

PUBLICITY OF TRIALS AND REGISTRIES VS. SECRET CASES AND CASE NUMBERS
Draft, not finalized yet

1. How are courts in Kosovo registering sensitive cases of covert measures where there is a need for confidentiality?

According to the Court Administrator in Peja DC the covert measures are registered to the public pre-trial registry only by the case number. The names of the subject of covert measures are not mentioned in this registry. Apart from the pre-trial registry there is a secret registry where the covert measures are registered. It is in the possession of the President of the District Court. The requests from prosecutors are delivered in a sealed envelope.

2. Legal bases for UNMIK sek/sec case numbers

To be found out.

3. International Human Rights and publicity of trials

International Human Rights Conventions, e.g. European Human Rights Convention art. 6 provides the principle of a fair trial that includes a public hearing. Part of the public hearing is that it is registered to a public registry. In context of pre-trial investigation there may be a need for secrecy and for not notifying the suspect or public. Prerequisites and conditions for a secret trial must be, however, defined by domestic law. Without a law there cannot be a secret trial or registry remark.

4. Current Kosovo legislation regarding the issue

In PCPCK article 5.1 it is provided that *“Any person who is suspected or charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time”*. The fair criminal proceedings include public hearing unless otherwise provided by the law.

An exception can be found PCPCK Art. 225 (4) provides that *“The public prosecutor may request in application for **extension** (of investigation) that the defendant and/or the injured party are not notified about the investigation and the request for the extension if this necessary for the successful completion of the investigation”*.

Another exception can be found in PCPCK Art 263 regarding informing the subject of covert measures.

The aforementioned articles speak about informing a suspect or a subject or covert measures by a prosecutor or a pre-trial judge. They do not state anything about registering the cases and publicity or secrecy of registry information even if it is clear that there is a need for secret registry accordingly.

Currently the courts are applying **Rules on internal activity of the courts** (Official Gazette of the SAP Kosovo”, no. 7/81) regarding registering the cases. The articles on registering the cases do not say anything on publicity on registries. The articles 14 and 15 of the respective rules state on concealment of official secret.

Article 14

All court employees are obliged to keep official secret that appears during their work.

Official secret is also data and documents of particular state bodies, associated labor organizations other self-governing communities, if this is predicted by general acts of these bodies.

Official secret is all data that is considered as secret by the president of the court and working community.

Article 15

Unauthorised persons cannot have access to court cases connected to personal, familiar and property status of particular persons, but this will be allowed for persons who have this right according to a law.

Permit for access to court cases shall be given by the president of the court or staff authorised by the general act of the court.

The Article 14.3 and 15.2 provides the President of the Court the power to decide secrecy and access to the cases. This **cannot** be considered to be in compliance with European best practises.

Conclusion: there is a need for clear articles for registries and the principle of publicity and exceptions for the publicity and based on articles a practical solution for a secret registry information must be solved. A secret manual registry book for covert measures or a solution within CMIS (when also the access to the information could be limited to the members of staff dealing with the issues).

5. Eulex and secret case numbers

One of the main principles of Eulex is local ownership. On the other hand Eulex has executive powers. Eulex is about to use the registries/CMIS of the local courts when exercising the executive powers.

When using the executive powers the need to keep decisions on covert measures confidential will arise. However the same need arises when Kosovan authorities themselves (police, prosecutors, courts) make take decisions/actions on covert measures.

The questions are whether registry information on covert measures can be kept secret in the local registries (according to the law and in practise) and whether Eulex can create and maintain a separate secret and confidential registry of covert measures regarding the cases where Eulex is exercising the executive powers.

Since the main principle of Eulex is local ownership and therefore local registries will be used in general it appears somehow strange if at the same time Eulex creates a separate parallel registry for itself. It would solve problem temporarily (one day Eulex will probably go home) and only for Eulex instead of solving the problem in Kosovo and for Kosovo legal system. Finding a general sustainable solution based on respective legislation that both Eulex and especially Kosovo legal system authorities could use would be most beneficial.

Written by
Gianfranco Gallo, Eulex criminal judge and
Elina Nurmela, Eulex legal officer