

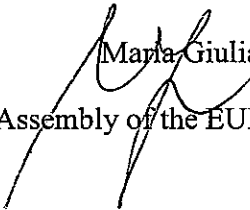
**On the occasion of the Tenth Assembly of the EULEX Judges, held in  
Gjilan/Gnjilane on 1 June 2010**

**The Assembly composed of the following Judges:**

Maria Giuliana Civinini, President of the Assembly of EULEX Judges; Gerrit-Marc Sprenger, Antoinette Lepeltier-Durel, Arkadiusz Sedek, Charles Smith, Dragomir Yordanov, Eija-Liisa Helin, Emilio Gatti, Esma Erterzi, Ferdinando Buatier de Mongeot, Francesco Florit, Gabriele Gaube, Gianfranco Gallo, Guy Van Craen, Hajnalka Karpati, Harri Katara, Laura Plesa, Martti Harsia, Nikolay Entchev, Piero Leanza, Richard Winkelhofer, Riku Jaakkola, Rositza Buzova, Torsten Koschinka, Vergiinia Micheva-Ruseva, Vitor Pardal, Vladimir Kanev, Witold Jakimko.

Adopts the DECISION

*With 24 votes in favour, 2 against, 2 abstentions, to approve the present Protocol on the organization of the public main trials in criminal cases.*

  
President of the Assembly of the EULEX Judges

**Protocol**

**On the organization of the public main trials in criminal cases.**

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**1. Definition**

- **Court:** Judges of the Courts/Panel/Assigned Judge
- **Prosecutor's Office:** all prosecutors or their legal substitutes
- **Lawyers:** all lawyers who are members of Kosovo Chamber of Advocates (defense of accused, victims, minors)
- **Registry:** court administrator, court-recorder and court-staff

- **Parties:** all lawyers involved, victims and prosecutor's office
- **Protocol:** binding agreement between the parties signing the protocol
- **Trial:** criminal procedure before the Court in session (hearings/pleadings)
- **Force majeure:** unforeseen circumstances to be interpreted by the Court  
in a restricted way ( e.g. not weather/road/travel conditions which can be foreseen)

## **2. Preparation of the main trial (first instance).**

### **a – Preliminary Conference**

The Court may in complex trial procedures (i.e. multiple parties) invite all parties to the trial (through their lawyers) to a preliminary scheduling conference, to determine the day and hour when the trial will start and to determine the duration of the trial (hearing, pleadings) and to schedule the hearings of victim(s), witnesses, experts and the accused persons.

After this conference the Judge will determine the hour and the day of the start of the main trial, taking into account as much as possible the agenda of the parties, the foreseen length and the urgency of the trial, as well as the availability of the Courtroom and of Court staff.

The Parties, in person or through their lawyer, shall, as soon as reasonably practicable, provide the Court with a list of their witnesses and the time estimate for the presentation of the evidence upon which s/he relies.

The parties will be informed as soon the trial date is set and at least 8 days before the day of the commencement of the main hearing, in accordance with article 321 CPCK.

It is the duty of the Court to ensure a fair and efficient trial process that respects substantive and procedural due process. The court may change the order of the presentation of evidence in the interests of efficiency and court time, always having regard to the fairness of the proceedings.

### **b – Prevention the Adjournment of Sessions**

Once the trial is set (day /hour) no adjournment is possible except for justified reasons. If for any other reason the lawyer or the assigned prosecutor cannot attend the start of the main trial or hearing, he/she should be represented by a lawful

substitute assigned by him/her in advance. The Correctional Unit and/or competent Police-unit will be informed promptly of the trial schedule in particular when detained persons are involved (accused, witnesses).

**c – The Unrestricted Access to case Files**

As a principle the lawyers having right to access to the criminal trial file will inform the Registry/Court, in advance (i.e. at least 24 hrs before by (phone, e-mail, letter...)) to make sure the file is available to them, except in cases involving detention on remand. The case file will be held at the lawyer's disposal at the convened day and time.

**e – The Priority of Cases**

By scheduling trials the Court should set at first the urgent trials, taking into account: old files and cases that are nearing the statutory limitation period, trials where the defendants are in custody; secondly trials involving victims or witnesses who are in custody, witnesses with a physical or mental handicap, elderly or minor witnesses and women with small children. Finally cases which reached the statute of limitation or cases regarding solely procedural legal issues and cases in general which do not need a long court session should be scheduled eventually the same day by the hour ( i.e. at 9.00 AM case "X" , at 10.AM case "Z", at 11.AM case "Y").

