

Department of Human Rights and Communities

Legal System Monitoring Section

**The Mitrovicë/Mitrovica Justice System:
status update and continuing human rights concerns**

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Introduction

Since February 2008, the justice system in the Mitrovicë/Mitrovica region has been functioning only in a limited capacity. The region has thus been left without a fully-functioning judicial system for nearly two years.

The Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) has issued several reports outlining the human rights violations resulting from the limited functioning of courts in the Mitrovicë/Mitrovica region.¹ The OSCE has repeatedly stressed the negative impact which the non-full functioning of the judiciary in the Mitrovicë/Mitrovica region has on the rule of law in general, and in particular on the observance of fundamental rights such as the right to liberty, the right of access to justice, and the right to trial within a reasonable time.²

From the time of the last reporting, there has been no major progress in the operation of the rule of law institutions in the region. This report presents a status update on the current functioning of the judiciary in the Mitrovicë/Mitrovica region and reiterates concern over continuing human rights violations as well as the difficult working conditions in some judicial offices.³

Status update

The Mitrovica/Mitrovicë court complex located in the northern part of Mitrovica/Mitrovicë – which before February 2008 housed the Mitrovicë/Mitrovica district court, municipal court, minor offences court, and municipal and district prosecutors' offices – has been inaccessible for local judges and public prosecutors and their support staff following the events of February and March 2008.⁴ This court complex currently houses staff of the European Union Rule of Law Mission in Kosovo (EULEX) – i.e. EULEX judges and prosecutors together with their local (Kosovo Serb and Kosovo Albanian) and international support staff – who were officially deployed on 9 December 2008. The EULEX staff assigned to this court currently consists of two criminal judges,

¹ See the OSCE Legal System Monitoring Section Monthly Report – March 2008, *Reactions to Kosovo's declaration of independence severely impact the justice system in Mitrovicë/Mitrovica and negatively affect courts in other regions, resulting in human rights violations*. See also the OSCE Legal System Monitoring Section Monthly Report – December 2008, *Continuing Human Rights Concerns and Recent Developments*. See also the OSCE Legal System Monitoring Section Monthly Report – *The Use of Detention in Criminal Proceedings in Kosovo: Comprehensive Review and Analysis of Residual Concerns* (Part I), pages 22-23.

² Articles 5 and 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, ECHR).

³ The information contained in this report was obtained by the OSCE through direct monitoring as well as through interviews with court officials conducted in November 2009.

⁴ Starting on 21 February 2008, a group of 50 to 200 protestors, among them employees of the pre-1999 justice system, staged daily protests outside the Mitrovicë/Mitrovica court complex on weekday mornings demanding entry to the building to return it to the Serbian court system. Protestors forcibly entered court premises on 14 March 2008. On 17 March 2008, UNMIK police, in an operation supported by KFOR, entered the building, arrested the occupants and re-established control over the courthouse. Serious civil unrest followed leading to the death of one international civilian police officer.

two prosecutors, two civil judges and three legal officers. To date, EULEX staff sitting at this court have completed five criminal cases.⁵

All local judges and prosecutors who used to work at the court complex in northern Mitrovica/Mitrovicë continue to operate in a limited capacity at the currently relocated Mitrovicë/Mitrovica district court on the premises of the Vushtrri/Vučitrn municipal court. This relocated district court holds detention on remand hearings, issues decisions in divorce cases, and processes requests to recognize foreign judgements.⁶ The district court also covers the municipalities of Skenderaj/Srbica and Vushtrri/Vučitrn, adding those municipalities to the list of municipalities without a fully-functioning court system.

Municipal court level

The Mitrovicë/Mitrovica municipal court (covering northern and southern Mitrovicë/Mitrovica as well as Zvečan/Zveçan) also operates in a limited capacity from the premises of the Vushtrri/Vučitrn municipal court. In criminal cases, this court handles all detention-related proceedings and conducts confirmation of indictments hearings in cases with defendants held in detention; it has also held some trial sessions. In civil cases, the court only holds trials in so-called emergency cases, which include cases of obstruction of possession, domestic violence cases, cases regarding the amendment of a first-instance court judgment on child custody, and inheritance cases. From February 2008, the Mitrovicë/Mitrovica municipal court has conducted and completed trials in approximately 17 criminal cases (one of these cases was completed by EULEX judges) and has handled 18 civil cases (including five cases which fell under the jurisdiction of the Vushtrri/Vučitrn court and were therefore forwarded to it). The court also provides minimal legalization services: its legalization office, open three days per week, legalizes contracts and amendments to contracts and issues authorizations and criminal record certificates.

