

**Organization for Security and Co-operation in Europe  
MISSION IN KOSOVO  
Department of Human Rights and Rule of Law**

**Legal System Monitoring Section**

**KOSOVO  
REVIEW OF THE CRIMINAL JUSTICE SYSTEM**

**“THE ADMINISTRATION OF JUSTICE IN THE  
MUNICIPAL COURTS”**

(March 2004)

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## EXECUTIVE SUMMARY

The work of the municipal courts is of crucial importance for the administration of justice and the establishment of rule of law in Kosovo. There are currently 24 municipal courts in Kosovo dealing with civil cases, juvenile cases, and criminal cases with a maximum penalty of up to five years of imprisonment. As such, the municipal courts play a major role in solving legal conflicts in society and constitute the level of court with which people are most likely to have contact. The functioning of the municipal courts therefore has a major impact on how the public perceives the administration of justice as a whole - its fairness and efficiency.

As a result of monitoring the conduct of criminal trials, the OSCE Mission in Kosovo has noted that the administration of justice in the municipal courts suffers from a series of shortcomings which may adversely affect the accused's right to a fair trial. This Report deals with five main aspects of the right to a fair trial, namely, the right to be tried within a reasonable time, the right to be tried by a tribunal established by law, the right to an impartial tribunal, the right to a public hearing, and the right to cross-examine witnesses.

Identifying the legislative, practical, and structural issues that affect the above-mentioned rights, the OSCE Mission in Kosovo has set out a number of recommendations aimed at developing the municipal court system, both in terms of fairness and efficiency. The relevant authorities are encouraged to implement these changes and to take all necessary steps to ensure the proper functioning of the administration of justice in the municipal courts.

With the entry into force of the Provisional Criminal Procedural Code of Kosovo<sup>1</sup>, on 6 April 2004, some of the legislative shortcomings highlighted in the Report will be remedied. However, most of the problems will remain and thus will still need to be addressed by the relevant authorities.

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<sup>1</sup> UNMIK Regulation 2003/26 On the Provisional Criminal Procedure Code of Kosovo

## SECTION 1

### BACKGROUND

This Report was prepared by the Legal System Monitoring Section (LSMS), which is part of the Department of Human Rights and Rule of Law of the OSCE Mission in Kosovo. The OSCE functions under the auspices of the United Nations Interim Administration Mission in Kosovo (UNMIK) as the Institution-Building Pillar.

This section is intended to provide a brief background to the Report and to outline the institutional context of LSMS and the Department.

#### **A. The Mandate of the Legal System Monitoring Section**

United Nations Security Council Resolution 1244 (SCR 1244) authorised the UN Secretary-General to establish an international civil presence in Kosovo that would provide an interim administration. One of the main responsibilities of the international presence was considered to be “*protecting and promoting human rights.*”<sup>2</sup>

The UN Secretary-General, in his report to the UN Security Council of 12 July 1999, assigned the lead role of institution-building within UNMIK to the OSCE and indicated that the tasks of the Institution-Building Pillar (Pillar III) should include human rights monitoring and capacity building. He also instructed UNMIK to develop co-ordinated mechanisms to facilitate human rights monitoring and the due functioning of the judicial system:

“UNMIK will have a core of human rights monitors and advisors who will have unhindered access to all parts of Kosovo to investigate human rights abuses and to ensure that human rights protection and promotion concerns are addressed through the overall activities of the mission. Human rights monitors will, through the Deputy Special Representative for Institution-building, report their findings to the Special Representative. The findings of the human rights monitors will be made public regularly and will be shared, as appropriate, with United Nations human rights mechanisms, in consultation with the Office of the United Nations High Commissioner for Human Rights. UNMIK will provide co-ordinated reporting and response capacity.” (Para. 87)

A Letter of Agreement, dated 19 July 1999, between the Under-Secretary-General for Peacekeeping Operations of the United Nations and the Representative of the Chairman-in-Office of the OSCE, stated that the OSCE should develop mechanisms to ensure that the courts, administrative tribunals, and other judicial structures operate in accordance with international standards of criminal justice and human rights. Within the OSCE Mission in Kosovo, the Department of Human Rights and Rule of Law has the responsibility to monitor and report upon the judicial system in terms of human rights and the rule of law. As a section of the Department, LSMS is tasked with the role of monitoring cases in the justice system, assessing their compliance with international standards, and reporting on matters of concern.<sup>3</sup>

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<sup>2</sup> United Nations Security Council Resolution 1244, 12 June 1999, para. 11/j.

