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Pristina, 8 March 2000

OBSERVATIONS AND RECOMMENDATIONS OF THE OSCE LEGAL SYSTEM MONITORING SECTION:

REPORT NO. 3 — EXPIRATION OF DETENTION PERIODS FOR CURRENT DETAINEES

Summary

As of 10 December 1999, there are eighty-one individuals being held by KFOR, UN Civil Administration and UN CivPol who will have been in custody for six months by December 1999, January 2000 and February 2000. This group comprises approximately one-third of the 255 individuals currently in detention. According to the law of the Federal Republic of Yugoslavia,[1] these detainees will be due for release unless they are indicted by the end of the six month period. Furthermore, OSCE legal monitors have observed that several detainees should already have been released because their maximum detention period, determined by the severity of the crimes for which they are held, was three months.

This report reviews the applicable law relating to the length of detention and highlights some areas that may conflict with international standards.[2] Issues of particular concern include the possibility of indefinite detention, the absence of procedures for the accused to participate in and initiate review of custody, and the lack of adequate remedies for unreasonably long detention. The possibility of unreasonably long

[1] The analysis contained in this report was based on the laws of the Federal Republic of Yugoslavia as they existed on 24 March 1999, which were declared to be the applicable laws in Section 3 of UNMIK Regulation 1999/1. On 12 December 1999, the Special Representative of the Secretary-General Bernard Kouchner passed Regulation 1999/24 and Regulation 19999/25, repealing Section 3 of UNMIK Regulation No. 1999/1 and providing that the law applicable in Kosovo is that which applied on 22 March 1989. Regulation 1999/24 further provides that in "criminal proceedings, the defendant shall have the benefit of the most favourable provision in the criminal laws which were in force in Kosovo between 22 March 1989 and the date of the present regulation." It is not immediately evident to what extent the criminal procedure code differed on 22 March 1989.

[2] This report, released internally on 21 December 1999, is being publicly released on 8 March 2000.

periods of pre-trial detention necessitates close monitoring of future developments regarding these detainees.

Analysis

Domestic Law

Articles 197[3] and 199[4] of the Federal Republic of Yugoslavia ("FRY") Code of Criminal Procedure provide for the procedure to be followed regarding pre-trial detention, both before (Article 197) and after (Article 199) indictment. The initial time limit set for pre-trial detention is one month, following which a decision must be taken as to whether to extend pre-trial detention. This may be extended for a further two months, after which time indictment or release must follow. However, if the crime concerned carries a sentence of "more than five years or a more severe penalty," a decision may be taken to extend pre-trial detention by another three months after which time indictment or release becomes necessary. Therefore, the maximum time an individual can spend in pre-trial detention, without being indicted, may be six months. In this respect, Article 197 falls within the limits set by Article 24 of the 1992 Constitution of the Federal Republic of Yugoslavia.[5]

[3] FRY Code of Criminal Procedure, Article 197, reads:

(1) On the basis of the examining magistrate's decision the accused may not be held in pretrial custody more than 1 month from the date of his apprehension. At the end of that period the accused may be kept in custody only on the basis of a decision to extend pretrial custody.
(2) Pretrial custody may be extended a maximum of 2 months under a decision of the panel of judges (Article 23, Paragraph 6). An appeal is permitted against the panel's decision, but the appeal does not stay execution of the decision. If proceedings are conducted for a crime carrying a prison sentence of more than 5 years or a more severe penalty, a panel of the supreme court of the republic or autonomous province may for important reasons extend pretrial custody by not more than another 3 months. The decision to extend pretrial custody shall be made on the argued recommendation of the examining magistrate or public prosecutor.
(3) If a bill of indictment is not brought before expiration of the periods referred to in Paragraph 2 of this article, the accused shall be released.

[4] FRY Code of Criminal Procedure, Article 199, reads:

(1) Once the bill of indictment has been presented to the court and until the end of the trial custody may be ordered or terminated only by decision of the panel of judges after hearing the public prosecutor if proceedings are being conducted on his petition.
(2) At the end of 2 months from the date when the last decision on custody became valid, even in the absence of motions by the principals, the panel shall examine whether the grounds still exist for custody and shall make a decision to extend or terminate custody.
(3) An appeal against the decision referred to in Paragraphs 1 and 2 of this article shall not stay execution of the decision.
(4) An appeal is not permitted against the decision of the panel which rejects a proposal to order or to terminate pretrial custody.

