



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: Maria Giuliana Civinini, Guy Van Craen, Angela Kaptein, Anna Bednarek, Antoinette Lepeltier-Durel, Arkadiusz Sedek, Christine Lindemann-Proetel, Dragomir Yordanov, Emilio Gatti, Eija-Liisa Helin, Ferdinando Buatier de Mongeot, Francesco Florit, Gerrit-Marc Sprenger, Gianfranco Gallo, Hajnalka Karpati, Harri Katara, Klaus Huner, Johanna Schokkenbroek, Nikolay Entchev, Rositza Buzova, Torsten Koschinka, Vitor Pardal, Vladimir Kanev, Vergiinia Micheva-Ruseva

Adopts the DECISION

Unanimously, to approve this advice to the Kosovo Judicial Council and the Courts of Kosovo 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).

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 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).

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 Kosovo Judicial Council and the Presidents of the Courts of Kosovo 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) represents the result of the monitoring and mentoring activities of EULEX Judges, in close consultation with the Kosovo counterparts. These activities have revealed that there is a lack of an harmonious and unified registration system in criminal cases. This practice is not in accordance with Kosovo law and European Best Practice. These findings demonstrate the urgent need to change the current practice, which would also increase the efficiency of the executive procedure in Kosovo.

2. Introduction

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According to Articles 407, the courts of first instance within which the appeals are filed have to evaluate the timely filing and permissibility of the appeals. Should they not be present, the Presiding Judge of the first instance Court has to dismiss the appeal by a ruling. Afterwards, the same first instance courts have to serve the admissible appeals to the opposing sides and collect their replies if any in accordance to Article 408. At the end of this procedure, the files are transmitted to the second instance courts for the appeal procedures. According to Article 409 Paragraph 1 of the KCCP the court of second instance shall, upon receiving the files with the appeal, give the files to the reporting Judge who shall send the files to the competent Prosecutor for examination, if the case is prosecuted *ex officio*. The Presiding Judges should consider that in order to respect the principle of the reasonable time as foreseen under Article 6 of the ECHR, the Prosecution should be given an average time limit of 1 month to file its opinion unless for particularly complex cases for which the Presiding Judge can allow for a different deadline.

Upon the findings through EULEX Judges MMA activities throughout Kosovo Courts, it has been detected that the registry system of the Courts is not always accurate in respecting this provision of the procedural law. On the contrary, sometimes was verified that either the appeals are not verified for their admissibility, or not serviced in the accurate manner, or also the files with appeals immediately after registration are forwarded to the competent Prosecutor, without giving the files to the Judge or even informing the Judge about the case. Especially with regard to the Supreme Court, it is a common practice that the Judge learns about the case not before the Prosecution returns the case files to the Supreme Court with his/her opinion.

3. The present situation

The EULEX Judges Unit, after assuming executive powers in accordance with the Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law No. 03/L-053), learned that the practice at the registries of many Courts of Kosovo do not respect Article 409 Paragraph 1 of the KCCP. It consequently appears that files with appeals are not scrutinized as for their timely filing or permissibility, or correctly served, or even given to the competent Prosecutor first instead of giving them to the Judge. The overall respect of the procedure is of the utmost importance, especially in consideration of the application of Articles 407 and 409 to the appeals against rulings.

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In this context the EULEX teams became also aware of the particular problem that in the past some case files had remained for a long time in the UNMIK Office of the Public Prosecutor (OPPK), and other Prosecutors offices sometimes even for years. The failure of those Prosecutors offices to timely return these files had remained unnoticed as the registries did not set deadlines for the return of the case files. Eventually, the Judges who have the power to set deadlines and to demand the return of the files were not aware of the appeals.

4. Recommendations

The EULEX teams recommend the registries of the Courts of Kosovo to change their registration systems and to comply with the provisions of Articles 407, 408, and 409 Paragraph 1 of the KCCP in order to avoid further cases of transmission to higher instances of appeals which should have been dismissed as belated or impermissible, and also to avoid missing services to legitimate parties or in the future possible further delays like the ones described.

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.

5. Conclusion

The court administration and in particular the registries of the Courts of Kosovo have to follow the procedure laws in the appropriate way and in an efficient manner.

For the above reasons the Eight Assembly of EULEX Judges:

ADVISES

That the procedures set under the Articles 407, 408, and 409 are duly respected in order to assure the proper and efficient administration of justice and the respect of the rights of all parties involved in the criminal proceedings.

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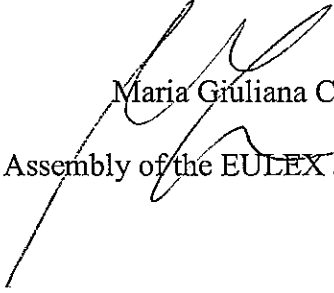
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That the Supreme Court of Kosovo to implement a registry system which is in compliance with the provision of Article 409 Paragraph 1 of the KCCP.


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