



## **Adoption of new Guidelines for Case Selection and Case Allocation in criminal cases**

The Assembly of EULEX Judges, on the occasion of the 13<sup>th</sup> Assembly of EULEX Judges, held in Pristinë/Priština on 27 January 2011, and composed of the following Judges:

Maria Giuliana Civinini, Charles Smith, Martti Harsia, Lars Dahlstedt, Gerrit-Marc Sprenger, Tapio Vanamo, Torsten Koschinka, Norbert Koster, Piero Leanza, Anna Bednarek, Esma Erterzi, Antoinette Lepeltier-Durel, Laura Plesa, Roxana Comsa, Katerina Entcheva, Francesco Florit, Arkadiusz Sedek, Ferdinando Buatier de Mongeot, Karen Asphaug-Warg, Gianfranco Gallo, Horst Proetel, Johanna Schokkenbroek, Verginiya Micheva-Ruseva, Dragomir Yordanov, Vitor Hugo Pardal, Rositza Buzova, Gunnar Oyhaugen, Franciska Fiser, Riku Jaakkola, Witold Jakimko, Vladimir Kanev, Klaus Jung, Hajnalka Karpati, Nikolay Entchev, Caroline Charpentier, Christine Lindemann-Proetel, Jonathan Welford-Carroll

*with 28 votes in favour, none against, 7 abstentions and 2 judges not expressing their vote*

DECIDES

**to endorse new Guidelines for Case Selection and Case Allocation for EULEX Judges in criminal cases.**

Maria Giuliana Civinini  
President of the Assembly of EULEX Judges

**ANNEX: new Guidelines for Case Selection and Case Allocation for EULEX Judges in criminal cases**

EULEX Kosovo

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# Guidelines for Case Selection and Case Allocation for EULEX Judges in Criminal Cases

## 1.1. Legal background

The case allocation for EULEX Judges will be carried out in accordance with the law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law n. 03/L-053), hereinafter LoJ.

## 1.2. Principles

- Transparency: Case allocation must be transparent to actors and non actors in the justice system.
- Objectivity: everyone should know in advance where and by which judges s/he will be tried (judges do not select cases).
- Flexibility: the specific working conditions and the number of EULEX Judges and legal disqualifications pursuant to the KCCP must be taken into account.
- Sustainability: case allocation system should be an example of good justice administration to which local judges could (should) adhere in order to achieve the goals of an independent, transparent and efficient justice administration;
- Equality of the workload of judges.
- EULEX Judges are deployed to the Supreme Court or to one or more District Courts. Deployment of EULEX Judges to more than one District Court will respond to the necessity of substitution in exceptional cases, as set out below under 1.3.7.

## 1.3. Case allocation during the pre trial phase (including confirmation stage) in the District Courts of Prishtinë/Prishtina and Mitrovicë/Mitrovica

- 1.3.1. EULEX Criminal Judges will be divided into two sub-sections within each district court.
- 1.3.2. The new cases will be assigned alternatively to each sub-section (e.g. case A to section 1, case B to section 2, case C to section 1, etc).
- 1.3.3. Within each sub-section the pre trial judge will be appointed on a rotational basis. If the judge who should be appointed according to the roster is excluded (for reason of disqualification or other serious reason), the case will be assigned to the next judge in the internal

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roster of the section. The judge who missed the turn will be appointed on the first following occasion.

- 1.3.4. The other members of the sub-section will compose the three judge panel during the pre trial stage (e.g.: case n. 1 to Judge A as pre trial judge and judges B and C as members of the three judge panel, case n. 2 to judge B as pre trial judge Judges C and A as member of the three judge panel, case n, 3 to Judge C as presiding and Judge A as panel member, etc). Such rotational scheme will be agreed upon previously among the members of the sub-section.
- 1.3.5. The Kosovo panel member will be appointed by the President of the District Court according to their case allocation system, upon request of the EULEX Focal Point.
- 1.3.6. If for any reason the necessary judges cannot be provided from among the members of the sub-section, they will be appointed by the Court Team Focal Point from among the judges of the other sub-section according to an automatic rotational scheme, unless this should deprive such section of a sufficient number of judges to sit in the main trial panel. In this latter case, the panel member will be appointed following the rules set forth below in 1.3.7.
- 1.3.7. In case no judge of the court team (including, for the District Court of Mitrovicë/Mitrovica, the civil judges) should be able to sit in the panel according to the rules set forth above, a judge from another District Court will be appointed by the President of the Assembly of EULEX Judges, upon request of the Court Team Focal Point, according to the following scheme:
  - judges who in first place are assigned to DC Mitrovicë/Mitrovica will be assigned as substitutes to DC Prishtinë/Pristina
  - judges who in first place are assigned to DC Prishtinë/Pristina will be assigned as substitutes to DC Gjilan/Gniljane
  - judges who in first place are assigned to DC Gjilan/Gniljane will be assigned as substitutes to DC Mitrovicë/Mitrovica
  - judges who in first place are assigned to DC Prizren will be assigned as substitutes to DC Peja/Pec
  - judges who in first place are assigned to DC Peja/Pec will be assigned as substitutes to DC Prizren

- 1.3.8. The judge for the confirmation of the indictment and for the appeal against the ruling on the confirmation of the indictment shall be appointed from among the judges of the sub-section in charge of the investigative stage. If this is not possible, due to disqualification or to other serious reason, a judge from the other sub-section will be appointed. If this should lead to an insufficient number of judges available for the main trial, judge(s) from another district court will be

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appointed. The appointment will be made according to the rules above outlined under 1.3.7.