<sup>3</sup> UNMIK Justice Circular 2001/15, issued on 6 June 2001, reaffirming that the LSMS trial monitors, with a few exceptions, have access to all court proceedings and documents. This Circular was intended to enhance the understanding of the judiciary with regard to the OSCE Mission in Kosovo’s mandate, and to ensure that the trial monitors maintain complete coverage at all stages of the criminal proceedings.

## **B. The Aim and Scope of the Report**

The mandate of the OSCE Mission in Kosovo includes the monitoring of the judicial system as a whole. Although to date this monitoring has concentrated on criminal cases that fall within the jurisdiction of the district court, the establishment of the rule of law and the respect of human rights require a well functioning judicial system at all levels. Therefore, the OSCE Mission in Kosovo has undertaken monitoring of the municipal courts system and prepared this Report to provide a more complete picture of the judicial system.

The Report identifies problems and difficulties within the municipal courts at a structural level and highlights concerns regarding specific cases where the activity of the judiciary, its administrators, or the law enforcement agencies have failed to comply with recognised international standards and guarantees of fair trial or due process. The Report puts forward recommendations on how to address these concerns.

The Report also comments on the changes that can be expected by the entry into force of the new Provisional Criminal Procedure Code (UNMIK Regulation 2003/26 On the Provisional Criminal Procedure Code of Kosovo), on 6 April 2004. With the new code some of the legislative problems will be addressed, while others, especially the structural problems, will remain.

The Report does not attempt to give an exhaustive list of the difficulties with which the municipal courts are confronted, but seeks to present some of the more significant issues that affect the administration of justice and the respect for human rights.

## **C. The Courts**

On 18 January 2000, in Gjilan/Gnjilane District Court, 36 judges and 4 public prosecutors were sworn into office for the Gjilan/Gnjilane region. Over the six weeks that followed, similar ceremonies were held in Kosovo's four other regions which marked the beginning of a renewed criminal justice system for Kosovo.

### **1. Court Structure and Territorial Jurisdiction**

There are presently 24 municipal courts in Kosovo, each covering the territory of one or more municipalities.<sup>4</sup> The most recently opened courts are the municipal courts in Leposavić/Leposaviq, and Zubin Potok.<sup>5</sup> While the municipal court in Leposavić/Leposaviq completed its first criminal case in 2003, the court in Zubin Potok has yet to conclude criminal cases.

There are five district courts in Kosovo, one in each region. These courts constitute the second instance for cases dealt with by the municipal courts and they cover the jurisdiction of three to six municipal courts each.<sup>6</sup> The district and municipal courts are listed below:

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<sup>4</sup> In addition it should be noted that a separate department, of the Municipal Court in Ferizaj/Uroševac, was opened in Shtërpçë/Štrpce in January 2003, in accordance with Administrative Directive No. 2002/24 implementing UNMIK Regulation No. 1999/1 On the Authority of the Interim Administration in Kosovo. The court in Shtërpçë/Štrpce held its first criminal hearing in November 2003.

<sup>5</sup> In Leposavić/Leposaviq and Zubin Potok, there have previously existed parallel court structures, see OSCE Mission in Kosovo Report, *Parallel Structures in Kosovo*, October 2003, p. 16.

<sup>6</sup> Article 35 of the Law on Regular Courts, Official Gazette of the SAP of Kosovo (OG SAPK), No. 21/78, 49/79, 44/82, 44/84, 18/87, 14/88 and 2/89.

