

ANNEX 4 to the 6th EULEX Judges Assembly Agenda

During the MMA activities in Peje/Pec Region it has been noticed several things that need attention and improvement, perhaps with an advice coming from EULEX Judges to the Kosovo judiciary through KJC. Here below are some points to be discussed for possible advise:

1) It is a practice for Kosovo courts when an appeal in execution case is filed, that the whole execution case is sent to the District court to be decided on the appeal. In the Law on Executive Procedure (Law No. 03/L-008), art.12.6 says that the appeal does not hold the executive procedure, but in practice when the whole case file is sent to the appellate court the execution judge does not implement any actions in the case until the case file returns back from the DC. This can be one reason for the big backlog of execution cases and also for their prolonged proceedings. Through our mentoring activities we convinced judges in one MC of the Peje/Pec Region to make copy of the execution file and leave the copy with them while the original case file is sent with the appeal to be considered by the DC. Thus the judge can continue the execution in accordance with the law.

2) Another issue that concerns the access of people to court is the practice that all courts close their registry offices, archive offices, execution offices during their lunch break. Here should be mentioned that the lunch break does not coincide with usual lunch hours 12.00 – 13.00, it is not even unified break for all courts in Kosovo, but in every court the break is in different hours – from 9.00 to 10.00, from 10.00 to 11.00 and in some courts from 12.00 to 13.00. While the offices are closed people are waiting outside the court. Some of them have traveled from other places, in cold or rainy weather they have to stay outside. It should not be forgotten that courts provides public services to people and therefore they have to be institutions to which people have easy access.

We should advice local judiciary to organize their stuff in such a way that the offices to which people should have constant access, like registry offices, archive offices, execution offices, are never closed during the working hours 08.00 - 16.00h.

In the small courts it will mean to employ more stuff, as usually only one clerk is fulfilling the duties of a registrar, or archivist. The concerns with the lunch break are also connected with the annual leaves of the clerks. When the clerk is on leave the office is closed. We monitored this in one MC of the Peje/Pec Region. While checking one complaint concerning execution matters the execution officer explained to us that he can not execute the case as the debtor, who lives abroad, comes back during summer but at that time the clerk is on his annual leave and can not execute the case. It is well known that many Kosovo citizens live and work abroad and they come back to Kosovo usually in August when they take their annual leaves. This is the time when they can be found to execute their debts or other obligations, but during summer time the execution offices are closed. Thus the backlog of cases continues to increase. And at the same time due to political reasons Kosovo courts do not have possibilities to receive legal assistance from courts abroad.

3) We also monitored Peje/Pec DC where one court clerk fulfils the duties of a registrar and additionally sometimes of a cashier, but receives a salary for a postman (the one who delivers the summons). And this continued for the last three years already. At the same time he is very well qualified, has computer skills, speaks English and helps me very much in my work while examining the new cases coming to Peje/Pec DC.

Probably it is a practice in local courts that some people officially have one position and salary but at the same time fulfil duties for another position.

This should be carefully examined and even investigated by the new KJC. It seems that the competitions for court clerks are not transparent and objective. It should not be forgotten that most of the work in the courts is done by the court clerks and also these clerks have access to information that should be kept away from the public. It is well known that at the moment the KJC is not functioning and it is the only body that appoints court clerks.