



**Advice to the KJC  
on the Provision of Relevant Legal Materials to the Kosovo Courts**

The Assembly of EULEX Judges, on the occasion of the 18<sup>th</sup> Assembly of EULEX Judges, held in Prishtinë/Priština on 29 February 2012, and composed of the following Judges:

Francesco Florit, Martti Harsia, Gerrit-Marc Sprenger, Tapio Vanamo, Piero Leanza, Esma Erterzi, Katerina Entcheva, Alexey Ivanov, Alfred von Keyserlingk, Anders Gunnar Cedhagen, Laura Liguori, Roxana Comsa, Johanna Schokkenbroek, Verginia Micheva-Ruseva, Rositza Buzova, Franciska Fiser, Vladimir Kanev, Hajnalka Karpati, Tore Thomassen, Mariola Pasnik, Anne Kerber, Elka Filcheva-Ermenkova, Cezary Dziurkowski, Vladimir Mikula, Gunnar Oyhaugen, Ingo Risch, Wolfgang Lindemann, Ondrej Pridal, Annemarie Meister, Andrew Hatton, Nuno Manuel Ferreira de Madureira

*with 27 votes in favour*

DECIDES

to issue an **advice to the Kosovo Judicial Council, recommending** the development of a sustainable long-term plan to standardize distribution of the following legal materials to the Municipal and District Courts of Kosovo in electronic and/or paper format:

- 1) The Official Gazette, in a timely manner and in sufficient number.
- 2) A newly consolidated compilation of the criminal law, criminal procedure laws and civil laws of Kosovo.
- 3) Supreme Court decisions.
- 4) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, and the caselaw of the European Court of Human Rights.
- 5) Commentaries/monographs on legislation applicable in Kosovo, which take into consideration European standards and best practices.
- 6) Materials related to the preparation of legislation.

EULEX Kosovo

Presidency of the Assembly  
of the EULEX Judges  
Supreme Court of Kosovo  
Luan Haradinaj street  
Police Avenue  
P.O. Box: 268, 10000  
Pristina, Kosovo  
[www.eulex-kosovo.eu](http://www.eulex-kosovo.eu)  
[info@eulex-kosovo.eu](mailto:info@eulex-kosovo.eu)

Francesco Florit  
President of the Assembly of EULEX Judges

**Annex: Background and Recommendation in detail**



## **Annex**

---

### **Background**

EULEX is mandated to “monitor, mentor and advise the competent Kosovo institutions on all areas related to the wider rule of law”. Advising consists of formal and official positions taken collectively by EULEX Judges in the Assembly and directed to Kosovo judicial, legislative or governmental authorities in order to provide professional counseling on topics arising from EULEX’s mentoring and monitoring responsibilities.

On 10 August 2009, the Assembly of EULEX Judges issued an “Advice to the Kosovo Judicial Council regarding the distribution of the Official Gazette throughout the Courts of Kosovo” which recommended the creation of a standard and reliable delivery system to provide Courts with sufficient copies of the Official Gazette without unreasonable delay. From November 2010 to January 2011, the EULEX Judges’ Unit carried out a Kosovo-wide monitoring activity to determine whether Kosovo’s Municipal and District Courts have access to the Official Gazette and other relevant and updated legal materials.

This monitoring activity revealed that there are long delays in the delivery of the Official Gazette to the Courts in sufficient number, coupled with the Courts’ inability to access the Gazette online. In addition, there is a lack of access to other relevant legal materials. Both these factors hinder the Kosovo Courts’ ability to best adjudicate their cases and thus ensure full observation of rule of law. Lack of legal resources results in a lack of legal knowledge which has the potential to negatively influence any case pending before the Kosovo Courts.

This monitoring activity furthermore revealed that it would be advisable if the Kosovo Courts had access to the decisions of the European Court of Human Rights in either of the official languages of the Republic of Kosovo in order to facilitate the adequate application of human rights standards stemming from the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, which holds priority over the laws of Kosovo.

#### **EULEX Kosovo**

Presidency of the Assembly  
of the EULEX Judges  
Supreme Court of Kosovo  
Luan Haradinaj street  
Police Avenue  
P.O. Box: 268, 10000  
Pristina, Kosovo  
[www.eulex-kosovo.eu](http://www.eulex-kosovo.eu)  
[info@eulex-kosovo.eu](mailto:info@eulex-kosovo.eu)



## Recommendations

- I. The Assembly of EULEX judges recommends drawing up a long-term plan to establish and maintain a standardized, sustainable and reliable system of distribution of the following legal materials – and their continuous up-dating:
  - 1) The Official Gazette, timely and in sufficient numbers.  
This is of outmost importance to the effective functioning of any judicial system.
  - 2) Updated consolidated compilations of Kosovo criminal law and criminal procedure law, and relevant sub-laws, as well as a compilation of civil codes.  
Since the last distribution of compilations of these codes in 2006, numerous supplementations and amendments have been issued.
  - 3) Supreme Court decisions.  
Timely notice of SC decisions will increase the unified interpretation of the law across the courts of Kosovo, and hence equality of persons before the law. It would also provide guidance to the lower Courts. A need for guidance will substantially increase when the new Law on Courts enters into force, which will transform the Supreme Court into a Court for judicial precedents.
  - 4) The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (the “European Convention”) and the case law of the European Court of Human Rights (“ECHR”).  
The Constitution of Kosovo guarantees the exercise of public authority based upon full respect for internationally recognized fundamental human rights and freedoms. International instruments including the European Convention are directly applicable and have priority over Kosovo domestic laws and other acts of public institutions. Decisions of the ECHR explain the meanings of the terms used in the European Convention. The availability of the ECHR’s jurisprudence is not sufficient as fluency in either English or French cannot be expected from the Kosovo judges. An easy, quick and economical start for a database would be to liaise with the relevant institutions of the Republic of Albania and of the Republic of Serbia, to the extent possible and ask for access to their translations of ECHR decisions as available.

### EULEX Kosovo

Presidency of the Assembly  
of the EULEX Judges  
Supreme Court of Kosovo  
Luan Haradinaj street  
Police Avenue  
P.O. Box: 268, 10000  
Pristina, Kosovo  
[www.eulex-kosovo.eu](http://www.eulex-kosovo.eu)  
[info@eulex-kosovo.eu](mailto:info@eulex-kosovo.eu)



5) Commentaries/monographs on legislation applicable in Kosovo, which take into consideration European standards and best practices. Furthermore, other scientific work, such as journals issued on a three-monthly basis by the Law Faculty, should be made available to the courts.

6) Materials related to the preparation of legislation.

II. The Assembly of EULEX Judges furthermore recommends the creation of a comprehensive online legal database which may include access to items 1) through 5) under I (as available). After the initial investment, such a database would be a fast and economical method of distributing information which can be easily updated. Since all the material in this database is public information, it can also be made available to the public thus increasing their awareness and trust.

Alternatively, the already existing websites of the Assembly of Kosovo and the KJC could be improved to provide access to the recommended legal materials.

**EULEX Kosovo**

Presidency of the Assembly  
of the EULEX Judges  
Supreme Court of Kosovo  
Luan Haradinaj street  
Police Avenue  
P.O. Box: 268, 10000  
Pristina, Kosovo  
[www.eulex-kosovo.eu](http://www.eulex-kosovo.eu)  
[info@eulex-kosovo.eu](mailto:info@eulex-kosovo.eu)