**Prishtinë/Priština District Court**

Ferizaj/Uroševac Municipal Court  
(Shtërpçë/Štrpce Department)  
Gllgovc/Glogovac Municipal Court  
Lipjan/Lipljan Municipal Court  
Prishtinë/Priština Municipal Court  
Podujevë/Podujevo Municipal Court  
Kaçanik/Kaçanik Municipal Court

**Gjilan/Gnjilane District Court**

Gjilan/Gnjilane Municipal Court  
Kamenicë/Kamenica Municipal Court  
Viti/Vitina Municipal Court

**Pejë/Peć District Court**

Deçan/Dečani Municipal Court  
Gjakovë/Đakovica Municipal Court  
Istog/Istok Municipal Court  
Klinë/Klina Municipal Court  
Pejë/Peć Municipal Court

**Prizren District Court**

Dragash/Dragaš Municipal Court  
Malishevë/ Mališevo Municipal Court  
Prizren Municipal Court  
Rahovec/Orahovac Municipal Court  
Suharekë/Suha Reka Municipal Court

**Mitrovicë/Mitrovica District Court**

Leposavić/Leposaviq Municipal Court  
Mitrovicë/Mitrovica Municipal Court  
Skenderaj/Srbica Municipal Court  
Vushtrri/Vučitrn Municipal Court  
Zubin Potok Municipal Court

The third and last instance court, with territorial competence over the entire territory of Kosovo, is the Kosovo Supreme Court.<sup>7</sup>

## **2. Subject Matter Jurisdiction**

The municipal courts are competent to adjudicate criminal cases that carry a maximum penalty of up to, and including, five years of imprisonment. Additionally the courts adjudicate cases concerning aggravated theft, grave acts against public traffic safety, disputes relating to property, labour relations, custody, inheritance, executions, and all cases for which an individual judge is competent.<sup>8</sup> In the Provisional Criminal Procedure Code the jurisdiction of the municipal courts is regulated by Articles 21 and 23. According to these provisions the municipal courts will have jurisdiction to adjudicate at first instance criminal offences that are punishable by a fine or imprisonment of up to five years unless they fall under the jurisdiction of the district courts. No reference is made to any special crimes.

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<sup>7</sup> In addition to the municipal, district and supreme courts referred to above, there is also the minor offences court structure. Presently there are 25 municipal minor offences courts, each covering one or more municipalities. Cases on appeal from these courts are handled by the Higher Court for Minor Offences located in Prishtinë/Priština. See Article 39 Law on Minor Offences OG SAPK No. 23/79, 44/84, 18/87, 9/88 and 21/88.

<sup>8</sup> Article 26 of the Law on Regular Courts, as amended.

## SECTION 2

### THE RIGHT TO BE TRIED WITHIN A REASONABLE TIME

The inability of the court system to process cases in a reasonable time may hinder the proper administration of justice generally and, in criminal cases, adversely affect the right of the accused to be tried within a reasonable time.

This section examines the problem of delays in the municipal courts and the possible causes. Since the courts' caseload as a whole, including both civil and criminal cases, affects the courts' ability to deal with criminal cases within a reasonable time, the statistics in this section also include civil cases.

#### A. Applicable domestic and international law

Any accused has the right to be tried within a reasonable time.<sup>9</sup> This right is especially important in cases where the accused is in detention. It should be noted that a prompt and speedy trial is in the interest of the parties as well as the court, as prolonged delays cause legal insecurity, lead to inefficient use of the courts' resources, and affect the courts' ability to establish the truth.

The time taken into account when determining whether a criminal case has suffered undue delay starts running when the person becomes the subject of a charge and ends when the verdict in the case becomes final. There is, however, no exact time period set down which could be said to constitute an unjustifiable delay. In determining whether there has been unjustifiable delay, the specific circumstances such as the complexity of the case, as well as the conduct of the accused, the authorities, and the court, should be taken into account.<sup>10</sup>

The right to be tried within a reasonable time is expressly protected in the applicable law.<sup>11</sup> The law sets specific time limits to regulate the time periods permitted for different phases of the proceedings.<sup>12</sup> For example, applicable law states that the main trial should be scheduled for a hearing within two months from the date on which the indictment was filed, or if the indictment has been traversed, as soon as possible.<sup>13</sup> Further, once the main trial commences, it can only be adjourned in accordance with certain established conditions and the adjournment should not last longer than one month (otherwise the trial must be re-started).<sup>14</sup>

To ensure the presence of the accused<sup>15</sup> and of witnesses<sup>16</sup> during the trial, the applicable law permits the court to take certain measures. These measures include the possibility to issue an order for the police to bring the accused or a witness to court.<sup>17</sup>

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<sup>9</sup> Article 14(3)(c) International Covenant on Civil and Political Rights (ICCPR), and Article 6(1) European Convention on Human Rights (ECHR).

