

ANNEX 2 to the 6th EULEX Judges Assembly Agenda

WG On-call system for District Court level

The Fifth EULEX Judges Assembly (22.04.2009, Gjilan/Gnjilane) decided to establish a Working Group in order to revise the on-call system at District Court level.

The existing on-call system is established by the Guidelines for case allocation in criminal cases and by SOP 2/2008. It foresees that there will be one Judge, one Legal Officer and/or Legal Advisor assigned to the given District Court, one court-recorder and one language assistant on-call for every District Court. There is also a back-up system based on replacement within or between District Courts.

The application of this system leads to the fact that there are at least 20 people on-call during every weekend Kosovo-wide while the on-call teams have been called not more than three times in total during the last over five months (since the mission became operational). In order to manage resources more effectively it is necessary to reduce the number of on-call judges at District Court level from five to one or two who shall have competence Kosovo-wide.

On the other hand the existing on-call system for District Courts does not consider the fact that the Supreme Court has often to decide on cases (mainly detention cases) during the weekends because of the tight deadlines set by PCPCK. There is an on-call system for the Presiding judges at the Supreme Court but not for the members of the panel who are usually from the District Courts.

The idea is to provide for

- Two (2) pre-trial judges at District Court level with Kosovo-wide competence who shall be at the same time panel members for the Supreme Court
- One (1) or two (2) – subject to discussion in the Assembly - additional judges who are available as substitutes in case of disqualification.

Several solutions are possible in order to practically implement this system:

First option:

One DC team shall be on-call every weekend Kosovo-wide, covering both pre-trial and Supreme Court cases. The exact distribution of tasks within the team shall be forwarded by the focal point to OPEJ no less than one month before.

The advantages are:

- simple and comprehensive system
- easy to manage
- judges are used to work together as a team or panel members
- facilitates organization of hearings (if necessary)
- better coordination of administration, transport, etc.

The disadvantages are

- individual judges from smaller teams (Gjilan/Gnjilane and Peja/Pec that currently have three judges) will be mathematically on-call more often than judges from bigger teams (Mitrovice/Mitrovica, Prishtine/Pristina and Prizren that have four judges)
- if the Assembly is in favour of two (2) on-call judges plus two (2) substitutes the court teams cannot provide the required number of judges. This could only be balanced by another DC team covering the substitutes.

The Guidelines for case allocation for EULEX judges in criminal cases in District Courts would have to be amended as follows:

5.5. On call/duty system will be established for urgent situations between the courts linked above and the Supreme Court in order to ensure that three (or: four) judges are available for urgent situations Kosovo wide. The term of the on call duty is the weekend, starting on Friday COB and ending Monday morning. The rotation system shall be based on the alphabetical order of the District Courts. 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.

Second option

A duty roster shall be established based on the alphabetical order of the judges where the first three (or four) shall be on-call the first weekend, the next three (or four) – the following weekend and so on.

Advantages of this solution:

- the on-call duty will be distributed mathematically equally between the judges
- there will always be a sufficient number of judges

The disadvantages are:

- Additional rules will have to be set regarding distribution of tasks between the judges
- The system is more complicated
- The distribution of tasks between on call judges and substitutes might not always be fair.

The Guidelines for case allocation for EULEX judges in criminal cases in District Courts would have to be amended the following way:

5.5. On call/duty system will be established for urgent situations between the courts linked above and the Supreme Court in order to ensure that three (or four) judges are available for urgent situations Kosovo wide. The term of the on call

duty is the weekend, beginning Friday COB and ending Monday morning. The judges are assigned to the on call system based on a roster which contains the last names of all EULEX judges at District Court level.

There shall be also two Legal Officers / Legal Advisors on-call, preferably those who work with the main judges, as well as two Language assistants from the same DC teams as the main judges. The International Translators and Court recorders are allocated on a centralized manner according to separate rules.

SOP 2/2008 shall be amended accordingly to the solution adopted.

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