

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 Selection and Case Allocation for EULEX Judges in civil cases.



Maria Giuliana Civinini

President of the Assembly of the EULEX Judges

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 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 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 Panel/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 the Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo and other applicable law, currently 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 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 Appeals Panel.

3. Article 5.1 c): District Courts

- 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.

- 3.2.:** There will be two EULEX Civil Judges per District Court. The civil EULEX Judges will take turns in selecting cases in the District Courts. Each turn will last one month.
- 3.3.:** The selecting Judge will be the focal point to the President of the Assembly of EULEX Judges. The selecting Judge reports of selected cases and other relevant issues to the President of the Assembly of EULEX Judges on a weekly basis.

New cases

- 3.4.:** Definition of a new case: a case is new when it is filed and registered at the court and not yet distributed by the President of the court to a local Judge.
- 3.5.:** To accommodate the selecting of new cases, the Registrar of each District Court shall notify the selecting EULEX Judge of each new property related case by sending the file immediately to the EULEX Judge who is in charge of selecting that particular month.
- 3.6.:** If a new case is selected, the selecting EULEX Judge will inform the President of the competent District Court and the President of the Assembly of EULEX Judges of her/his decision.

Pending cases

- 3.7.:** Definition of a pending case: a case is pending when it has been filed and registered at the Municipal or District Court and has been allocated to a local Judge.
- 3.8.:** In accordance with Article 5.1 c) EULEX Judges assigned to the District Courts will have the authority to select and take responsibility over property related cases pending at the Municipal Courts.
- 3.9.:** The following list (a till i) contains examples of pending 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 filed at the local courts prior to the establishment of the Kosovo Property Agency pursuant to Article 18 of UNMIK Regulation 2006/50;
- e) 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;
- f) 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;
- g) 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;
- h) Civil execution cases pertaining to cases falling into one of the above category;
- i) Other similar property related civil cases.

3.10.: For the selection of a case it will be sufficient that one of the requirements mentioned in Article 5.1 c) (i), (ii) and (iii) is fulfilled. For the fulfillment of one of the requirements grounded suspicion will be sufficient.

3.11.: 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 or any other request.

3.12.: If a pending case is selected, the selecting EULEX Judge will inform the President of the competent District Court and the President of the Assembly of EULEX Judges of her/his decision. This decision has to be grounded, taking into account the requirements set forth in Article 5.1 c) (i), (ii) and (iii).

3.13.: 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.

3.14.: The President of the Assembly of EULEX Judges can delegate her/his responsibility as mentioned in paragraph 3.12. to an EULEX civil or criminal Judge.

3.15.: To ensure that the President of the competent District Court, the local Judge and the parties can exercise their right in accordance with Article 5.7 of the Law on Jurisdiction a hearing will be held **every two months** at each District Court.

3.16.: 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.

4. Composition of the panels and allocation

4.1.: In accordance with Article 5.2 and 5.3 of the Law on Jurisdiction the panel will always be composed of three judges, two of whom will be EULEX Judges, unless otherwise decided by the President of the Assembly of EULEX Judges (in accordance with Article 5.5 of the Law on Jurisdiction).

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). For exceptional reasons, for instance case load, the selecting judge can allocate the selected cases in another way than mentioned before.

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**.

4.4.: 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.

4.5.: 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.