<sup>10</sup> *König v. Federal Republic of Germany*, European Court of Human Rights, 28 June 1978 para. 99.

<sup>11</sup> Articles 14 and 292(2) Federal Republic of Yugoslavia Criminal Procedural Code, Official Gazette SFRY, No. 26/86 (FRY CPC).

<sup>12</sup> Articles 174(2), 279(2) and 356(1) FRY CPC.

<sup>13</sup> Article 279 FRY CPC. If the main trial is not set down for hearing within this period, the presiding judge should inform the president of the court, who carries the ultimate responsibility to make sure that the necessary steps are taken and a date for the trial is set.

<sup>14</sup> Article 305(3) FRY CPC.

<sup>15</sup> The measures the court may take to secure the presence of the accused during trial are; to summon the accused, to have him brought to the court by the police, to have the accused give a pledge, to release the accused on bail and, if there is risk that the accused will flee, to detain him (Article 183 – 191 FRY CPC).

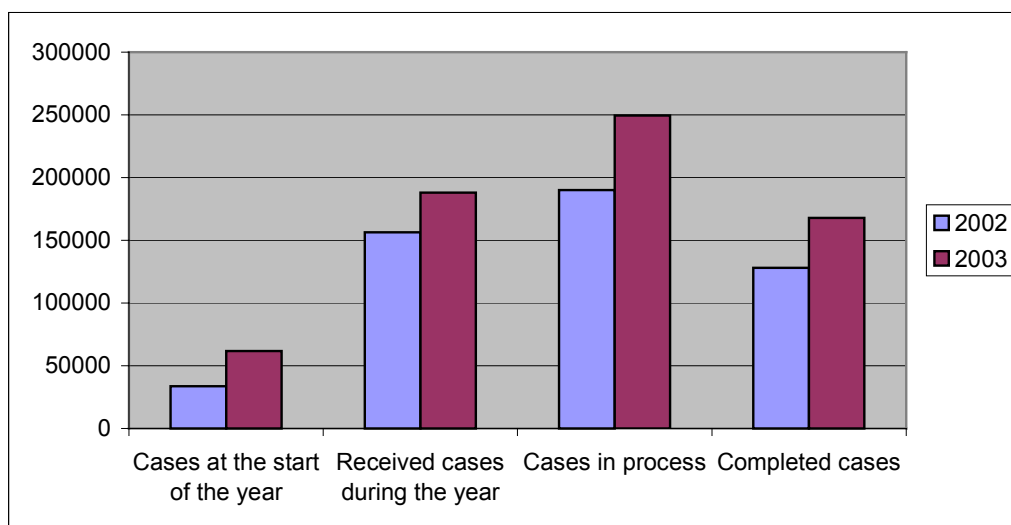


## B. Findings

During the course of monitoring the municipal courts, it was observed that the major problem with the administration of justice was the incapacity of the courts to deal with the number of cases filed and the corresponding delays. For example, statistics show that, in criminal cases, out of 2,894 cases completed during the first half of 2003, 56 percent were completed within 6 months from the date when the presiding judge was assigned; 27 percent took more than 12 months to complete.<sup>18</sup>

Many of the criminal cases handled by the municipal courts involve minor criminal charges that may be dealt with expeditiously. However, delays and adjournments often occur in these cases leading to situations in which an accused's right to be tried within reasonable time may not be respected.

It appears that, in most municipal courts, there is a growing backlog of cases. In 2003 no less than 249,695 civil and criminal cases were in process in the municipal courts; of these 187,982 were lodged with the courts during that year, while 61,713 were passed on from previous years. During 2003 the courts completed 167,795 cases. These statistics demonstrate that fewer cases were completed than were initiated during 2003, leading to an increase in the backlog of cases, and passing on an even higher number of cases to 2004<sup>19</sup> (see chart below).



<sup>16</sup> Concerning the witness' obligation to appear before the court during the main trial see article 303 FRY CPC. Similar measures can be taken to assure the witness' presence during the investigative stage, see Articles 230 and 237 FRY CPC.