[5] Constitution of the Federal Republic of Yugoslavia, Article 24(4), reads:
The detention ordered by a first instance court may not exceed three months from the day of arrest. This time limit may be extended for a further three months by order of a

Once an indictment has been issued, Article 199 governs the procedure for review of a detention order while awaiting trial. The maximum period between reviews of detention orders permitted under Article 199 is two months. However, no provision is made for the eventual termination of this extension procedure in the Code of Criminal Procedure. The trial of the indicted detainee may thus, in theory, be postponed indefinitely.[6]

Current Situation of Detention

According to statistics compiled by the OSCE Rule of Law Division and the UN Judicial Affairs Department, as of 10 December 1999, there are eighty-one individuals held by KFOR, UN Civil Administration and UN CivPol who will have been in detention for six months by December 1999, January 2000 and February 2000. This group comprises approximately one-third of the 255 individuals currently in detention. Among these, seven were arrested in June 1999; twenty-four were arrested in July 1999; and forty-four were arrested in August 1999.[7] Of the eighty-one individuals, only twenty-one indictments have been filed.[8]

As mentioned above, detention without an indictment is lawful for a maximum period of six months if the accused is held for a "crime carrying a prison sentence of more than five years or a more severe penalty."[9] For individuals who are detained for crimes with less serious penalties, the maximum period of detention permissible will only be three months.

Table 1 shows the crimes for which individuals have been detained. The punishment for these crimes has been determined with reference to the Federal Republic of Yugoslavia Criminal Code, Serbia Criminal Code, and the Kosovo Criminal Code.[10] For most of the crimes surveyed in Table 1, there is no difference between the

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higher court. If by the end of this period charges have not been brought, the suspect shall be released.

[6] This situation could eventually violate Article 9(3) of the ICCPR (" Anyone arrested or detained on a criminal charge. . . shall be entitled to trial within a reasonable time or to release.") and Article 5(3) of the European Convention on Human Rights ("Everyone arrested or detained . . . shall be entitled to trial within a reasonable time.")

[7] The dates of apprehension are unconfirmed for six individuals.

[8] Of the twenty-one individuals who have been indicted, one was arrested in June 1999, six were arrested in July 1999, thirteen were arrested in August 1999, and the date of arrest is unknown for one.

[9] See Article 197(2) of the FRY Code of Criminal Procedure.

[10] Section 3 of UNMIK Regulation 1999/1 established that the applicable law in Kosovo consisted of those laws applicable prior to 24 March 1999; however, judges of the Emergency Judicial System persisted in applying the Kosovo Criminal Code which has not been in force since 1989 – 1990. As explained in footnote 1, the recent Regulations 1999/24 and 25 permit the application of the federal, Serbia, and Kosovo criminal codes, and allow the defendant to benefit from the most favorable provisions.

punishments provided for in the Serbia Criminal Code and the Kosovo Criminal Code.[11]

Violations of domestic law

Table 2 lists the crimes for which the eighty-one individuals have been detained. There are five crimes that are punishable by imprisonment of at least five years: genocide, war crimes, murder, attempted murder, and robbery with use of force.[12] Of the eighty-one detainees arrested in June – August 1999, forty-five individuals are being held based on this group of crimes; among these, only ten have been indicted. If indictments are not brought before the expiration of six months, then pursuant to Article 197(3) of the FRY Code of Criminal Procedure, three will be entitled to release in December 1999, twelve in January 2000, and fifteen in February 2000.

There are eight crimes that carry a punishment of less than five years' imprisonment: assault, prostitution, drug trafficking, car theft, looting, weapons possession, extortion, and kidnapping. The maximum period of detention for the nineteen people detained on the basis of this category of crimes is three months. Of the nineteen, only four have been indicted. Since a bill of indictment has not been brought before the expiration of three months, the remaining fifteen individuals are entitled to immediate release, pursuant to Article 197(3) of the FRY Code of Criminal Procedure.

A third category of crimes includes those that provide for the possibility of five or more years in prison within the permissible range of penalties. These crimes are rape (punishable by one to ten years), robbery (punishable by at least one or three years, depending on the value of the good stolen), and inciting a riot (punishable by one to ten years). According to Article 197(2) of the FRY Code of Criminal Procedure, the maximum pre-trial detention period for individuals held on the basis of these crimes is six months. Of the eleven people detained for crimes in this category, only three have been indicted. If indictments are not brought before the expiration of six months, then pursuant to Article 197(3) of the FRY Code of Criminal Procedure, two will be entitled to release in December 1999, two in January 2000, and four in February 2000.

