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MONITORING DEPARTMENT

Legal System Monitoring Section

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Insufficient number or uneven distribution of judges and prosecutors, and inadequate court facilities, may lead to violations of domestic law and human rights standards

I. Insufficient number or uneven distribution of judges and prosecutors

The OSCE Mission in Kosovo (OSCE) is concerned that the insufficient number or uneven distribution of judges and prosecutors contributes to delays in civil and criminal cases.¹

International human rights standards establish that everyone is entitled to a fair hearing within a reasonable time.² This guarantee underlines “the importance of rendering justice without delays which might jeopardize its effectiveness and credibility.”³ It is especially important in criminal cases, so that individuals do not “remain[] too long in a state of uncertainty about their fate”.⁴ States therefore have an obligation to allocate sufficient financial resources at the disposal of their systems for a fair and effective administration of justice.⁵

In line with these standards, the Provisional Criminal Procedure Code of Kosovo⁶ requires that criminal proceedings be conducted within a reasonable time, and that any deprivation of liberty shall be reduced to the shortest time possible.⁷ Concerning the civil procedure, the Law on Contested Procedure states that the court shall conduct the procedure without any unnecessary delay.⁸

Currently, there are 302 judges working in the judicial system and 20 posts are vacant. For example, while the Kosovo Supreme Court has 16 positions for judges, there are only 13 active judges. Some larger courts, such as the Mitrovicë/Mitrovica District Court and the Gjilan/Gnjilane Municipal Court, have vacancies (each court lacks two judges). But even the lack of one judge can have a serious impact on the work of the court. For

¹ Increasing salaries would help to attract the best candidates to fill these slots. At a minimum, the salaries in the justice system should be comparable with their peers in the executive and legislative branches. Further factors can influence the speed of caseload, such as the lack of sufficient court support staff. See <http://www.ncscinternational.org/ks/news3.aspx>.

² See Article 14(3) of the International Covenant on Civil and Political Rights, and Article 6(1) of the European Convention on Human Rights (the Convention). The European Court on Human Rights has held that the reasonableness of the length of proceedings depends on the particular circumstances of the case, including the complexity of the case, the conduct of the defendant and the conduct of the competent administrative and judicial authorities (see, e.g., European Court of Human Rights, *Konig v. Germany*, 6232/73, Judgment, 28 June 1978, paragraph 99).

³ European Court of Human Rights, *H. v France*, 10073/82, Judgement, 24 October 1989, paragraph 58.

⁴ European Court of Human Rights, *Stogmuller v. Austria*, 10073/82, Judgement, 10 November 1969, paragraph 5.

⁵ N. Mole, C. Harby, *The Right To A Fair Trial. A Guide To The Implementation of Article 6 of the European Convention On Human Rights*, 2nd edition, August 2006, page 7.

⁶ UNMIK Regulation No. 2003/26, of 6 July 2003 (“Criminal Procedure Code”).

⁷ See Criminal Procedure Code, Article 5.

⁸ Article 10 of the Law on Contested Procedure, Official Gazette of Socialist Federal Republic of Yugoslavia No. 4/77, 1478, 36/80-1182, 69/82-1596.

example, the Kamenicë/Kamenica Municipal Court only has two judges, including the president, to handle all civil and criminal cases.⁹

The OSCE has monitored several cases where trials were postponed or delayed due to the lack of judges and/or prosecutors:

During an interview with OSCE monitors, a Mitrovicë/Mitrovica municipal prosecutor stated that his office until recently had five prosecutors and a chief prosecutor, who covered five municipal courts.¹⁰ However, two prosecutors were recently promoted to the District Prosecution, leaving only three prosecutors and a chief prosecutor in the office. This number of prosecutors is insufficient to cover five municipalities, each of which has a considerable caseload. A Mitrovicë/Mitrovica Municipal Court judge told the OSCE that, due to the lack of prosecutors, he recently had to postpone several scheduled trials.

In a case in Gjilan/Gnjilane, on 28 June 2007 the municipal court had to postpone a trial session because the only available municipal prosecutor was busy with other trial sessions.