Municipal minor offence court level

The Mitrovicë/Mitrovica minor offences court also functions in a limited capacity on the premises of the Vushtrri/Vučitrn municipal court. From the end of February 2008 until the end of December 2008, this court had received 8,400 cases originating from the southern part of the Mitrovicë/Mitrovica municipality (the court did not receive any cases

⁵ EULEX judges sitting at the district and municipal court of Mitrovicë/Mitrovica in the courthouse in northern Mitrovica/Mitrovicë completed one robbery trial in March 2009. A second trial on charges of light bodily harm and damage to movable property involving a Kosovo Albanian defendant and a Kosovo Serb injured party, was completed in mid-May. A third trial involving charges of alleged acts of terrorism (which the prosecution waived at a later stage) and inciting national, racial, religious or ethnic hatred, discord or intolerance ended on 19 November 2009. A fourth trial, on charges of attempted murder and unauthorized ownership, control, possession or use of weapons, was completed on 7 December 2009. A fifth trial involving charges of light bodily harm was completed on 19 January 2010. EULEX judges have scheduled three additional trials to begin in the months of January and February 2010.

⁶ The Mitrovicë/Mitrovica district court recognized 352 foreign judgments in 2008, while 355 in the first 11 months of 2009.

from the northern part). In the second half of 2009, the police stations from northern Mitrovica/Mitrovicë and Zvečan/Zveçan started to file cases of disturbance of public peace and order with the Mitrovicë/Mitrovica minor offences court. In the period from January to November 2009 this court received more than 9,700 cases, including those from northern Mitrovica/Mitrovicë and Zvečan/Zveçan. Because of the current difficult working conditions, the court accepts and files all incoming cases. However, it handles only those with summary procedure as well as urgent cases such as cases of disturbance of public peace and order, traffic accidents, seizure of documents by the police and those that need to be transferred to other courts in Kosovo.

The Zubin Potok and Leposavić/Leposaviq municipal and minor offences courts remain non-functional since February 2008. No civil or minor offences cases falling under the territorial jurisdiction of these courts are being processed. From all criminal cases only those requiring detention are handled through transfers of jurisdiction to another municipal court from the region. This practice of transferring jurisdiction over criminal cases involving detention commenced in early 2009 and is operated through requests addressed to the president of the Mitrovicë/Mitrovica district court, who usually grants such requests. The president of the Zubin Potok municipal court has also offered to come to the Vushtrri/Vučitrn municipal court and handle cases requiring detention on remand which fall under the territorial competence of the Zubin Potok municipal court.

The Skenderaj/Srbica and Vushtrri/Vučitrn municipal and minor offences courts are at this point the only courts in the Mitrovicë/Mitrovica region that operate more or less normally, although the Vushtrri/Vučitrn municipal court's facilities are greatly overcrowded due to the fact that it also houses the relocated Mitrovicë/Mitrovica district, municipal and minor offences courts as well as the Mitrovicë/Mitrovica district and municipal public prosecution offices with all their staff. Also of note, and as previously mentioned, appeals filed against judgments issued by the Skenderaj/Srbica and Vushtrri/Vučitrn municipal courts cannot be processed because of the non-functioning of the Mitrovicë/Mitrovica district court, which has jurisdiction over such appeals.

District and Municipal Public Prosecution Level

With regard to the prosecution service, the Mitrovicë/Mitrovica district and municipal public prosecution offices, covering all six municipalities in the region: (Leposavić/Leposaviq, Mitrovicë/Mitrovica, Skenderaj/Srbica, Vushtrri/Vučitrn, Zubin Potok, and Zvečan/Zveçan) are also currently operating from the premises of the Vushtrri/Vučitrn municipal court, exercising limited prosecutorial functions.

The Mitrovicë/Mitrovica district public prosecution office performs all duties up to and including the filing of indictments. However, no indictments are confirmed by the court. Criminal proceedings in cases falling under the jurisdiction of the Mitrovicë/Mitrovica district court are thus stalled at the stage of confirmation of the indictment.⁷

⁷ The only cases falling under the jurisdiction of the Mitrovicë/Mitrovica district court on which indictments are confirmed and trials held are those handled by EULEX staff – see above.