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[11] For the crime of rape, Article 103 of the Serbia Criminal Code provides for imprisonment of one to ten years, while the punishment in Article 74 of the Kosovo Criminal Code is imprisonment of up to ten years, without any reference to a minimum sentence. For the crime of robbery, Article 168 of the Serbia Criminal Code has a minimum sentence of one to three years' imprisonment depending on the value of the goods stolen, while the Article 137 of the Kosovo Criminal Code simply provides for a minimum sentence of three years. Looting may be punished under Article 230 of the Serbia Criminal Code ("Participation in a gathering that commits violence") which carries a punishment of three months to five years in prison") or under Article 141 of the Kosovo Criminal Code ("Plunder") which is punished by imprisonment of at least three years. A provision for kidnapping could not be found in the Kosovo Criminal Code.

[12] Article 19(1) establishes criminal liability for attempts of criminal acts which are punished by a sentenced of give years' imprisonment or more, thereby permitting the prosecution of attempted murder. Article 19 of the Federal Republic of Yugoslavia Criminal Code states that "[f]or an attempted criminal act the court *may* reduce the punishment provided for the completed criminal act." (emphasis added).

The fifteen individuals who have already been detained for longer than the maximum three month period and those individuals who may be detained beyond their maximum six month period should not only be released but should also be entitled to compensation in accordance with domestic and international law. According to Article 545(1)(3) of the FRY Code of Criminal Procedure, "An individual shall . . . be entitled to compensation for damage . . . if because of an error or illegal act by a body or agency he has been . . . kept for a prolonged period in custody." International standards also recognize the right to compensation for unlawful detention.[13] The right to compensation is triggered when the detention violates either national or international law.[14]

Violations of international standards

Under international human rights law, there is a strong presumption against pre-trial detention, in accordance with the right to liberty and the presumption of innocence. Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) states that "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody."[15] The Human Rights Committee has stated that "[p]re-trial detention should be an exception and as short as possible."[16] These principles have also been affirmed in other United Nations instruments.[17]

i. Criteria for original order of detention

International standards recognise that there are circumstances in which authorities may detain an individual. The Human Rights Committee has noted that detention may be justified in order to "prevent flight, interference with witnesses and other evidence, . . . to prevent the commission of other offences [or when the suspect] constitutes a clear and serious risk to society which cannot be contained by any other manner."[18]

[13] See Article 9(5) of the ICCPR: *Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.* Article 5(5) of the European Convention: *Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.*

[14] Amnesty International, Fair Trials Manual (1998), p.48.

[15] Article 9(3) of the ICCPR.

[16] Human Rights Committee, General Comment 8, para. 3.

[17] *See* Principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment ("hereinafter "Body of Principles")("Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law."). *See also* Rule 6(1) of the United Nations Standard Minimum Rules for Non-custodial Measures (hereinafter "Tokyo Rules")("Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of society and the victim.").

[18] Van Alphen v. the Netherlands (305/1988) 23 July 1990. Report of the Human Rights Committee, Volume II (A/45/40), 1990, at 115. With respect to absconding, the possibility of flight is not automatically considered as a justification for detention. Regard must be had for whether it is possible to obtain "guarantees" of his appearance for trial. Wemhoff v. Fed. Rep. Of Germany, Judgement of

The criteria for ordering detention are set forth in Article 191 of the FRY Code of Criminal Procedure. The terms of Article 191(2) are consistent with international standards since they refer to the possibility of absconding, witness tampering, interference with evidence, repetition of crime or disturbance to the citizenry. However, Article 191(1) appears to be in violation of the European Convention since it calls for a mandatory order of custody if a person is suspected of a crime punishable by the death penalty.[19] Council of Europe expert Stephan Trechsel has expressed concern about Article 191(1) and has recommended the elimination of obligatory custody.[20]

ii. Review of pre-trial detention

In order to ensure that the accused does not spend an unreasonable period of time in detention, periodic review of the detention order is necessary. After indictment, the relevant procedures are provided for in Article 199 of the FRY Code of Criminal Procedure.

The relevant provision of the European Convention governing review of pre-trial detention is Article 5(4).[21] It provides:

> Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall

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27 June 1968, Series A no.7, para. 15. In Stogmuller v. Austria, Judgement of 10 Nov. 1969 (no.9), para. 33, the Court held " … the danger of the accused absconding does not result just because it is possible or easy for him to cross the frontier; there must be a whole set of circumstances, particularly, the heavy sentence to be expected or the accused's particular distaste for detention, or the lack of well established ties in the country, which give reason to suppose that the consequences and hazards of flight will seem to him to be the lesser evil than continued imprisonment."