In some courts in Kosovo, there appear to be too few judges to handle the court caseload.¹¹

For example, the Minor Offences Court in Kaçanik/Kacanik has only one judge to handle a caseload of approximately 3,500 cases per year. The Dragash/Dragaš Minor Offences Court has three judges to handle a caseload of approximately 1,200 cases per year. Consequently, the caseload per judge of the Kaçanik/Kacanik court is nearly ten times higher than that of the Dragash/Dragaš court.¹²

Understaffing is particularly serious in the Zubin Potok Municipal Court, which only has one judge handling both criminal and civil proceedings, and who also serves as the president of the court.¹³

⁹ In addition, the Pejë/Peć District Court, and the municipal courts in Suharekë/Suva Reka, Malishevë/Mališevo, Dragash/Dragaš, Pejë/Peć, Gjakovë/Đakovica, Ferizaj/Uroševac and Vushtrri/Vučitrn, each lack one judge.

¹⁰ Mitrovicë/Mitrovica, Vushtrri/Vučitrn, Skenderaj/Srbica, Zubin Potok and Leposavić/Leposaviq.

¹¹ Based on official statistics provided by the Kosovo Judicial Council. At the beginning of 2006 the number of unresolved cases before the municipal courts amounted to 143,776 cases, and before the district courts to 11,802 cases; in addition to these, the municipal courts received 253,466 new cases during 2006, and the district courts 17,427. Official data for 2007 is not yet available.

¹² Official figures provided by the Kosovo Judicial Council's Report on the work of the Minor Offences Courts, 2006. Among the most overloaded Minor Offences Courts are Prishtinë/Priština (nine judges, approximately 3,800 cases per judge per year) and Ferizaj/Uroševac (five judges, over 3,000 cases per judge per year). In contrast, the Zubin Potok and the Štrpce/Shtërpçë Minor Offences Courts each have a caseload of less than 500 cases per judge per year.

¹³ The OSCE has already stressed that this situation affects the right to a tribunal established by law (see Monthly Report, July 2006).

Understaffing also dramatically affects municipal prosecution offices. Municipal prosecutors are generally assigned to the municipal court of the district centre¹⁴ and not to the respective municipal court(s) with whom they work.¹⁵ Thus, they must travel to the competent municipal court whenever their presence is required. Due to their limited number, and lack of adequate means of transportation, they face daily difficulties in their work.

The insufficient number or uneven distribution of court and prosecution staff leads to delays in processing cases, even where a case is relatively simple. This may ultimately lead to violations of the right to a trial within a reasonable time. Therefore, the vacant posts should be filled as a matter of priority. Moreover, the Kosovo Judicial Council should consider increasing the number of prosecutors and judges and/or redistributing existing staff to match the existing caseload.

II. Inadequate court facilities

According to the UN Basic Principles on the Independence of the Judiciary, each member state should provide adequate resources to enable the judiciary to properly perform its functions.¹⁶ This includes court facilities such as courtrooms and appropriate office space.

Moreover, international standards require that “everyone is entitled to a [...] public hearing.”¹⁷ Similarly, domestic law requires that the main trial in criminal and civil proceedings shall be public.¹⁸ However, the public may be excluded under certain circumstances.¹⁹ The right to a public trial is a fundamental aspect of fair trial standards, because it makes the justice system open to public scrutiny. This protects individuals from the exercise of arbitrary state power.

The OSCE is concerned that the inadequate facilities of many courts in Kosovo may lead to the violation of the right to a public trial. In fact, in some monitored cases, because of the lack of court rooms, the public could not access some hearings.

¹⁴ In addition, municipal prosecutors are also in Ferizaj/Uroševac (covering the municipal courts of Ferizaj/Uroševac and Kačanik/Kaçanik), and Gjakovë/Đakovica (the municipal court in Gjakovë/Đakovica alone).

¹⁵ According to several court presidents, prosecutors should be assigned to a specific municipal court rather than having to travel throughout the region.

¹⁶ General Assembly Resolution 40/32, 29 November 1985 and 40/146, 13 December 1985.