The Mitrovicë/Mitrovica municipal public prosecution office performs all duties up to and including the filing of indictments; attending confirmation hearings in cases falling under the competence of the Mitrovicë/Mitrovica municipal court; and, occurring in southern Mitrovicë/Mitrovica that involve defendants in pre-trial detention. Municipal public prosecutors perform similar duties with regard to cases originating from northern Mitrovica/Mitrovicë and Zvečan/Zveçan which warrant detention or are considered priority cases that by their nature require quick action. Prosecutors also attend some trial sessions. Prosecutors are now handling all cases falling under the competence of the Leposavić/Leposaviq and Zubin Potok municipal courts, on which they perform all the duties mentioned above (whenever needed, a request is filed with the president of the Mitrovicë/Mitrovica district court to transfer the competence to another court of the same material jurisdiction from the Mitrovicë/Mitrovica region). Municipal prosecutors continue to perform the full spectrum of prosecutorial duties in the cases falling under the competence of the Vushtrri/Vučitrn and Skenderaj/Srbica municipal courts.

EULEX judges and prosecutors

The deployment of EULEX judges and prosecutors in December 2008 brought some improvements to the functioning of the judiciary in the Mitrovicë/Mitrovica region, in so far as the still limited capacities of EULEX allow for some of the most serious cases to be effectively prosecuted and tried. As noted above, to date, EULEX judges assigned to the district and municipal court of Mitrovicë/Mitrovica have completed five criminal cases. In August 2009, EULEX also started to hold special hearings to take over cases from the local judiciary. It is noteworthy that such hearings, attended by the president of the Mitrovicë/Mitrovica district court together with local judges and prosecutors, are held on the premises of the court compound in northern Mitrovica/Mitrovicë. Security at such hearings is provided by EULEX and so far they have been held without incidents.

EULEX has also taken steps to prepare the processing of all other pending cases. To that aim, at the end of July 2009 EULEX, with support of local staff from the Mitrovicë/Mitrovica district court, started the inventory of all criminal and civil case-files located in the courthouse in northern Mitrovica/Mitrovicë and falling under the jurisdiction of the Mitrovicë/Mitrovica district court.⁸ The inventory team successfully completed the processing of criminal case-files in mid-October 2009 and the inventory of civil case-files in November 2009.⁹ The total number of criminal and civil case-files that have been retrieved and organized by the inventory team is of approximately 3,500.¹⁰

⁸ The inventory team, composed of four (two Kosovo Serb and two Kosovo Albanian) administrative employees of the Mitrovicë/Mitrovica district and municipal courts, was tasked to retrieve, organize, register and classify the case-files located in the courthouse in northern Mitrovica/Mitrovicë which fall under the jurisdiction of the Mitrovicë/Mitrovica district court.

⁹ On 6 October 2009, the inventory team was strengthened with another two additional administrative staff (one Kosovo Albanian administrator of the Mitrovicë/Mitrovica district public prosecution office and one Kosovo Serb executive clerk of the Mitrovicë/Mitrovica municipal court) and has taken on the inventory of case-files of the District Public Prosecution Office.

¹⁰ In its press release of 14 October 2009, EULEX gives an estimated number of more than 3,000 case-files that have been found, organized, registered and classified.

Of all the criminal case-files inventoried and archived in the courthouse in northern Mitrovica/Mitrovicë, 42 cases were identified by EULEX as priority cases. Most of these 42 cases involve defendants held in detention on remand. These cases (which are at different procedural stages, from investigations to [suspended] trial) are to be given priority over all other cases and will be the first to be dealt with by EULEX judges in the region. At some later stage it is envisaged that cases will be handled by an ethnically-mixed group of judges and prosecutors, composed of five Kosovo Albanian, five Kosovo Serb and five international EULEX judges and prosecutors. The date when this mixed group of judges and prosecutors is to commence its work is yet unknown.

Continuing human rights violations

As result, the absence of a fully-functioning justice system in the Mitrovicë/Mitrovica region leads to serious violations of human rights, in particular violation of:

- the right to access to justice;
- the right to trial within a reasonable time and;
- the right to liberty.