[19] The European Court of Human Rights has rejected the idea that the seriousness of an offense, by itself, can justify detention. *See* Van der Tang, (26/1994/473/554), 13 July 1993, para. 63. ("[T]he existence of a strong suspicion of the involvement of the person in serious offences, while constituting a relevant factor, cannot alone justify a long period of pre-trial detention.) On a related point, the European Court has also held that the "danger of an accused's absconding cannot be gauged solely on the basis of the severity of the sentence risked." Yagci and Sargin v. Turkey (6/1994/453/533-534), Judgement of 8 June 1995, para. 52.

[20] Stefan Trechsel, Opinion on the Yugoslav Law on Criminal Procedure (6 September 1999) at p. 12: "… It might be questioned whether the control under Article 5(3), first part, ECHR will still be effective if the 'judge or other officer' does not enjoy a margin of appreciation."

[21] *See also* Principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. ("Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.")

be decided speedily by a court and his release ordered if the detention is not lawful.[22]

The substantive right at issue is the availability of review of the legality of detention.[23] In one case, decided by the European Court of Human Rights, an interval of five and a half months for examination of a second application for release from detention on remand was deemed too long.[24] Furthermore, the Court clarified that the intervals for review of decisions to detain on remand must be relatively short.

Article 197 of the FRY Code of Criminal Procedure provides for review of pre-trial detention after the first and third months of detention. After indictment, Article 199 provides for review of custody every two months. Thus, although the period between reviews could be considered acceptable, the entire time the accused must remain in detention before the conclusion of his trial must be monitored.[25]

Also of concern are the procedures for reviewing pre-trial detention. Article 5(4) of the European Convention requires an effective domestic remedy available to the defendant.[26] The European Court of Human Rights held that the detained individual must be empowered "to take proceedings" to request a review of the legality of his detention at reasonable intervals.[27] Furthermore, the equality of arms principle applies in habeas corpus proceedings under Article 5(4).[28] The European Court of Human Rights has also held that an accused must have access to the files used by the investigating authorities in their review of a decision to detain the accused on remand.[29]

The procedures for reviewing pre-trial detention under Article 199 raise some concerns. It appears from Article 199, that although it provides for periodic review by a panel of judges, it does not provide an opportunity for the accused to initiate review of the detention.[30] Article 199 also does not appear to provide for an adversarial procedure by which the accused may be heard when the 'panel' of judges considers the detention order.

iii. Criteria for prolonging pre-trial detention

[22] This article is autonomous; thus a State may be found to violate this provision even if its grounds for detaining a given individual are found to be acceptable under the other sections of Art.5(4).

[23] Donna Gomien, Short Guide to the European Convention on Human Rights (2nd ed. 1998).

[24] Bezicheri v. Italy (1989), Judgement of 25 Oct. 1989 (no.164).

[25] *See* discussion, *infra*, regarding trial within a reasonable time.

[26] Sakik and Others v. Turkey, Judgement of 26 November 1997 (87/1996/706/898-903).

[27] Winterwerp v. the Netherlands, Judgement of 24 October 1979 (no. 33).

[28] Sanchez-Reisse v. Switzerland, Judgement of 21 Oct. 1986 (no.107).

[29] Lamy v. Belgium, Judgement of 30 March 1989 (16/1987/139/193).

[30] There does not appear to be a specific provision for habeas corpus review.

Article 5(3) of the European Convention aims to prevent the indefinite prolongation of pre-trial detention. If the "reasonable suspicion" criterion of Article 5(1)(c)[31] ceases to apply, continued detention becomes unlawful. As stated by the European Court:

> The persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the validity of the continued detention, but, after a certain lapse of time, it no longer suffices; the Court must then establish whether the other grounds cited by the judicial authorities continue to justify the deprivation of liberty. Where such grounds are "relevant" and "sufficient", the Court must also ascertain whether the competent national authorities displayed "special diligence" in the conduct of the proceedings.[32]

The criteria for justifying the prolongation of detention are similar to those considered when ordering detention in the first place.[33] The reasons given to justify continued detention by authorities must be weighed against the reasons for given for release by the suspect.

