

On the occasion of the First Assembly of the EULEX Judges, held in  
Pristina on 10 July 2008

The Assembly composed of the following Judges: Maria Giuliana Civinini, President of the Assembly of EULEX Judges; Guy Van Craen, Olavi Snellman, Andrea Cruciani, Angela Kaptein; Michael Zimmermann, Norbert Koster, Christine Lindemann-Proetel, Michael Simmons, Gerrit-Marc Sprenger; Gianfranco Gallo; Emilio Gatti.

Unanimously adopts the DECISION

To approve the Guidelines for Case Allocation for EULEX Judges in criminal cases in District Courts.

Maria Giuliana Civinini

President of the Assembly of the EULEX Judges

## **GUIDELINES FOR CASE ALLOCATION FOR EULEX JUDGES IN CRIMINAL CASES IN DISTRICT COURTS**

### **I. Introduction**

According to the Law on the Jurisdiction<sup>1</sup> and Case Allocation of EULEX Judges and Prosecutors have in criminal cases a primary or exclusive competence and a subsidiary competence.

The first one is foreseen in Article 3.1, the second in Articles 3.3, 3.4, 4.1, 4.3, and 4.5.

Primary competence has to be considered as "normal", that means that every case falling under these hypothesis should be tried by EULEX judges (EJ)<sup>2</sup>.

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<sup>1</sup> "Law on the jurisdiction, case selection and case allocation of EULEX judges and prosecutors in Kosovo" no. 03/L-053 issued on the 13 March 2008 (LoJ)

<sup>2</sup> An exception is provided by Article 3.2 of LoJ, according to which the President of the EULEX Assembly can decide "for grounded reasons" not to assign an EULEX judge to one of these cases.

Subsidiary competence is only ``eventual`` and requires in the different hypothesis a particular reason and a specific decision of the President of the Assembly of EULEX Judges.

This allows thinking a) that the proportion between the number of cases falling in the primary and the number of cases falling in the subsidiary competence will see a large prevalence of the first ones and b) that cases of subsidiary competence will be easily known in advance and consequently allocated in the panel in the best way.

Primary competence is designed according to the competences for investigation and prosecution of the Special Prosecution Office of the Republic of KOSOVO (SPRK)<sup>3</sup>.

The Law on the SPRK<sup>4</sup> foresees two different types of competence for crime both committed or attempted, the first one as ``exclusive`` (Article 5), the second one as ``subsidiary`` (Article 9).

**It is important to remark that in both cases, when the SPRK is acting either investigating, or prosecuting the primary competence of EULEX judges is also grounded.**

Either Article 5 (exclusive competence) and Article 9 (subsidiary competence) contain a nominative list of crimes foreseen by the Provisional Criminal Code of Kosovo (PCCK) entered into force on 6 April 2004 **and** a nominative list of serious crimes foreseen by the Criminal Code of the Socialist federal Republic of Yugoslavia (CCFRY) and by the Criminal Law of the Socialist Autonomous Province of Kosovo (CCK).

This means that the most serious crimes fall in the competence of the SPRK (and hence of the EULEX judges) either if they were committed or attempted before the 6 April 2004 (according to the CCFRY and to the CCK) and if they were committed since that day (according to the PCCK).

Article 5.1 of LoSPRK indicates as falling in the exclusive competence of the special Prosecutor Office the crimes<sup>5</sup> of terrorism, genocide, crimes against Humanity, war crimes included conscription or enlisting of people younger than eighteen years, crimes concerning nuclear material, organized crime as foreseen by the PCCK, that is committed after the 6 April 2008.

Article 5.2<sup>6</sup> lists as falling in the primary competence of the SPRK as well the crimes of terrorism as foreseen both in the CCFRY and in the UNMIK Regulation 2001/12<sup>7</sup> and the crimes foreseen in the Articles 141-155 of the CCFRY<sup>8</sup>.

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<sup>3</sup> Article 3.1 of LoJ: ``EULEX judges assigned to criminal proceedings will have the jurisdiction and competence over any case investigated or prosecuted by the SPRK``.

<sup>4</sup> ``Law on the Special prosecution Office of the Republic of Kosovo`` no. 03/L-052 issued on the 13 March 2008 (LoSPRK).

<sup>5</sup> For the precise list see annex 1.

<sup>6</sup> For this and the related documents see annex 2.

One could conclude that **all** cases falling in the **exclusive competence** of SPRK attain facts of **violence** against people or at least **organized crime**.