The right to access to a court

The established case-law of the European Court of Human Rights (ECtHR) provides that “[e]veryone [has] the right to have any claim relating to his civil rights and obligations brought before a court or tribunal,”¹¹ and that a “hindrance, even of a temporary character, may contravene the [European] Convention [on Human Rights].”¹² The ECtHR has construed the right of access to a court as a key feature of a more general concept of “rule of law”, which is part of the “common heritage” of the Council of Europe states.¹³ In civil matters in particular, “one can scarcely conceive of the rule of law without there being a possibility of having access to the courts”.¹⁴

The residents of Mitrovicë/Mitrovica, Zvečan/Zveçan, Zubin Potok and Leposavić/Leposaviq have had their right to access to justice continuously hampered from 20 February 2008 to date. Only in some cases which were considered priority or urgent individuals could seek and obtain justice before relocated courts functioning in limited capacity, as described above. The same stands for individuals whose claims or cases fall under the jurisdiction of the Mitrovicë/Mitrovica district court. EULEX has only handled a small fraction of criminal cases before this court, while the vast majority of proceedings in both criminal trials and civil claims continue to remain suspended indefinitely.

The absence of a fully-functioning district court also prevents the processing of appeals filed against judgments of municipal courts from the Mitrovicë/Mitrovica region. In some cases which were completed shortly before February 2008, appeals could not be filed

¹¹ ECtHR, *Golder v. United Kingdom*, 4451/70, Judgment of 21 February 1975, paragraph 36.

¹² *Ibidem*, paragraph 26.

¹³ *Ibidem*, paragraph 34.

¹⁴ *Ibidem*, paragraph 34.

because the court had only announced the verdict orally, and did not manage to issue written verdicts due to the inaccessibility of case-files which remained in the north.

In three criminal cases, in which first-instance judgments had been orally announced before the court compound stopped functioning, judges could not issue written verdicts, as the case-files remained in the courthouse in the north. Both public prosecutors and defendants were thus deprived of their right to file an appeal on those cases. With the assistance of EULEX, those three case-files were recovered from the court in northern Mitrovica/Mitrovicë, and district court judges then drafted written judgments in all three cases, so that they became appealable. Two cases are already on appeal to the Supreme Court of Kosovo. An appeal on the third case is still pending.

Another serious problem related to the absence of a fully-functioning justice system in the Mitrovicë/Mitrovica region concerns the possible lapse of the statute of limitations for many of the crimes and minor offences that occurred in Mitrovicë/Mitrovica, Zvečan/Zveçan, Zubin Potok and Leposavić/Leposaviq.¹⁵

As mentioned earlier in this report, the vast majority of criminal and minor offence cases that are non-urgent, occurring in these municipalities, cannot get effectively prosecuted and/or completed, which in turn brings the risk of the statute of limitations expiring on some cases before they are properly handled.¹⁶ This risk is particularly high in minor offences cases, for which the law provides a rather short period of statutory limitation.¹⁷ The inability to properly complete those criminal and minor offences cases in effect denies victims' quest for justice. This widespread denial has a serious effect on the rule of law in the region and severely undermines public trust in law enforcement and justice in general

The right to trial within a reasonable time

The ECtHR has held that an individual's right to trial within a reasonable time generates a correlative positive obligation on the part of authorities to organize their legal system in

¹⁵ This threat of the period of statutory limitation expiring before cases are effectively handled concerns also the cases on which the files are blocked in the courthouse in northern Mitrovica/Mitrovicë, in particular the cases involving minor offences and crimes falling under the jurisdiction of the municipal court, for which the law provides shorter statutes of limitations. See Article 27 paragraph 1 of the law on Minor Offences (Official Gazette of the Socialist Autonomous Province of Kosovo, no. 23/79) and Article 90 paragraph 1 item 6 of the Provisional Criminal Code of Kosovo, promulgated by UNMIK Regulation No. 2003/25, 6 July 2003, with subsequent amendments (PCCK).

¹⁶ The non-full functioning of the courts and prosecution services from the northern municipalities may however justify the interruption of the period of statutory limitation on criminal prosecution, under art. 91(2) PCCK. A clarification on this point from the Supreme Court of Kosovo would be very helpful.