By considering whether the government has acted with "special diligence," the European Court recognizes that the "right of an accused held in pre-trial detention to have the case examined with all necessary expedition must be balanced against and not hinder the efforts of the authorities to carry out their tasks with proper care." In Van Der Tang v. Spain, the European Court found no violation of Article 5(3) where the authorities exercised necessary diligence in investigating the case of an individual held for over three years.[34]

Article 199(2) of the FRY Code of Criminal Procedure merely states that in its periodic review of detention, the panel shall "examine whether the grounds still exist for custody." Presumably, the grounds to be taken into consideration by the panel are those articulated in Article 191. However, there is no explicit reference to Article 191 or to other factors that should be taken into consideration by the panel. Consideration should be given to amending Article 191 so that the decision-making of the panel will be guided by some criteria and be more transparent.

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[31] ". . . No one shall be deprived of his liberty save in the following case [of] the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence . . ."

[32] Letellier v. France, Judgement of 26 June 1991 (no. 207), at para. 35 (citing Stögmüller Judgement of 10 November 1969, Series A no. 9, p. 40, § 4; the Wemhoff judgement of 27 June 1968, Series A no. 7, pp. 24-25, § 12; and the Ringeisen Judgement of 16 July 1971, Series A no. 13, p. 42, § 104; the Matznetter Judgement of 10 November 1969, Series A no. 10, p. 34, § 12; and the B. v. Austria Judgement of 28 March 1990, Series A no. 175, p. 16, § 42.)

[33] In Letellier v. France, the European Court considered the risk of interfering with witnesses, the danger of absconding, the inadequacy of court supervision, and the preservation of public order.

[34] Amnesty International, Fair Trials Manual, p. 51.

iv. Trial within a reasonable time

The ICCPR and the European Convention both recognize that anyone "arrested or detained . . . shall be entitled to trial within a reasonable time or to release . . ."[35] This principle has also been affirmed in the Body of Principles for the Protection of All Persons under Any Form of Detention of Imprisonment.[36] Even after a detainee has been released from custody, he still has a right to be tried without undue delay.[37]

The right to a prompt adjudication of criminal charges is recognised in neither the FRY Constitution nor the FRY Code of Criminal Procedure. Moreover, while Article 197(3) requires the release of the accused if a bill of indictment has not been brought before the expiration of the specified time period, there is no such provision requiring the release of an individual if he has not been brought to trial within a reasonable time. Indeed, Article 199 does not place any express restrictions on the continuation of custody, once an indictment has been presented.[38] Accordingly, an individual who has been subjected to an unreasonably long period of custody will have no independent domestic grounds for claiming that his detention was unlawful.

International standards do not specify what constitutes a reasonable time for the completion of a trial and such determinations have been made by a case-by-case basis. Factors which are considered include whether the accused is detained[39], the complexity of the case, the conduct of the accused, and the conduct of the authorities.[40]

As discussed above, the continuation of pre-trial detention is subject to periodic judicial review. In the future, it will be important to monitor whether judges abuse their unfettered discretion to postpone trials and prolong pre-trial detention.[41]

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[35] *See* ICCPR, Article 9(3) and European Convention, Article 5(3).

[36] Principle 38 of the Body of Principles ("A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial.").

[37] *See* ICCPR, Article 14(3)(c) ("In the determination of any criminal charge against him, everyone shall be entitled . . . [t]o be tried without undue delay") and European Convention, Article 6(1) ("In the determination of . . . any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time").

[38] As noted in the Opinion on the Yugoslav Law on Criminal Procedure by Stefan Trechsel, President of the European Commission on Human Rights: ". . . Article 199 declares the "panel" competent to extend custody without any limitation. This is not as such contrary to Article 5(3), second part, ECHR, but the extension must be handled restrictively."

[39] The Human Rights Committee has stated that, "[i]n cases involving serious charges such as homicide or murder, where the accused is denied bail by the court, the accused must be tried in as expeditious a manner as possible." Del Cid Gomez v. Panama (473/1991), 19 July 1995, Fin.Dec, UN Doc.CCPR/C/57/1, 1996, at 46.

[40] Amnesty International, Fair Trials Manual, p. 100.

[41] Article 285 of the FRY Code of Criminal Procedure provides that "[t]he presiding judge of the panel may order postponement of the trial for important reasons, on the motion of the principals, or

Consideration should also be given to providing individuals who have been subjected to an unreasonably long period of custody with compensation.

automatically." See also above discussion regarding lack of specified criteria for prolonging detention under Article 199.