#### **1.4. Case allocation during the pre trial phase (including confirmation stage) in the District Courts of Peja/Pec, Prizren and Gjilan/Gniljane**

- 1.4.1. In order to avoid disqualification of the judges in the later phase of the case, the EULEX judges will be mainly assigned to the main trials.
- 1.4.2. When there is a need to assign EULEX judges to the pre trial proceedings or confirmation of the indictment proceedings or to substitute a judge for another grounded reason, a criminal judge among those assigned to each court will be appointed. In case this should lead to an insufficient number of EULEX Judges for the main trial, a EULEX Judge from another district court or a civil judge can be assigned to the pre trial proceedings by the President of the Assembly of EULEX.
- 1.4.3. The substitution of the judges of the courts shall take place according to the rules set forth above under 1.3.7.

#### **1.5. Case allocation system for the district courts of Prishtinë/Prishtina and Mitrovicë/Mitrovica: Main Trial**

- 1.5.1. EULEX Criminal Judges are divided into two sub-sections within each district court, according to the rules set out above under 1.3.1.
- 1.5.2. The incoming main trials will be assigned to the sub-section which was not in charge of the pre trial phase (e.g. if case A was assigned to sub-section 1 in the pre trial stage, for the main trial it will be assigned to sub-section 2).
- 1.5.3. Within each sub-section the presiding judge will be appointed on a rotational basis. The other EULEX panel member will be appointed on a rotational basis from among the other members of the sub-section (e.g.: case n. 1 to Judge A as presiding and judge B as panel member, case n. 2 to judge B as presiding and Judge C as panel member, case n. 3 to Judge C as presiding and Judge A as panel member, etc). Such rotational scheme will be agreed upon previously among the members of the section.
- 1.5.4. The Kosovo panel member will be appointed by the respective President of the District Court according to their case allocation system, upon request of the EULEX Focal Point;
- 1.5.5. If the judge who should be appointed according to the roster is excluded (for reason of disqualification or other serious reason), the case will be assigned to the next judge in the internal roster of the sub-section. The judge who missed the turn will be appointed on the first following occasion.

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- 1.5.6. In case no judge of the sub-section can be part of the panel, one or more judges of the other sub-section will be appointed by the Court Team Focal Point. An automatic rotational scheme will be followed in order to appoint the substituting judges.
- 1.5.7. In case no judge should be eligible to sit in the panel, a judge from another District Court will be appointed by the President of the Assembly of EULEX Judges, upon request of the Court Team Focal Point. The substitution of the judges of the courts shall take place according to the scheme set forth above under 1.3.7,
- 1.5.8. The judge who is appointed as presiding judge is responsible for the proper preparation of the case as well as for drawing up a judgment and the other rulings in the case;

#### **1.6. Case allocation system for the district courts of Gjilan/Gniljane, Peja/Pec and Prizren: main trial**

- 1.6.1. The court will be organized in one single sub-section, comprising all criminal judges of the team
- 1.6.2. For each incoming case, the presiding judge and the other EULEX panel member will be appointed on a rotational basis from among the members of the sub-section (e.g.: case n. 1 to Judge A as presiding and Judge B as panel member, case n. 2 to Judge B as presiding and Judge C as panel member, case n, 3 to Judge C as presiding and Judge A as panel member, etc). Such rotational scheme will be agreed upon previously among the members of the sub-section.
- 1.6.3. The Kosovo panel member will be appointed by the respective President of the District Court according to their case allocation system, upon request of the EULEX Focal Point;
- 1.6.4. If the judge who should be appointed according to the roster is excluded (for reason of disqualification or other serious reason), the case will be assigned to the next judge in the internal roster of the sub-section. The judge who missed the turn will be appointed on the first following occasion.
- 1.6.5. In case no judge should be eligible to sit in the panel, a judge from another District Court will be appointed by the President of the Assembly of EULEX Judges, upon request of the Focal Point. The substitution of the judges of the courts shall take place according to the rules set forth above under 1.3.7.
- 1.6.6. The judge who is appointed as presiding judge is responsible for the proper preparation of the case as well as for drawing up a judgment and the other rulings in the case.

**2.** The Court Team Focal Point is responsible for the proper application of these guidelines, also considering the general principles set out above.

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### **3. On call/duty system**

On call/duty system will be established for urgent situations between the courts in order to ensure that a sufficient number of judges is available for urgent matters. In case of need of application of a judge from another district court, the scheme set forth above under 1.3.7 shall apply.

The term of the on call/duty is one week at a time, including weekends. The proposal of the rotation system shall be forwarded by the focal points to the President of the Assembly of EULEX Judges no less than one month before.

### **4. Exceptional circumstances**

The President of the Assembly of EULEX Judges can, for grounded reasons, deviate from the above mentioned Rules in exceptional cases (e.g. severe imbalance in workload, need to have a Panel composed exclusively of EULEX Judges pursuant to the relevant provisions of the Law on Jurisdiction, and other important reasons)

**5. MMA activities of EULEX Judges** will follow separate guidelines as established by the Assembly of EULEX Judges.

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