¹⁷ See Article 27 paragraph 1 of the law on minor offences (Official Gazette of the Socialist Autonomous Province of Kosovo, no. 23/79).

such a way as to enable the courts to comply with the “reasonable time” requirement.¹⁸ Public unrest in a region where a trial is held can justify delays in proceedings only insofar as public authorities undertake steps to transfer the caseload to another jurisdiction.¹⁹ In general, whenever public authorities are faced with a temporary backlog of business, they must undertake, with requisite promptness, remedial action to deal with an exceptional situation of that kind.²⁰

Confronted with the disruption in the functioning of courts in Mitrovicë/Mitrovica, Zubin Potok and Leposavić/Leposaviq, Kosovo institutions have taken only limited steps to address the situation. The currently relocated Mitrovicë/Mitrovica district, municipal and minor offences courts handle only urgent, or priority criminal, civil and minor offences cases. Many of those cases are not completed but left pending at some procedural stage, as described above. Only urgent criminal cases from the non-functioning municipal courts in Zubin Potok and Leposavić/Leposaviq started to be transferred to same-level jurisdiction courts only after roughly one year from the moment those courts stopped functioning. The processing of such urgent criminal, civil and minor offences cases, whether at relocated courts or through transfer of jurisdiction, is a positive development in and of itself, but it cannot make up for the fact that the vast majority of cases before the Mitrovicë/Mitrovica, Zubin Potok and Leposavić/Leposaviq courts are still delayed or suspended indefinitely. EULEX, with its mandate²¹ and current staffing levels, helps prosecute and try some of the most serious cases, but it cannot compensate for the absence of a fully-functioning judiciary in the region.

That means that unreasonable delays in the processing of most cases before the Mitrovicë/Mitrovica, Zubin Potok and Leposavić/Leposaviq courts are likely to continue to be the norm, and not the exception. Particularly troublesome is the situation at the Mitrovicë/Mitrovica district court, which by nature of its jurisdiction should be handling cases involving the most serious crimes. In 2009, there were 120 indictments pending confirmation before this court, and it is still not clear when those indictments will be confirmed and cases referred for trial.

On 26 May 2008, a Mitrovicë/Mitrovica district prosecutor filed an indictment against a Kosovo Albanian police officer, charging him with attempted aggravated murder;²² unauthorized ownership, control,

¹⁸ See, e.g. ECtHR, *Spentzouris v. Greece*, 47891/99, Judgment of 7 May 2002, paragraph 27. See also *Eckle v. Germany*, 8130/78, Judgment of 15 July 1982, paragraph 92. In another case the Court held that a temporary backlog of business does not involve liability on the part of the institutions “provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation” (ECtHR, *Milasi v. Italy*, 10527/83, Judgment of 25 June 1987, paragraph 18).

¹⁹ See ECtHR, *Foti v. Italy*, 7604/76, 7719/76, 7781/77 and 7913/77, Judgment of 10 December 1982, paragraph 61.

²⁰ See ECtHR, *Baggetta v. Italy*, 10256/83, Judgment of 25 June 1987, paragraph 23.

²¹ See Article 3, European Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO. In part, EULEX is mandated to “mentor, monitor, and advise the competent Kosovo institutions on all areas related to the wider rule of law (including a customs service), whilst retaining certain executive responsibilities.” These responsibilities include, *inter alia*, investigating, prosecuting, and adjudicating certain cases.

²² Article 147, PCKK.

possession, or use of a weapon;²³ accepting bribes;²⁴ abusing official position or authority;²⁵ fraud;²⁶ and two counts of mistreatment in exercising duties.²⁷ No confirmation hearing has yet been scheduled on this case, despite the fact that the law requires courts to schedule confirmation of indictment hearings immediately and no later than two months from the date the indictment is filed.²⁸ The defendant was initially held in detention on remand from 12 March 2008 to 26 May 2008.

The OSCE was also monitoring a number of civil cases, including interethnic property cases, when the functioning of courts in the Mitrovicë/Mitrovica region was interrupted in February 2008. At that time there were already considerable delays in the processing of those cases (some of them dating back to 2001), due to various reasons. According to information available to the OSCE, these cases remain stalled and are awaiting the courts in northern Kosovo to re-start functioning.

In an interethnic property claim dated 17 May 2003, the Kosovo Albanian plaintiffs had asked for the confirmation of their ownership regarding a property located in Mitrovicë/Mitrovica before the Mitrovicë/Mitrovica municipal court. The court approved the plaintiffs' claim as grounded in a judgment rendered on 20 January 2004, after appointing a legal temporary representative for them and without trying to locate the respondents. The internally displaced Kosovo Serb respondents, who had been living and working in Mitrovicë/Mitrovica and Zvečan/Zveçan for the entire period, then filed a motion for retrial on 4 April 2005 after learning about the loss of their property. Only on 6 November 2007, more than two and a half years later, did the court hold a hearing on respondents' proposal for retrial, where it decided to allow the repetition of the procedure. In the meantime, the property had allegedly already been sold to a third party. After November 2007, the municipal judge in the case did not schedule any further session. The proceedings were suspended in February 2008, and remain stalled up to this day.

