



ANNEX 5

On the occasion of the Eight Assembly of the EULEX
Judges, held in Prizren on 9 December 2009

The Assembly composed of the following Judges: XXXXXX

Adopts the DECISION

With XX votes in favor, XX votes against, and XX abstentions, to approve this advice to the Kosovo Judicial Council and the Courts of Kosovo on the establishment of registration systems.

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 the establishment of registration systems.

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,

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mentor and advise 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 Kosovo Judicial Council and the Presidents of the Courts of Kosovo on the establishment of more efficient and functional registration systems in order to permit the court administration in a more accurate, transparent, and trustworthy monitoring of the flow of judicial and non-judicial documents. By improving an harmonious and unified registration system for the cases, it will be established a practice in accordance with Kosovo law and European Best Practice also increasing the efficacy of justice in Kosovo.

2. Introduction

A court registry system which reflects precisely and accurately *inter alia* all incoming documents / case files is of utmost importance for the proper administration of justice. Judges can benefit for the fulfillment of their tasks in an impartial and independent manner, also thanks to the fact that they are duly informed about all cases.

Furthermore, for the sake of relevant principles of transparency and access to justice for all citizens, it has to be noted that everyone who files a document with a court is entitled to accurate registration of the document and transfer of the case to a Judge.

The registry system currently in place in the Courts of Kosovo is in need to be improved in order to meet basic standards and comply with the long-path journey for the Kosovo judiciary to reach European Best Practice. The improvement has to be intended to avoid the risk that the registrar of a court

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decides whether a case belongs to the jurisdiction of the given court or not. In cases where the registrar is of the opinion that the matter does not fall under the jurisdiction of the given court the registrar refuses to accept the case file without registering the case or at least giving a reasoning in writing for the decision not to accept the case. Such a decision might not be taken by other than the President of the Court or a Judge delegated by him/her or entrusted with it by law. Furthermore, any registrar is under the obligation to register all incoming documents / case files regardless their legal nature. In doing so the registrar mustn't interfere with the work and the independence.

In the future, any decision legitimately and legally taken by a judge on whether to refuse a case from filing, will have to be made in writing and duly notified to the person who wanted to file any case or document.

3. Conclusion

A registry system which precisely and accurately lists all incoming documents and case files is of utmost importance for the proper administration of justice.

This importance is also underlined by another advise made to the Kosovo Judicial Council and the Kosovo Courts by the Assembly of the EULEX Judges, on the establishment of a registration, evaluation and service system of appeals in criminal cases in compliance with Articles 407, 408, and 409 Paragraph 1 of the Kosovo Code of Criminal Procedure (KCCP).

For the above reasons the Assembly of EULEX Judges

ADVISES

The Kosovo Judicial Council to support all Court of Kosovo in order to implement a registry system which respects the objective registering of incoming documents / case files without any interference with the work and the independence of the Judges at the Supreme Court.

The Courts of Kosovo to contact and cooperate with the Presidency of the EULEX Judges and the EULEX Judges Unit at District Court level to seek for advise and support on these matters. The EULEX Judges and their staff members will be glad and honored to provide their support to the Kosovo colleagues for the advised improvements which will benefit the Kosovo Judiciary and all people of Kosovo.

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