



Adoption of new Guidelines for Case Selection and Case Allocation in civil cases

The Assembly of EULEX Judges, on the occasion of the 13th Assembly of EULEX Judges, held in Pristinë/Priština on 27 January 2011, and composed of the following Judges:

Maria Giuliana Civinini, Charles Smith, Martti Harsia, Lars Dahlstedt, Gerrit-Marc Sprenger, Tapio Vanamo, Torsten Koschinka, Norbert Koster, Piero Leanza, Anna Bednarek, Esma Erterzi, Antoinette Lepeltier-Durel, Laura Plesa, Roxana Comsa, Katerina Entcheva, Francesco Florit, Arkadiusz Sedek, Ferdinando Buatier de Mongeot, Karen Asphaug-Warg, Gianfranco Gallo, Horst Proetel, Johanna Schokkenbroek, Verginiya Micheva-Ruseva, Dragomir Yordanov, Vitor Hugo Pardal, Rositza Buzova, Gunnar Oyhaugen, Franciska Fiser, Riku Jaakkola, Witold Jakimko, Vladimir Kanev, Klaus Jung, Hajnalka Karpati, Nikolay Entchev, Caroline Charpentier, Christine Lindemann-Proetel, Jonathan Welford-Carroll

with 28 votes in favour, 1 against, 6 abstentions and 2 judges not expressing their vote,

DECIDES

to endorse new Guidelines for Case Selection and Case Allocation for EULEX Judges in civil cases.


Maria Giuliana Civinini
President of the Assembly of EULEX Judges

ANNEX: new Guidelines for Case Selection and Case Allocation for EULEX Judges in civil cases

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Guidelines for Case Selection and Case Allocation for EULEX Judges in Civil Cases

Legal background

Case allocation of the EULEX judges will be carried out in accordance with the Law on the jurisdiction, case selection and case allocation of EULEX judges and prosecutors in Kosovo (Law No. 03/L-053) (Law on Jurisdiction). These guidelines are to elaborate the prescriptions on case allocation provided by the aforementioned law.

Principles

- **Transparency**
Case allocation must be transparent to actors and non-actors in the justice system.
- **Objectivity**
Everyone should know in advance where and by which judge s/he will be tried.
- **Flexibility**
The specific working conditions and the number of EULEX judges must be taken into account.
- **Sustainability**
Case allocation system should be an example of a good justice administration to which local judges could (should) adhere in order to achieve the goals of an independent, transparent and efficient justice administration.
- **Equality of the workload of judges**

Case selection and allocation system

1. Article 5.1 a): Kosovo Trust Agency related matters

1.1.: In accordance with Article 5.1 a) of the Law on Jurisdiction EULEX Judges will have the authority to select and take responsibility over cases falling within the jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, including cases that have been referred to another court pursuant to the applicable law. The jurisdiction of the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters is

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governed by the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo and other applicable law, currently UNMIK Regulation No. 2002/13 as amended by UNMIK Regulations 2008/4 and 2008/19.

1.2.: Where EULEX Judges are deployed to the panels at the Special Chamber, case allocation will be conducted according to the internal rules of the Special Chamber, based on pre-determined objective criteria and procedural safeguards. Such internal rules will be developed separately, taking into account the specific structure of the Special Chamber.

2. Article 5.1 b): Appeals on decisions of the Kosovo Property Claims Commission

2.1.: In accordance with Article 5.1 b) of the Law on Jurisdiction EULEX Judges will have the authority to select and take responsibility over cases falling within the jurisdiction of any court of Kosovo regarding appeals on decisions on the Kosovo Property Claims Commission according to the applicable law. The jurisdiction of the Kosovo Property Agency appeals panel at the Supreme Court is governed by UNMIK Regulation 2006/10 as amended by UNMIK Regulation 2006/50.

2.2.: Where EULEX Judges are deployed to the panel having jurisdiction over appeals against decisions of the Kosovo Property Claims Commission, there is no need for further clarification on case selection. Case allocation will be conducted according to the internal rules, based on pre-determined objective criteria and procedural safeguards. Such internal rules will be developed separately, taking into account the specific structure of the Appeals Panel.

3. Article 5.1 c): Municipal Courts, District Courts and Supreme Court

3.1.: In accordance with Article 5.1 c) of the Law on Jurisdiction EULEX Judges will have the authority to select and take responsibility over new and pending property related cases, including the execution procedures, falling within the jurisdiction of any court of Kosovo if the requirements mentioned in Article 5.1 c) (i), (ii) and (iii) are met. The President of the Assembly of EULEX Judges has the final authority to select a case, whether new or pending, laid down in Article 5.1 c) of the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo. The selecting authority of a civil judge is restricted to a legal assessment to be forwarded to the President of the Assembly of EULEX Judges. Only in cases where 1) the case is not property related in the sense of

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Article 5.1 c) of the LoJ or 2) there is clearly no grounded suspicion in the sense of Article 5.1 c), (i) to (iii), the EULEX judge has the right to take the final decision. In these cases provisions of Article 5.7 need not to be observed.