**f– The Guaranty to Communicate with the Accused**

As a principle the lawyer has the right to have a private conversation with his detained client in an appropriate room of the Court in so far this conversation shall not delay the commencement or the Court-session.

### **3 The Court in Session.**

#### **A – The timely presence in the Court**

**All parties including the defendant in person and his lawyer, the prosecutor's office, experts, the victims and witnesses, and their lawyers shall ensure their timely attendance at court.**

**In principle the Court-session starts at 9.00 hrs - 12.00 (Break from 12:00 to 13:00) hrs and eventually 14.hrs -17.30hrs. The panel may order, only for reasons of the good judicial administration, breaks during the session or other hours to start, to resume.**

**The Court should announce immediately any circumstance, which leads to an adjournment or a postponement, to the parties indicating the day of the next Court session in the particular case.**

#### **b – Unjustified Delays**

**Any unjustified delay, occasioned by the parties, will be seen as disrespect to the Court and to the other parties and can result in eventual lawful/disciplinary sanctions.**

#### **c- The Lawyer-Client Communication during the Session**

**During the trial session the presiding judge may, at the request of a lawyer, permit him to have a private conversation with his detained client (accused, victim or witness) in an appropriate room. This private conversation should be no longer than is reasonable.**

#### **d – The Prevention of Delays**

**The Court should not allow the parties to act in a way clearly intended to delay the hearing. In this regard the parties are required to stay within the subject matter of the trial, to file their documents in the proper and timely way ( with preference in the electronic version), to exchange their documents (in advance) with their counterpart and in accordance with any procedural requirements.**

#### **e- Impermissible Conduct in the Session**

**The parties and the Courtroom personnel shall not interrupt each other, influence in any way (by speech or signs) the witness/expert heard by the Court at that given**

moment, or make improper comments to his/her counterpart or to the decisions of the court. Mobile phones should be switched off or at least be put on "silent".

No smoking, neither drinking nor eating is allowed in the Courtroom while the Court is in session. The Court may order that drinking water be served to the victim, witnesses, experts, interpreters, parties and panel members.

#### **f- Special Rules for Conduct in the Session**

To improve the necessary dignity of the Court-sessions and to promote a fair trial, the parties and the Courtroom personnel shall:

- ask the Presiding judge for permission to speak, to intervene, to discuss or communicate through other channels,

- to speak clearly, loudly and in a way that facilitates simultaneous translation,

- not address persons other than those involved in the particular trial,

- not be dressed in an improper way (e.g. no shorts),

- not display political symbols (goes also for the Court, Registry, police, correctional unit) in the Courtroom nor weapons, tools or other objects which are or could be used as a weapon (except the previous authorized authorities),

- encourage serenity in speech and attitude, and to show mutual respect to the parties, the Court and the Court's personnel (including Police and Correctional officers).

#### **g- Delegation of Legal Substitutes**

Public and private parties and their lawyers who cannot attend the trial (except force majeure) shall inform the Court, eventually through the Court Registry, in time and will make sure that he/she is represented by a lawful substitute so that the normal and planned court procedure is not interrupted.

#### **h- Requests for extension of time for sufficient preparation**

The parties will inform the Court in due time when they need in the interest of justice or in the interest of their client more time than previously announced (i.e. pleadings/rebottle) in order to make sure that the Court can provide in time for all personal and material resources.

#### **i-The Measures for Resolution of Conflicts**

The Court will make sure that the serenity and the rules of the fair trial are strictly respected and that therefore any disturbance from the public or parties will be

**banned immediately. Eventual conflicts between parties, between panel members, between staff, between other persons involved in the trial, or between the foregoing will be immediately addressed to the appropriate authority during and after the trial by the Presiding Judge so the appropriate measures can be taken as soon as possible.**

#### **4. Conclusion:**

**- All parties to this protocol will ensure the proper administration of justice by promoting and respecting the conditions necessary to conduct a fair trial in a professional atmosphere.**

**- All parties to this Protocol will take the appropriate measures to ensure the application of the above mentioned behavior and attitude and agree to take the necessary measures against the one who breaches the rules of this protocol.**

**- All parties to this Protocol will meet each year in September (upon the invitation of the Court) to evaluate the application of the Protocol and eventually modify and/or ameliorate the Protocol in the interest of the serene fair trial.**