The right to liberty

The case-law of the ECtHR as well as the Kosovo legal framework provide that any period of detention should be periodically reviewed by a court.²⁹ In the case of prolonged detentions, law enforcement agencies have a duty to show that grounds for detention

²³ Article 328(2), PCCK.

²⁴ Article 343, PCCK.

²⁵ Article 339, PCCK.

²⁶ Article 261, PCCK.

²⁷ Article 164, PCCK.

²⁸ Articles 309(1) and 312(2), Provisional Criminal Procedure Code of Kosovo, promulgated by UNMIK Regulation No. 2003/26, 6 July 2003 (PCPCK).

²⁹ Articles 212(4) and 284-287, PCPCK.

continue to exist, and to conduct proceedings with special diligence.³⁰ Furthermore, any detention should last no longer than necessary,³¹ otherwise it becomes unlawful, and the person must be released pending trial.³²

The lack of a fully-functioning judicial and prosecution system in the northern municipalities leads to serious violations of the right to liberty. In early November 2009, the list of detainees before the Mitrovicë/Mitrovica district court indicated 32 persons held in detention on remand and 19 persons in house detention. A similar list from the Mitrovicë/Mitrovica municipal court showed five persons in detention on remand and two persons in house detention. Detention orders against many of these defendants were continuously extended during the period that the courts have been functioning only in a limited capacity.

In one case before the Mitrovicë/Mitrovica district court, a defendant charged with aggravated murder,³³ attempted murder,³⁴ and unauthorized ownership, control, possession, or use of weapons³⁵ has been held in detention since 6 February 2007. His trial was at the final stage when the court stopped functioning, but no progress has been made since. The court extended his detention on remand continuously, up until 3 March 2010.

In one case before the Mitrovicë/Mitrovica district court, a defendant charged with murder³⁶ and unauthorized ownership, control, possession, or use of weapons³⁷ has been held in detention since 31 May 2007. His trial had not yet started at the time when the court stopped functioning. His detention on remand has been continuously extended, up until 5 March 2010.

Many other persons, detained based on rulings issued by the Mitrovicë/Mitrovica district or municipal court, are in a similar position. This situation raises serious concerns with regard to the observance of their fundamental right to liberty.

Difficult working conditions for the currently temporarily relocated judges and prosecutors

A report on the justice system of the Mitrovicë/Mitrovica region would not be complete without a brief description of the very difficult working conditions in which the judges, prosecutors and support staff of the currently relocated courts and prosecution offices currently operate.

³⁰ Article 285(1), PCPCK; see also ECtHR, *Dobrev v. Bulgaria*, judgment of 10 August 2006, paragraph 79.

³¹ Article 5(3), PCPCK; see also ECtHR, *Labita v. Italy*, judgment of 6 April 2000, paragraph 152.

³² See Articles 5(1)(c) and 5(3), ECtHR.

³³ Article 147(1) 23, PCCK.

³⁴ Articles 146(1), 20 and 23, PCCK.

³⁵ Article 328(2), PCCK.

³⁶ Article 146, PCCK.

³⁷ Article 382, PCCK.

As was mentioned earlier in this report, the Vushtrri/Vučitrn municipal court currently houses, besides its own staff, also the personnel of the Mitrovicë/Mitrovica district court, municipal court, and minor offences court, and that of Mitrovicë/Mitrovica district and municipal public prosecution offices. The premises of the Vushtrri/Vučitrn municipal court are thus severely overcrowded and the officials currently working in that court, as well as all the parties who come before them, have to operate in a very congested environment.

Thus, the Mitrovicë/Mitrovica district court uses the courtroom of the Vushtrri/Vučitrn municipal court. A total of 10 to 15 judges and support staff are placed in that courtroom. The judges also use one additional office whenever there is a need to hold detention hearings or civil trials.

The Mitrovicë/Mitrovica municipal court has been allocated one single office room, of only about seven square meters in size, on the premises of the Vushtrri/Vučitrn municipal court. In that one room the president of the court, one or two judges, five administrative staff of the Mitrovicë/Mitrovica municipal court, and two administrative staff of the Vushtrri/Vučitrn municipal court are placed. Whenever there is a need to hold a session or trial, the Mitrovica/Mitrovicë judges have to ask one of their Vushtrri/Vučitrn colleagues for permission to use their office.