The term “property related civil cases” shall be understood as it is approved by the 9th Assembly of EULEX Judges.”

- 3.2.:** In case there is more than one EULEX Civil Judge per EULEX Judges’ team, the EULEX Judges will take turns in selecting cases.
- 3.3.:** To accommodate the selecting of new cases, the Registrar of each District Court shall notify the EULEX Civil Judges of the respective District Court of each property related case.
- 3.4.:** If there are grounds for a case to be selected, the selecting EULEX Civil Judge will immediately inform the President of the competent court and the PAE of her/his legal assessment. This assessment has to be grounded, taking into account the requirements set forth in Article 5.1 c).
- 3.5.:** The following list (a till h) contains examples of property related cases which fall in the scope of Article 5.1 c) and may, but do not have to, be selected by EULEX Judges.
- a) Cases for compensation against UNMIK, KFOR, Municipalities and private persons resulting from the events in 1999 and 2004, which have been suspended by UNMIK;
 - b) Cases referred to the competent local courts by the Housing and Property Claims Commission (HPCC);
 - c) Cases referred to the competent local courts by the Kosovo Property Claims Commission (KPCC);
 - d) Cases for private immovable property including agricultural and commercial property which fall within the jurisdiction of the Kosovo Property Agency and which were mistakenly filed at the local courts;
 - e) Cases for private immovable property including agricultural and commercial property which would fall within the mandate of the Kosovo Property Agency, and which were filed at the local court after the expiry of the claims submission deadline (3 December 2007) applicable for the Kosovo Property Agency;

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- f) Cases which were delegated to the local courts by the Special Chamber of the Supreme Court of Kosovo on Kosovo Trust Agency related matters, pursuant to Article 4.2 of UNMIK Regulation 2008/4;
- g) Civil execution cases pertaining to cases falling into one of the above category;
- h) Other similar property related civil cases.

3.6.: The fulfillment of the requirements set forth in Article 5.1 c) (i), (ii) and (iii) resulting in the selection of a case can be done without the prior recusal by a judge and / or without the request of a party based on the Articles 71 et. sqq. of the Civil Procedure Code (Official Gazette of the SFRY 4/77 with later amendments) or on Articles 67 et. Sqq. Of the Law on Contested Procedure (Official Gazette of the Republic of Kosovo, Year III, No 38) or any other request.

3.7.: In accordance with Article 5.7 of the Law on Jurisdiction the local Judge who is assigned to the case, the President of the competent court and the parties to the proceeding will have the right to be heard by the President of the Assembly of the EULEX Judges. The right to be heard according to Article 5.7 of LoJ requires an oral hearing; for grounded reasons the President of the Assembly of EULEX Judges can decide whether it is sufficient to give the local Judge, the President of the competent court and the parties to the proceeding the opportunity to make a statement in writing.

3.8.: The President of the Assembly of EULEX Judges can delegate her/his responsibility as mentioned in paragraph 5.7. of the LoJ to an EULEX civil or criminal Judge.

3.9.: After the hearing the President of the Assembly of EULEX Judges / the appointed EULEX Judge will give a grounded ruling on the objection raised by the party / parties. Against this decision there is no appeal possible. A grounded ruling does not only relate to the assignment of an EULEX Judge to the mixed panel but also to the requirements laid down in Article 5.1 c), (i) to (iii) of the LoJ.”

4. Composition of the panels and allocation

4.1.: In accordance with Articles 5.2 of the Law on Jurisdiction the panels shall be composed of three judges unless otherwise stated in the applicable procedural law. Two panel members shall be EULEX judges unless otherwise decided by the President of the Assembly of EULEX Judges in accordance with Article 5.5 of the LoJ. Judge who selected the case shall not sit in the panel to adjudicate it.

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In cases where, according to the applicable procedural law, a single judge is to adjudicate the case that judge shall be different from the one who selected the case.

- 4.2.: The selected cases will be allocated to the judges following the numeral system where every third case will be allocated to judge A, every third case to judge B and every third case to judge C (no 1 to judge A, no 2 to judge B, no 3 to judge C, no 4 to judge A and so forth).
- 4.3.: The judge to whom the case is allocated is responsible for proper preparation of the case as well as for composing a judgment and other rulings in the case.
- 4.4.: A framework decision of the President of the Assembly of EULEX judges assembly will individuate the automatism of the substitutions as follows:
- Judges in **Peja/Peć** DC will be assigned to **Prizren/Prizren** DC and **vice versa**.
 - Judges in **Prishtinë/Priština** DC will be assigned to **Gjilan/Gnjilane** DC and **Mitrovicë/Mitrovica** DC and **vice versa**.
- 4.5.: On call/duty system will be established for urgent situations between the courts linked above in order to ensure that a judge is available for urgent situations.
- 4.6.: In case of sick leave or other unexpected situation the substitute will be assigned from another section of the respective court or if necessary applying the system prescribed in the aforementioned article 4.4.

5. Other

- 5.1.: Monitoring element of the EULEX judges follows separate guidelines established by the Assembly of the EULEX judges.

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