¹⁷ Article 6(1) of the European Convention on Human Rights; Article 14(1) of the International Covenant on Civil and Political Rights; Article 10 Universal Declaration of Human Rights. However, this right is subject to restrictions in the interest of morals, public order or national security in a democratic society, where the interest of juveniles or the private life of the parties so require or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

¹⁸ Article 328(1), Criminal Procedure Code; Article 4, Law on Contested Procedure.

¹⁹ Articles 328 to 331 of the Kosovo Criminal Procedure Code, and Articles 306 to 310 of the Law on Contested Procedure.

For example, in a high profile case involving a defendant charged with several criminal offences²⁰ before a panel of international judges at the Prishtinë/Priština District Court on 6 July 2007, all members the public who wished to attend could not fit in the overcrowded courtroom. Many stood in and outside the courtroom.

In another case before the Prizren Municipal Court, involving a defendant charged with attacking official persons,²¹ on 25 January 2008 the court held a trial session in the presiding judge's office. The room was so small that some relatives of the defendant, who desired to attend the session, could not fit and remained in the corridor.

Of concern, in one instance, the lack of space led to the violation of the right to be tried in one's presence.²²

In a case before the Pejë/Peć Minor Offences Court, involving proceedings against 13 defendants charged with disturbing public peace and order, the court held a session on 18 June 2007. However, the judge's room was so small that not all defendants could fit in the room. Therefore, the judge interrogated each defendant individually and then asked the person to leave the room. This violated the right to be tried in one's presence.

The OSCE notes that in many municipal and minor offences courts, judges hold trial sessions in their offices. The limited size of these offices often does allow the public to attend. Often, the entire office space is filled by the judge(s), court personnel, parties, and their legal representatives.

In addition to the lack of courtrooms and office space, courts and prosecution offices often do not have the necessary equipment to perform their responsibilities.

For example, courts and prosecutors offices often lack basic supplies such as pens, paper, and printer toner,²³ and copy machines often do not function.²⁴ This not only delays their work, but may also violate the right of the public to access public documents.²⁵ Frequently, computers, typewriters, and fax machines are old and do not function. Often,

²⁰ Participating in a group obstructing official persons in performing official duties, Article 318(1) Criminal Code; Participating in a crowd committing a criminal offence, Article 320(1) Criminal Code; and Call to resistance, Article 319(1) Criminal Code.

²¹ Article 317(2), Criminal Code.

²² See International Covenant of Civil and Political Rights, Article 14(3).

²³ Prizren Municipal and District Prosecutor's Office, Pejë/Peć Municipal Court.

²⁴ In Prishtinë/Priština Municipal Court, there are only two photocopy machines which often do not function. In the branch of Prishtinë/Priština Municipal Court in Gračanica/Graçanicë, there are no photocopy machines. The Prishtinë/Priština District Prosecutor's Office, for months had problems with the photo-copy machine, and for the copying they used a small fax machine. In Mitrovicë/Mitrovica, the district and the municipal courts do not have a functioning copy machine, and use that of the Minor Offences Court.

²⁵ See UNMIK Regulation 2003/32, *On the Promulgation of a Law adopted by the Assembly of Kosovo on Access to Official Documents*, of 6 November 2003.

since courts lack fuel for generators, trial sessions must be adjourned because of power cuts.²⁶

Finally, some municipal prosecution offices only have one available vehicle to transport prosecutors to the municipal courts in the district. Consequently, prosecutors cannot appear in all criminal hearings they must attend. This causes undue delays in criminal proceedings, and may ultimately result in a violation of the right to a trial within a reasonable time.²⁷

Consequently, the OSCE recommends:

- As a matter of priority, the Kosovo Judicial Council should fill vacant judge and prosecutor positions, and evaluate whether to increase or redistribute judges and prosecutors to manage the existing caseload.
- The Kosovo Judicial Council, the Ministry of Justice and the Kosovo government should collectively ensure that the Kosovo justice system has adequate funds to perform its responsibilities. The justice system must have facilities to hold public trials, and sufficient office space, supplies and equipment.

²⁶ For example, this has occurred in the Pejë/Peć Municipal Court.

²⁷ Article 6(1), European Convention on Human Rights.