

On the occasion of the Ninth Assembly of the EULEX Judges, held
in Peje/Pec on 11 March 2010

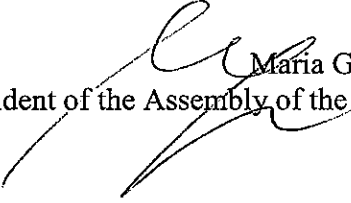
The Assembly composed of the following Judges:

Maria Giuliana Civinini, President of the Assembly of EULEX Judges; Gerrit-Marc Sprenger, Anna Bednarek, Arkadiusz Sedek, Charles Smith, Gabriele Gaube, Emilio Gatti, Esma Erterzi, Francesco Florit, Guy Van Craen, Harri Katara, Klaus Jung, Klaus Huner, Johanna Schokkenbroek, Laura Plesa, Nikolay Entchev, Piero Leanza, Richard Winkelhofer, Rositza Buzova, Torsten Koschinka, Vergiinia Micheva-Ruseva, Vitor Pardal, Vladimir Kanev.

Adopts the RECOMMENDATION

On adopting a common practice to the extent that all EULEX judges will sign any decision they take, including the enacting clauses: *approved with 22 votes in favor and 1 abstention.*

ANNEX: Study paper on the signature of judicial decisions.


Maria Giuliana Civinini
President of the Assembly of the EULEX Judges

The signature of the verdict in criminal cases

a contribution

1. The state of the legislation

Article 395 paragraph 2 of Kosovo Code of Criminal Procedure (KCCP):

“the judgment shall be signed by the presiding judge and the recording clerk. Where the trial panel was composed of two judges and three lay judges the second judge of the trial panel shall also sign the judgment”.

Article 420 paragraph 3 KCCP:

“a decision of the court of second instance shall be signed by all the judges in the panel, except for a decision issued under article 421 or 422 of the present code. A member of the panel may submit a dissenting or concurring opinion on legal or factual questions regarding the appeal and such opinion will be attached to the main decision”.

Article 430 paragraph 3 KCCP:

“a judgment of the Supreme Court shall be signed by all judges on the panel. A member of the panel may submit a dissenting or concurring opinion on legal or factual questions regarding the appeal and such opinion will be attached to the judgment”.

2. The question

1. Apparently, according to the above mentioned legal provisions there are different rules as to the signature of verdicts and rulings (decisions terminating a phase of the trial) by judges according to the different instances:

- in first instance only the presiding judge (the second professional judge in case of a five judges panel),
- in second and in third instance all judges of the panel.

This is related only to the judgment and **not** to the minutes of the deliberation, for which article 122 KCCP does not contain any provision.

In the different legal provisions it is not specified if those rules refer only to the enacting clause or to the written judgment or both.

2. Different practices were ascertained in the Courts of Kosovo where EULEX Judges act:

- in Mitrovica (see contribution of Judge Karpati) only the presiding judge signs both enacting clause and written verdict;
- in Peja both enacting clause and written verdict are signed only by the presiding judge unless the other EULEX judge is the reporting, in which case both of them sign both documents (see contribution of Judge Gallo);

- in Pristina the enacting clause is signed only by the presiding judge and the written verdict by all judges (see contribution of Judge Florit);
- in Prizren only the Presiding Judge signs Judgments, Decisions or Rulings;
- in Gjilan (see contribution of Judge Yordanov) both enacting clause and written verdict are signed only by the presiding judge.

3. Different practices appear to require a discussion in order to clarify and solve some doubts.

For example it was raised the following problem.

“Despite the possible legal interpretation, do you know a better way to control if the verdict will really fit the enacting clause (specially the discussed reasoning) than both being signed?

I simply figured the case that the verdict may not reflect the relevant reasons of the enacting clause and it could create later problems (internal problems amongst panel members) more than external problems with the parties. I think (de jure condendo) both signed would be the best legal solution”.

3. DISCUSSION

4. In approaching the problem of the signature it is important to stress that, according to the Kosovo criminal procedural code (24 paragraphs 1 and 3) the panel in the District Court is composed by one (or two) (professional) judge and two (or three lay judges). The consequences of the lack of professionalism for the lay judges are clearly reflected among other provisions in those related to the signature of the verdicts, because only the professional judge or judges sign the verdict.

At the Supreme Court level there are only professional judges and all of them sign the verdict.

Another difference between District and Supreme Court is related to the public announcement of the verdict.

It was suggested that since in the District Court there is a public announcement of the verdict (article 392) at the presence of the panel it is obvious that every member of this takes the responsibility of the decision, with the exception of dissenting opinions duly documented in the minutes of the deliberation.

On the contrary, since in the Supreme Court there is not (among local colleagues) the practice to announce the verdict before the parties and the public, it is necessary that all judges sign the verdict in order to take the responsibility for it (with the above mentioned exception).

5. This can be differently considered in presence of International or EULEX judges.

My opinion is that, independently from the signatures of the panel members, the responsibility of the verdict fall over the whole panel since all judges take part in the trial and in its decision.

Dissenting opinions will be duly represented in the minutes of the deliberation.

Discrepancies between enacting clause and the reasoning part of a verdict may constitute a substantial violation of the criminal procedure (article 403 paragraph 1 item 12) which must be examined also ex officio in case of an appeal.

Apart from this procedural aspect, discrepancies between enacting clause and reasoning part find their origin in a not accurate work during the deliberation, since any decision (procedural or substantial) must be taken during the deliberation and reflected in the enacting clause whereas the reasoning part limits itself to explain those decisions.

For sure the presence in EULEX panels of professional judges only could change the perspective of the UNMIK and Kosovo legislator related to the panel composition (article 24 KCCP).

In this sense article 395 paragraph 2 KCCP could be intended and interpreted as prescribing the signature of all professional judges.

This would have the simple advantage to show the collegiality of the decision to everybody, even without going through the minutes of the deliberation.

To sign a verdict is part of our professional responsibility and of our job.

Again in my personal opinion, there is no difference between enacting clause and written verdict, both of them being the “decision”.

To the objection related to the possible absence of panel members at the moment of delivering the written verdict (some times this delivery happens and especially happened in the past months after the announcement of the verdict) it can be replied considering this as an exception to the general rule that every professional judge signs the verdict to which he has participated.

6. The discussion is obviously open.

Emilio Gatti
EULEX Supreme Court Judge