Article 9.1 of LoSPRK indicates 24 types of crimes<sup>9</sup> varying from assault on legal order of Kosovo, inciting Racial, Religious or Ethnic Hatred, Discord or Intolerance, trafficking in persons, murder, kidnapping, torture, offences against sexual integrity and unauthorized purchase of drugs (lit. a – n) to serious economic crimes (causing bankruptcy, counterfeit money, tax evasion, extortion, giving and accepting bribes and similar: lit. o - z).

Article 9.2 lists as falling in the subsidiary competence of SPRK as well some serious crimes as foreseen in the CCK, in the CCFRY and in some UNMIK Regulations<sup>10</sup>.

A large number of crimes falling in the **subsidiary competence** of the SPRK have economical character and this can have an important effect on the subdivision of the cases between judicial panels.

2. Subsidiary competence of EULEX judges is foreseen in Articles 3 and 4 of the LoJ.

The first hypothesis (art. 3.3) occurs when the President of the Assembly of EULEX Judges, upon the request of an entitled party, considers the assignment of an EJ as ``necessary to ensure the proper administration of justice``<sup>11</sup> and the provisions related to the disqualification of a judge are not applicable.

It is important to observe that this competence is given only for nominally individuated crimes, which are the same concerned by the subsidiary competence of the SPRK (art. 9.1 and 9.2 LoSPRK).

Subsidiary competence of EJ occurs only when the SPRK has not conducted investigations or prosecutions, otherwise the competence of EJ were primary (see no. 1).

**Conclusion is that for the serious crimes foreseen in the Article 3.3 of LoJ and in the Articles 9.1 and 9.2 of LoSPRK it is always possible to appoint an EJ for the main trial or another stage of the proceeding.**

Other hypothesis of subsidiary competence of EJ are related a) to cases showing discrimination`s elements in relation to the victim or the premises or the target of the

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<sup>7</sup> REGULATION NO. 2001/12 UNMIK/REG/2001/12 14 June 2001 on the prohibition of terrorism and related offences.

<sup>8</sup> Basically genocide, war crimes and crimes connected with racial discrimination.

<sup>9</sup> See the precise list in Annex 3.

<sup>10</sup> Basically murder, trafficking in persons, crimes against personal dignity and moral, unauthorized production and sale of narcotics, inciting racial religious or ethnic hatred, discord or intolerance, grave cases of burglary and robbery, extortion, receiving and giving bribe, see Annex 4.

<sup>11</sup> This necessity is explained by the Article 3.5 LoJ for the hypothesis of threats to KJ, to the witnesses or to the parties which can cause a ``serious miscarriage of justice`` if the case is kept under the exclusive responsibility of KJ.

offence (art. 3.4), b) to the disqualification (art. 4.1 and 4.5) or to the inopportunities to engage in the case of a Kosovan Judge (KJ).

Hence the primary or exclusive competence of the EJ covers the most serious crimes, while the subsidiary one covers in a great part cases where his engagement responds to opportunity criteria.

## **II Provisions of guidelines for case allocation of criminal cases for EULEX judges District Courts**

### **II. 1. 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), hereinafter LoJ.

These guidelines are to elaborate the prescriptions on case allocation provided by the aforementioned law.

### **II. 2. 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 (judges do not select cases).
- **Flexibility**  
The specific working conditions and the number of EULEX judges and legal disqualifications pursuant to PCPCK 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**

### **II. 3. Case allocation system**

1. EULEX judges will be divided into two sections within each District Court. One of the sections shall deal with financial crimes comprising also corruption. The other section will deal with war crimes, terrorism and violence/ bodily harmed related crimes. Organized crime and crime related drugs and cases that are sensitive e.g. for threatening or intimidation of a party, witness or a judge which may have elements of financial crimes as well as of violence related crime will be tried in the section to which the respective case is mainly linked.

2. **2.1** In both of the aforementioned sections there will be one or two EULEX criminal judges and one local judge. One of the EULEX judges will be the Head of the Section. In the courts where there are only three EULEX criminal judges and therefore only one EULEX criminal judge in one of the sections, one EULEX civil judge will be assigned to the criminal section, preferably to the section for financial crimes.

**2.2.** EULEX judges assigned to a District Court will decide who will be members of sections and who will be the Head of the section.

**2.3.** Local judges to the sections will be appointed by the President of the District Court.

**2.4.** Judges will be the members of the respective section for 6 months after which a review will be carried out and rotation of judges from one section to another is possible. The term of the Head of the Section is also six months after which a new decision regarding the Head of the Section shall be made by the EULEX judges of the respective District Court.