TABLE 1: Crime, by numbers of persons arrested by KFOR from June – August 1999 and relevant criminal code articles and punishment

Crime	No. of persons detained	Criminal Code	Punishment
Genocide	4	Federal Republic of Yugoslavia Criminal Code, Article 141	At least five years
War crimes	9	Federal Republic of Yugoslavia Criminal Code, Article 141	At least five years
Murder	21	Serbia Criminal Code, Article 47	At least five years
		Kosovo Criminal Code, Article 30	At least five years
Attempted murder	10	Federal Republic of Yugoslavia Criminal Procedure Code, Article 19	At least five years[42]
Rape	4	Serbia Criminal Code, Article 103	One to ten years
		Kosovo Criminal Code, Article 74	Up to ten years
Assault	2	Serbia Criminal Code, Article 53	Six months to five years
		Kosovo Criminal Code, Article 38	Six months to five years
Kidnapping	1	Serbia Criminal Code, Article 64	One to five years
Prostitution	5	Federal Republic of Yugoslavia Criminal Code, Article 251	Three months to five years
Drug Trafficking	1	Federal Republic of Yugoslavia Criminal Code, Article 245	Six months to five years
Car theft	1	Serbia Criminal Code, Article 174	Three months to five years
		Kosovo Criminal Code, Article 143	Three months to five years
Robbery	5	Serbia Criminal Code, Article 168	At least one or three years, depending on value of goods stolen
		Kosovo Criminal Code, Article 137	At least three years
Robbery with use of force	1	Serbia Criminal Code, Article 169	At least five years
		Kosovo Criminal Code, Article 138	At least five years
Theft	4	Serbia Criminal Code, Article 165	Three months to five years
		Kosovo Criminal Code, Article 134	Three months to five years
Looting	2	Serbia Criminal Code, Article 230(1)	Three months to five years
		Kosovo Criminal Code, Article 141	At least three years
Weapons possession	2	Serbia Criminal Code, Article 228	Six months to five years
		Kosovo Criminal Code, Article 198	Six months to five years
Inciting a riot	2	Serbia Criminal Code, Article 230(2)	One to ten years
		Kosovo Criminal Code, Article 200	One to ten years
Extortion	1	Serbia Criminal Code, Article 180	Six months to five years
		Kosovo Criminal Code, Article 149	Six months to five years
TOTAL	**75**		

NOTES:

1. THE OSCE Legal System Monitoring Section and the UN Judicial Affairs Department has collected data regarding eighty-one individuals. Of the remaining seven detainees who are not indicated in Table A;
   a. One individual was arrested for arson. However, the provision for this crime could not be found in either the Serbia or Kosovo Criminal Code.
   b. One individual was arrested for possessing a grenade. While the Article 229 of the Serbia Criminal Code formerly provided for the "unlawful holding of exploding substances," this article was deleted with the promulgation of the Law on Weapons and Ammunition.
   c. Two individuals were arrested on the basis of acts for which the relevant crime has not been identified ("threat to KFOR," "suspect in shooting")
   d. The basis for the arrest of three individuals is not indicated.
2. There is no analogous provision in the Kosovo Criminal Code for kidnapping.

[42] Article 19 of the Federal Republic of Yugoslavia Criminal Code states that "[f]or an attempted criminal act the court *may* reduce the punishment provided for the completed criminal act." (emphasis added).

TABLE 2: Crimes and number of detainees, by severity of punishment

Possible sentence	Crime	Number of persons held in this group of crimes
Crimes punishable by at least five years	Genocide War crimes Murder Attempted murder Robbery with use of force	45
Crimes punishable by less than five years	Assault Prostitution Drug trafficking Car theft Theft Looting Weapons possession Extortion Kidnapping	19
Crimes which *may* be punished by five years	Rape (one to ten years) Robbery (at least one or three years) Inciting a riot (one to ten years)	11

TABLE 3: Indictments, by month of arrest and severity of punishment

	June 1999	July 1999	August 1999
Crimes punishable by at least five years	1	4	5
Crimes punishable by less than five years	--	1	3
Crimes which *may* be punished by five years	--	1	2

NOTE: There are four individuals for whom information regarding the month of arrest or the crime for which he was detained is either unavailable or unconfirmed.

TABLE 4: Arrests, by month of arrest and severity of punishment

	June 1999	July 1999	Aug 1999	Other	Total
Crimes punishable by at least five years	4	16	20	5	45
Crimes punishable by less than five years	1	4	13	1	19
Crimes which *may* be punished by five years	2	3	6	0	11
Other	--	1	5	--	6
Total	7	24	44	6	81

NOTE: "Other" refers to individuals for whom information regarding the month of arrest or the crime for which he was detained is either unavailable or unconfirmed.