULEX presence.

g. Assisting in research

EJU staff might assist the domestic judges in legal research and assisting in access to literature on international conventions or standards.

h. Assisting in compilation of jurisprudence

EULEX judges may support the domestic judiciary in preparing commentaries of laws and codes as well as a collective jurisprudence database.

i. Assisting in training

EULEX judges may contribute, within their mentoring activity, to relevant training organized by the competent actors (such as KJC, KJI, OSCE, USAID, etc.).

j. regional professional trainings

According to juridical problems already commonly detected on mentees work, and to avoid discrepancies and repeating work on mentoring activity, specific meetings upon specific juridical issues may be organized and held at regional level. These meetings would be organized by regional teams, through the model used on regular “in service trainings” for international staff: several short presentations, performed by international staff, regarding specific technical and thematic issues within an interactive approach, involving all regional mentees, on a single day-long basis. Attendance would be strongly encouraged in advance.

k. Meeting with Kosovo Bar Association

This could allow the EULEX judges to become more acquainted with the problems and difficulties faced by the lawyers. Moreover, it would show possible challenges regarding the relationship between Kosovan judges and lawyers.

4. ADVISING

If monitoring and mentoring have failed to eliminate a specific problem, in the sense that violations or structural dysfunctions continue, the last step to be taken for the EULEX judges is advising.

An advise is a formal and official positions taken by the EULEX judges collectively in the Assembly of EULEX judges and directed to the relevant and competent authority. Advising intends to provide professional counseling to the competent authority (KJC, Presidents of the Courts, Supreme Court judges, etc.) on a specific topic arising from the monitoring and mentoring experience.

An advice is directed to the relevant institution and not to an individual counterparts.

The advising provides the stakeholders with the necessary insights to intervene in this specific area of the justice system that needs general and structural improvements to be implemented for the all judicial system and that cannot be performed by the mentoring activity of individual EULEX judges.

5. MMA REPORTING SYSTEM

EULEX judges are advised to report on the progress of the MMA activities, according the following procedure:

- 1) EULEX Judges shall check the deadlines and the priorities in the MMA Action Fiches and the corresponding time lines/workplan
- 2) EULEX judges shall report the findings on each output in the Programme Office Information System once a month, through the designated reporting officer within each EULEX DC team.

6. Current phase of MMA

Since November 2009, MMA Phase II started. It is an 18 months programme. EJU has laid down 10 Outouts in the MMA catalogue Action Fiches. In addition, there is a timeline MMA Action document which fixes the differents deadline for the output.

According to the defined output, EJU should focus for the next 18 months, from November 2009, on the following 10 points with its MMA activities:

1. Independence of the judiciary
2. CMIS
3. Case allocation system
4. Improvement of Kosovo Judiciary in courts
5. Serious Crime cases

6. National/international arrest warrant
7. Detention on remand
8. Judicial misconduct
9. Civil Court Decision
10. Stayed cases and Property cases

As of September 2010, the 10 abovementioned points will be subdivided under four Outputs:

- 1 Output 1: Court Management
- 2 Outputs 2: Independence of the Judiciary
- 3 Output 3: MMA on criminal cases
- 4 Output 4: MMA on civil cases

Annex: list of EJU recommendations and advices as of August 2010:

I. Recommendations made by EULEX Programme Office July 2009

In July 2009, a first assessment of the Kosovo Judiciary was finalized and analyzed in the Programme Office six-monthly report, within which a list of 11 recommendations are addressed to the Kosovo Judiciary and 4 directly addressed to the Kosovo Judges:

- **EULEX recommendation JC/2/2009**

Target: KJC and Kosovo judges

To (1) abolish the legal basis for retrials, (2) the KJC to issue a guideline that Second Instance Judges remit the civil cases presenting a substantial reasoning, (3) EULEX Judges to establish a model of regular deliberations between EULEX civil and Kosovo civil Judges to establish a platform for a legal discussions, which include among other the topic of repeated trials

- **EULEX recommendation JC/3/2009**

Target: KJC, KPC, and the President of the Courts

- 2) Enhance the reintegration and representation of non-majority communities into the Kosovo Justice Sytem
- 3) Ensure a strong commitment to gender balanced policies

- **EULEX recommendation JC/9/2009**

Target : KJC, President of the Courts, Kosovo Judges and Kosovo Judges Association

To enhance the service oriented and integrated approach of the KJC towards the Kosovo Courts

- **EULEX recommendation JC/11/2009**

Target: KJC, KPC, Kosovo Judges and Kosovo Prosecutors

Enhance the effective application of witness protective measures in crimes involving vulnerable witnesses and serious crimes

II. EULEX Judges Advices

The Assembly of EULEX Judges has adopted so far seven advices addressed either to the Kosovo Judicial Council (3) or to the Courts (4), which were presented to the Kosovo Judiciary in Albanian and Serbian language.

- 23 October 2008: (adopted during the 2nd Assembly of EU Judges). Advice to the KJC regarding the case allocation system in the courts of Kosovo

- 10 August 2009: (adopted during the 6th Assembly of EU Judges). Advice to the KJC regarding the distribution of the Official Gazette throughout the Courts of Kosovo
- 23 September 2009: (adopted during the 7th Assembly of EU Judges). Advice to the Courts of Kosovo on the handling of execution cases upon appeal
- 23 September 2009: (adopted during the 7th Assembly of EU Judges). Advice to the Courts on accessibility to the Courts
- 9 December 2009: (adopted during the 8th Assembly of EU Judges). Advice to the Courts of Kosovo on the establishment of a registration, evaluation and service system of appeals in criminal cases in compliance with Articles 407, 408, and 409 paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP)
- 9 December 2009: (adopted during the 8th Assembly of EU Judges). Advice to the Courts of Kosovo on the establishment of a proper case allocation system
- 9 December 2009: (adopted during the 8th Assembly of EU Judges). Advice to the Kosovo Judicial Council on different tools to strengthen and protect the independence of the Judiciary