



## **Adoption of new Guidelines for Case Selection and Case Allocation for EULEX Judges in Civil Cases**

The Assembly of EULEX Judges, on the occasion of the 17<sup>th</sup> Assembly of EULEX Judges, held in Mitrovicë/a on 16 November 2011, and composed of the following Judges:

Francesco Florit, Martti Harsia, Horst Proetel, Anne Kerber, Piero Leanza, Anna Bednarek, Laura Plesa, Roxana Comsa, Katerina Entcheva, Alexey Ivanov, Ondrej Pridal, Merja Helene Holme, Alfred von Keyserlingk, Arkadiusz Sedek, Gianfranco Gallo, Johanna Schokkenbroek, Jonathan Welford-Carroll, Verginia Micheva-Ruseva, Rositza Buzova, Dean Pineles, Cezary Dziurkowski, Vladimir Mikula, Gunnar Oyhaugen, Malcolm Simmons, Ingo Risch, Franciska Fiser, Wolfgang Lindemann, Witold Jakimko, Tore Thomassen, Annemarie Meister, Hajnalka Karpati, Nikolay Entchev, Nuno Manuel Ferreira de Madureira, Caroline Charpentier, Katja Dominik, Andrew Hatton

*with 21 votes in favour, 2 against and 12 abstentions*

DECIDES

**to endorse new Guidelines for Case Selection and Case Allocation for EULEX Judges in Civil Cases.**

Francesco Florit  
President of the Assembly of EULEX Judges

**ANNEX: 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 selection and case allocation of the EULEX Judges in civil cases will be carried out in accordance with the Law No. 03/L-053 on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (hereinafter “the Law on Jurisdiction”).

These guidelines are to elaborate the case selection and allocation in civil proceedings 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

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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 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.:** EULEX Judges assigned to civil proceedings will have the authority to select and take responsibility over any new or pending property related civil cases, including the execution procedures, falling within the jurisdiction of any court of Kosovo, in accordance with the requirements of Article 5, paragraph 1, item c), sub-items (i), (ii) or (iii) of the Law on Jurisdiction.

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3.2 The selecting authority of the EULEX Civil Judge will be exercised through legal assessment that has to be grounded as per the requirements of Article 5, paragraph 1, item c), sub-items (i), (ii) or (iii) of the Law on Jurisdiction and shall be immediately notified to the President of the Assembly of the EULEX Judges for final decision.

Only where the case is not property related or there is clearly no grounded suspicion in the sense of Article 5, paragraph 1, item c), sub-items (i), (ii) or (iii) of the Law on Jurisdiction, the EULEX Civil Judge shall take the final decision and Article 5, paragraph 7 of the Law on Jurisdiction needs not to be observed.

3.3. The term “property related civil cases” in these guidelines shall be understood as defined by the Recommendation, approved by the 9<sup>th</sup> Assembly of the EULEX Judges on 11<sup>th</sup> March 2010.

3.4.: The following list contains examples of property related civil cases which fall in the scope of Article 5, paragraph 1, item c) of the Law on Jurisdiction 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;
- 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.

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- 3.5.:** The fulfillment of the conditions provided by Article 5, paragraph 1, item c), sub-items (i), (ii) or (iii) of the Law on Jurisdiction, resulting in the selection of a civil case, does not require the prior disqualification of a Kosovo Judge pursuant to Articles 71 - 75 of the Law on Contentious Procedure (Official Gazette of the SFRY No 4/77, 36/80, 69/82, 58/84, 74/87, 57/89, 20/90, 27/90, 35/91 and Official Gazette of the SRY No 27/92, 31/93, 24/94, and 12/98) or pursuant to Articles 67 - 71 of the Law No. 03/L-006 on Contested Procedure (Official Gazette of the Republic of Kosovo No 38/08).
- 3.6.:** In accordance with Article 5, paragraph 7, first sentence of the Law on Jurisdiction, the Kosovo Judge who is or would otherwise be assigned to the case, the President of the competent court and the parties to the proceedings will have the right to be heard by the President of the Assembly of the EULEX Judges in a taking over hearing or by giving them the opportunity to make a statement in writing within 7-days time period from the date of notification. Articles 103 – 120 of the Law on Contested Procedure will be applicable for service of documents in the taking over procedure.
- 3.7.:** The President of the Assembly of EULEX Judges can delegate to an EULEX Judge the powers under Article 5, paragraph 7 of the Law on Jurisdiction and the aforementioned Article 3.6.
- 3.8.:** The President of the Assembly of EULEX Judges or the delegated EULEX Judge will render a ruling for assignment of the case to a single EULEX Judge or to a panel, as required by the applicable procedural law. The ruling shall be grounded as per the requirements of Article 5, paragraph 1, item c), sub-items (i), (ii) or (iii) of the Law on Jurisdiction, and the objections raised by the parties. No appeal will be permitted against this ruling. It shall be notified to the President of the competent court and the parties to the proceedings.

#### **4. Composition of the court and case allocation**

- 4.1.:** In accordance with Article 5, paragraph 2, second sentence of the Law on Jurisdiction, the panels will be composed of three judges, two of whom will be EULEX Judges, unless this majority is derogated by the President of the Assembly of the EULEX Judges pursuant to Article 5, paragraph 5 of the Law of Jurisdiction. The Presiding Judge in the panel will be an EULEX Judge.
- 4.2.:** The civil cases taken over will be allocated to EULEX Civil Judges of the respective District Court following internal roster.
- 4.3.:** The Kosovo Judges - panel members will be appointed by the President of the competent court upon request of the EULEX Court Team Focal Point.

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- 4.4. The EULEX Judge to whom the civil case has been allocated is responsible for its adjudication, as well as for rendering of a judgment and/or the rulings in the proceedings.
- 4.5.: If no EULEX Civil Judge of the respective District Court is able to decide the case according to the applicable procedural rules, an EULEX Civil Judge of another District Court will be appointed by the President of the Assembly of the EULEX Judges, whereas:
- EULEX Civil Judges of the District Court of Prishtinë/Priština will be assigned to cases of the District Court of Gjiilan/Gnjilane and the District Court of Mitrovicë/Mitrovica and *vice versa*;
  - EULEX Civil Judges of the District Court of Prizren/Prizren will be assigned to cases of the District Court of Peja/Peć and *vice versa*.
- 4.6.: In case of sick leave or other unexpected circumstances, the substitute will be assigned by the President of the Assembly of the EULEX Judges from another section of the respective District Court or if necessary applying the system provided by the aforementioned Article 4.5.

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