The Mitrovicë/Mitrovica minor offences court uses one office of about 12 square meters at the Vushtrri/Vučitrn municipal court. Around 24 staff members use that office, with at least ten staff members present there every day.

The Mitrovicë/Mitrovica district public prosecution office uses one office room of 16 square meters in the building of the Vushtrri/Vučitrn municipal court. A total of nine people are placed in that room: five prosecutors, one administrator, two registrars, and one interpreter whenever needed. Similarly, the Mitrovicë/Mitrovica municipal public prosecution office uses one office of about 12 square meters at the Vushtrri/Vučitrn municipal court. At least 17 staff members use that office, with at least ten of them present there every day. When a municipal or district prosecutor has to examine a party the other staff members have to leave the office, but in some cases the examination is done in front of others.

Such working conditions fall far short of established international standards,³⁸ and undermine not only the efficiency of the court but the very dignity which should be inherent in the functioning of judicial bodies. Having to operate in such an environment makes it almost impossible for judges and prosecutors to discharge their duties effectively and efficiently, and also give rise to a host of daily logistical problems and hardships. The following may serve as an example.

³⁸ See Principle V (2), Recommendation No. R (94) 12, of the Council of Europe to Member States on the Independence, Efficiency and Role of Judges. (Adopted by the Committee of Ministers, on 13 October 1994 at the 518th meeting of the Ministers' Deputies).

Before October 2008, the relocated Mitrovicë/Mitrovica municipal public prosecution office was receiving from the police only case-files on emergency cases and those warranting pre-trial detention. All other case-files sent to the prosecution were kept in police drawers due to lack of stage space. On 30 October 2008, the Kosovo chief prosecutor sent a letter to the Mitrovicë/Mitrovica chief municipal public prosecutor ordering him to accept all criminal reports filed with his office. Thereafter, all criminal reports addressed to the Mitrovica/Mitrovicë municipal public prosecution office were accepted. On 11 August 2009 the Mitrovicë/Mitrovica chief municipal public prosecutor sent a letter to the Mitrovica/Mitrovicë police regional investigations unit informing them that as of the date of the letter the prosecution office could no longer receive any more criminal reports in cases (except for urgent cases and cases requiring detention on remand) due to lack of adequate storage facilities. On 12 October 2009 the Kosovo chief prosecutor addressed another letter to the Mitrovicë/Mitrovica chief municipal public prosecutor, ordering him to accept and register all criminal reports filed with his prosecution office and to work on them as much as possible, and not to return any criminal reports to the police. Following this request the Mitrovicë/Mitrovica municipal public prosecution office again started to accept all criminal reports filed with the office. Currently, the case-files are kept in carton boxes located in an office as well as in unlocked drawers. This method of storage increases the risk of loss or tampering.

Conclusion

There have been very few positive developments in the functioning of the justice system in the Mitrovicë/Mitrovica region throughout 2009. Much of the region's judiciary remains paralyzed.

The currently relocated courts and prosecution offices cannot effectively handle the cases and claims brought before them, leaving the residents of the Mitrovicë/Mitrovica region with very limited access to justice. Most criminal, civil and minor offences cases, are not being handled, and run the risk of having their statute of limitation expire. When cases do get processed, unreasonable delays and indefinite suspensions often take place. Many defendants held in detention on remand have their detention extended continuously, and the relocated courts and prosecution offices are clearly unable to handle cases involving detention with the special diligence required of them by international and domestic law. The deployment of EULEX judges and prosecutors was a positive development, but with only five criminal cases completed in Mitrovicë/Mitrovica during their first ten months of operation, and given their current staffing levels and limited jurisdiction, their impact is unfortunately only limited.

In light of all of the above, the OSCE underscores once again that the absence of a fully-functioning judicial system in northern Kosovo has grave adverse repercussions on individuals' rights of access to justice, to trial within a reasonable time, and to liberty. The lack of a functioning justice system in the northern municipalities for almost two years now has significantly eroded people's trust in law enforcement and judicial

institutions and in the rule of law in general. To prevent further undermining of the rule of law and to put an end to continuing violations of human rights, the OSCE calls on all the actors involved to step up their efforts and to restore as soon as possible a functioning justice system in the Mitrovicë/Mitrovica region.