



On the occasion of the Seventh Assembly of the EULEX Judges, held in Prishtinë / Priština on 23 September 2009

The Assembly composed of the following Judges: Maria Giuliana Civinini, President of the Assembly of EULEX Judges; Guy Van Craen, Vice-President of the Assembly of EULEX Judges; EULEX Judges: Angela Kaptein; Antoinette Lepeltier-Durel; Arkadiusz Sedek; Christine Lindemann-Proetel; Dragomir Yordanov; Eija-Liisa Helin; Ferdinando Buatier de Mongeot; Francesco Florit; Gerrit-Marc Sprenger; Gianfranco Gallo; Hajnalka Karpati; Harri Katara; Klaus Jung; Piero Lanza; Richard Winkelhofer; Torsten Koschinka; Vitor Pardal; Vladimir Kanev.

Adopts the DECISION

Unanimously, to approve this advice to the Kosovo Judicial Council and the Courts of Kosovo on accessibility to the courts.

A D V I C E

To:

- The Kosovo Judicial Council
- The Presidents of the District and Municipal Courts of Kosovo

From: Assembly of EULEX Judges, EULEX Justice Component

Subject: Advice to the Courts of Kosovo on accessibility to the courts

Presidency of the
Assembly of EULEX
Judges

Supreme Court of Kosovo

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1. Executive Summary

As foreseen by article 3 of the joint Action of the Council of the European Union of 4 February 2008 on the European union Rule of Law Mission in Kosovo, this has the task to “(a) monitor, mentor and advice the competent



Kosovo institutions on all areas related to the wider rule of law (including a custom service), whilst retaining certain executive responsibilities”.

Article 2.4 of the Law on jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo of 13 March 2008 (Law no. 03/L-053) provides that: *“besides exercising their judicial functions pursuant to the provision of articles 3, 5 and 5 of this law, EULEX judges will monitor, mentor and advice the Kosovo judges, in the respect of the principle of independence of the judiciary and according to the modalities as established by the present law and by the EULEX KOSOVO”.*

In particular, advising consists of formal and official positions taken by the EULEX Judges collectively in the Assembly of EULEX Judges and directed to the national judicial, legislative or government authorities to stimulate their actions in the respective fields of competence. In other words, advising is intended to provide professional counseling to the competent authorities (MoJ, KJC, KJI, Presidents of the Courts, Supreme Court, Parliament, Law Faculties) on each topic raising from the monitoring and mentoring experience. The advising provides the Kosovan stakeholders with the necessary insights to intervene in those areas of the justice system that need general and structural improvements to be implemented for all the judicial system and that cannot be performed by the mentoring activity of single EULEX Judges.

The present advice to the Presidents of the Courts of Kosovo on accessibility to the courts represents the result of the monitoring and mentoring activities of EULEX Judges, in close consultation with their Kosovo counterparts. These activities have revealed that there are several problems with the accessibility to the courts due to the daily breaks and to the annual leave of the staff. The present practices are not in accordance with European Best Practice as it hinders the public’s access to justice. These findings demonstrate the urgent need to change the current practice in order to provide the public with a more reliable and foreseeable access to their courts. This would also have positive effects as to the efficiency of the work of the court.

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2. Introduction

Access to justice is one of the most important principles in a justice system based on the Rule of Law. This principle, enshrined in article 6 of the European Convention on Human Rights, applies in a number of different ways; one of them is the access to the documents and services of a court of law. All persons in Kosovo should be able to reach a court during reasonable and foreseeable opening hours. This applies not only to the reception of the



court but to all the public offices including the registry offices, the archive offices and the execution offices. If the opening hours of these offices are not clear and consistent, the public are not provided with an acceptable level of access to justice.

3. The present situation

When performing MMA functions and interacting with the staff of the Courts of Kosovo, the following problems have been identified as regards opening hours:

- In practice most courts close their registry offices, archive offices and execution offices during the lunch break. Furthermore, the lunch break is not consistent between the different courts; it can take place on a number of different hours (for example 9.00-10.00, 10.00-11.00 or 12.00-13.00). While the offices are closed, people are waiting outside for the offices to open again. This is of course especially inconvenient and frustrating for the people that are coming from villages and that may have travelled a long way to get to the courts and have a need to return home within a reasonable time.
- During the holiday season, the situation of access to the courts gets worse. Since one court staff member may be in charge of an entire office, the office may simply close down when he or she goes on leave since there are no other staff members that are trained or authorized to run the office. The office is therefore closed for several weeks. This is of course an unacceptable situation for the public, as well as for other institutions, which might need access to the documents and services of that particular office. Moreover, it has through the MMA activities of EULEX Judges been noted that this also creates difficulties for the fulfilment of the tasks of the courts. In the case of the execution office, one execution officer stated that he had many cases where the debtors lived abroad and only returned to Kosovo for their summer leave. The problem was that when they returned he was also on leave and since no one was replacing his position, no execution could be completed against these debtors. In this way, this problem also hinders the correct handling of execution cases, and increases the backlog of the courts.

The courts are to provide public services to the people and therefore they should be institutions to which people have easy access. In the above mentioned cases the working methods of the courts are in clear contrast with

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the principle of free access to the courts. Moreover, the problems mentioned above could in most cases be solved through relatively simple measures.

As regards the issue of lunch breaks, the courts should organize the individual lunch breaks of their staff in such a way so as to ensure that the offices that the public needs constant access to, such as the registry office and the execution office, are never closed during the working hours 08.00-16.00. In the same way, staff members of the courts should organize their annual leave in such a way as to never leave an entire public office unattended. This can of course appear difficult since in many cases there is only one person responsible for an entire office. However, through organizational measures such as staff training and cooperation between the staff, it should be possible to in almost all cases find temporary replacements for the persons who are on leave. The court staff member who is going on leave will have to instruct another staff member to fulfill his or her tasks during the leave period. This is common practice in many court systems and other institutions in Europe and there is no reason why this system could not be implemented in Kosovo. In the rare cases where this solution is not possible, the court will have to make recruitments.

4. Recommendations

In the light of the conclusions above, the present recommendations are presented to the Courts of Kosovo:

- During the opening hours of the court, normally week days 08.00-16.00, the public should be able to access all the relevant offices of the court, such as the registry office and the execution office. The court staff should be instructed to organize their individual lunch breaks so as to make this possible.
- The summer leave periods of the staff members should be organized in such a way as to allow all the relevant public offices of the court to stay open during the entire period. In the cases where there is only one person assigned to an office, staff training should be organized so that there are possibilities to replace this staff member when he or she goes on leave.

5. Conclusion

Improving the access to the courts and thereby the access to justice is an important part of the development of the Courts of Kosovo. By implementing the recommendations mentioned above, the Courts would become more

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accessible to the public and it would also increase the efficiency of the work of the courts.

For the above mentioned reasons, the Assembly of EULEX Judges

ADVISES

The Presidents of the Courts of Kosovo to adopt routines in their respective courts that will ensure that all the relevant public offices of the Court are open during working hours (normally week days 08.00-16.00) and to ensure that these offices also remain open during the summer leave period.

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