



ANNEX 6

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 a proper case allocation system.

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 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 the establishment of an efficient and functional case allocation 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 cases allocation 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

The present Advice follows and supplements a previous one which the Assembly of the EULEX Judges approved at its 2nd Assembly meeting on 23 October 2009 addressed to the Kosovo Judicial Council. Therefore, it is intended not to conflict but instead to follow-up on the mention one on a peer-to-peer basis with local Judges.

A case allocation system based on predefined and objective criteria is advisable to be adopted and implemented in all Courts of Kosovo. As evidenced by MMA activities Kosovo wide until now, in many cases Judges are assigned to cases by the President of the Court on a case by case basis without any pre-established and transparent way. This facilitates the so-called “Judges shopping” which entails all sorts of allegations of influence if not corruption upon the judiciary. Evidently, such system is not in compliance with European Standards.

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On 23 October 2008 the Assembly of EULEX Judges approved a case allocation system for criminal cases at the Supreme Court in Kosovo, referring to cases which are presided by EULEX Judges. This allocation system sets rules for the assignment of Judges to cases based on predefined and objective criteria.

In Section III, 2.2. and 3.2. of this case allocation system the idea of strengthening local ownership is reflected by the fact that members of the panels shall preferably be local Judges at the Supreme Court. According to the case allocation system these panel members are assigned to cases on a roster basis that satisfies the elements of a predefined and objective system.

The case allocation system was introduced and explained to the local Judges at the Supreme Court in a meeting at the end of October 2008. Each local Judge at the Supreme Court was provided with a copy of the text in Albanian language and asked for comments. In a later meeting the President of the Supreme Court stated that after discussing the matter among the local Judges there were no objections against this system. He announced that the local Judges would fully adhere to this system.

In addition the President of the Supreme Court was requested to create a similar system for cases handled by local Judges at the Supreme Court only. Despite the difficulties that such a system can encounter in an initial phase of study and implementation, it is now deemed necessary to adopt in all Kosovo Courts as a matter of urgency.

3. Recommendation

Adhering to a predefined case allocation system, which is based on objective criteria, is an important step towards strengthening Rule of Law in Kosovo. Such system reduces the possibility and the risk of influence and corruption upon the judiciary and consequently plays an important role in the process of establishing a judiciary in Kosovo which is accepted by the local population.

The Assembly of EULEX Judges invites the Courts to take action in order to plan and create such a system in cooperation and support with the EULEX Judges as appropriate. For these reasons the Courts of Kosovo are proposed 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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For the above reasons the Assembly of EULEX Judges

ADVISES

The Courts of Kosovo to adopt and implement a case allocation system which is based on predefined and objective criteria.

Maria Giuliana Civinini

President of the Assembly of the EULEX Judges

**Precedency of the
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