**2.5.** The judges assigned to the section will be the judges of the panel (*exercising the jurisdiction regarding the cases allocated to the section*) mentioned in the LoJ Articles 3.7 and 4.7 unless otherwise decided by the President of the Assembly of EULEX Judges in accordance with the Articles 2.1, 3.7 and 4.7 of the LoJ and Article 24 of the PCPCK.

**2.6.** The Head of the Section is a focal point of the section to the President of the Assembly of EULEX judges. The Head of the Section reports of cases of the section and other relevant issues to the President of Assembly EULEX on weekly bases. The Head of the Section also communicates the President of the Assembly of EULEX Judges of cases where there is a need for a panel composition different than the basic composition mentioned above in paragraph 2.2.

**3.1.** Within the section cases will be allocated to the judges following the numeral system where every third case coming to the section 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). For exceptional reasons (for instance quality and complexity of the case and number of cases entrusted to each judge), the selecting judge can allocate the selected cases in another way than mentioned before.

**3.2.** 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.

**3.3.** The Head of the Section will be the presiding judge.

4. In both of the sections there will be one or two EULEX international legal officers and one EULEX national legal officer. International legal officers are linked to a judge whereas national legal officers are linked to the section.

5.1. In order to avoid disqualification of the judges (PCPCK Article 40 (2) in the later phase of the case the EULEX judges will mainly be assigned to main trials.

5.2. In situations when there is a need to assign EULEX judge to the pre-trial proceedings or confirmation of the indictment proceedings or to substitute a judge for another grounded reason, a criminal judge assigned to another District Court or a civil judge can be assigned to the pre-trial proceedings including the confirmation of the indictment and ordering detention on remand.

5.3. EULEX judges are deployed to the Supreme Court or to one or more District Courts. Deployment of EULEX judges to more than one District Court will respond to the necessity of substitution in exceptional cases. In these cases the EULEX judge will have his main sit in a district Court and will act as natural substitute of another EULEX judge in another District Court.

5.4. A framework decision of the President of the Assembly of EULEX Judges will individuate the automatisms of the substitutions as follows:

Judges who in the first place are assigned to a certain DC will be assigned to all other DCs as substitutes based on the following system:

Judges who in the first place are assigned to **Prishtinë/Priština** DC will be assigned as substitutes to:

1. **Gjilan/Gnjilane** DC
2. **Mitrovicë/Mitrovica** DC
3. **Prizren/Prizren** DC
4. **Peja/Peć** DC

Judges who in the first place are assigned to **Peja/Peć** DC will be assigned as substitutes to:

1. **Prizren/Prizren** DC
2. **Prishtinë/Priština** DC
3. **Gjilan/Gnjilane** DC
4. **Mitrovicë/Mitrovica** DC

Judges who in the first place are assigned to **Prizren/Prizren** DC will be assigned as substitutes to:

1. **Peja/Peć DC**
2. **Gjilan/Gnjilane DC**
3. **Prishtinë/Priština**
4. **Mitrovicë/Mitrovica DC**

Judges who in the first place are assigned to **Gjilan/Gnjilane DC** will be assigned as substitutes to:

1. **Prishtinë/Priština DC**
2. **Mitrovicë/Mitrovica DC**
3. **Prizren/Prizren DC**
4. **Peja/Peć DC**

Judges who in the first place are assigned to **Mitrovicë/Mitrovica DC** will be assigned as substitutes to:

1. **Gjilan/Gnjilane DC**
2. **Prishtinë/Priština**
3. **Prizren/Prizren DC**
4. **Peja/Peć DC**

Primarily, judges of the corresponding chambers being in charge of a case, will be requested to substitute.

In exceptional circumstances, the President of the Assembly of EULEX Judges can decide to appoint civil judges to specific criminal cases.

**5.5.** 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. The term of the on call duty is one week at the time including weekends. The proposal of the rotation system shall be forwarded by the Heads of the War Crimes Sections of the respective District Courts to the President of the Assembly of EULEX Judges no less than one month before.

3. In the 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 5.
4. Monitoring element of the EULEX judges follows separate guidelines established by the Assembly of the EULEX Judges.

#### **II. 4. Scheduling the main trials (and other hearings)**

The hearings will be organized in the court rooms of local courts in accordance to the provisions of the LoJ. Therefore in scheduling the main trials and other hearings) it must be taken into account that there is shortage of court rooms and the court rooms will be shared with local judges having their trials. Schedule for the trials should be made in co-operation with local courts for several months in advance in order to ensure the smooth proceedings for cases dealt with by local judges as well as EULEX judges in accordance to the provisions of the LoJ.