<sup>17</sup> Articles 184 and 303 FRY CPC.

<sup>18</sup> Courtesy of the Department of Judicial Administration, Ministry of Public Services.

<sup>19</sup> During 2002, 190,083 cases were in process; during the same year the courts completed 127,913 cases. Of these, 33,538 cases were passed on from 2001 while 156,545 were lodged with the courts during that year. The difference between the number passed on from 2001 to 2002 and the number passed on from 2003 to 2004 indicates that, in two years, the municipal courts total backlog has increased by 143 percent.

## 1. Organisational Related Causes of Delay

Delays are partly caused by organisational aspects of the municipal court system. This section seeks to identify these organisational problems and the affect that they may have on the right to a fair trial.

### *i. The number of municipal court judges*

The first factor to consider is the number and distribution of working judges. Many of the judges interviewed suggested that the reason for the backlog was understaffing in the courts. Compared to 1989<sup>20</sup> there is a 21 percent overall decrease in the number of positions - from 209 judges in 1989<sup>21</sup> to 165 judges in 2003<sup>22</sup> (see below; and Table 1, Annex 1).

**Number of judges in 1989 and 2003**

Number of posts in 1989	Number of posts in 2003	Number of employed judges in 2003
<b>209</b>	<b>165</b>	<b>128</b>

When considering the current number of working judges, the vacancies should also be born in mind. In 2003, 37 posts were vacant, which meant the number of working judges was actually 128.<sup>23</sup> With approximately one fifth of the posts vacant, the workload for the remaining judges is inevitably greater.

A hiring of judges to fill the vacant posts would undoubtedly help the courts to process their workload. However, as can be seen below, greater efficiency may be achieved even with the current number and distribution of working judges.

### *ii. Efficiency of the courts*

#### *The number of cases per court*

An examination of the number of cases per court highlights the relative efficiency of the different municipal courts. Dividing the number of completed cases by the number of received cases in each court gives a good indication the courts' capacity to deal with their caseload (see Table 2 and 3, Annex 2).

<sup>20</sup> In 1989 the Milosevic regime stripped Kosovo of its autonomous status within the Republic of Serbia and as a consequence many Kosovo Albanian Judges and Prosecutors left the Judiciary.

<sup>21</sup> Annual Report on the Work of the Courts 1989, published by the Provincial Secretariat for Justice and General Administration. According to the Department of Judicial Administration, Ministry of Public Services, however, only 185 judges were employed in 1989 and 24 post remained vacant.

<sup>22</sup> Courtesy of the Professional Development Section, Department of Justice. It should be noted that the decrease in the number of judges has been distributed throughout Kosovo, taking into consideration the post-war changes in population in certain municipalities (the population figures used in the Report are based on the estimated numbers made available through the OSCE Mission in Kosovo municipal profiles). There are however a few exceptions: Prishtinë/Priština Municipal Court had 32 judges in 1989, and has presently only 28 judges despite the fact that Prishtinë/Priština's population is estimated to have doubled since the war (it is estimated that Prishtinë/Priština had a population of 225,388 in 1998 and 564,800 in 2002). Other municipal courts that have experienced a comparatively large decrease in the number of judges are Mitrovicë/Mitrovica Municipal Court with a 47 percent decrease, and Prizren and Suharekë/Suha Reka Municipal Courts with a 38 percent decrease each.

<sup>23</sup> Courtesy of the Department of Judicial Administration, Ministry of Public Services. It should be noted however that according to the Kosovo Judicial and Prosecutorial Council, 137 municipal court judges were employed in 2003, and 28 post remained vacant. These numbers, though different, do not affect the conclusions of the Report.

The number of received and completed cases varies widely from court to court. On one hand the highest number of cases in process can be found in Prishtinë/Priština Municipal Court (which had 44,459 cases in 2003), and in Pejë/Peć Municipal Court (which had 35,864 cases in 2003). Notably, these courts also had comparatively low capacity to deal with their caseload and belong to the group of nine courts with a lower than 90 percent capacity. Apart from these two courts, this group also includes all the other municipal courts that are located in the regional capitals.<sup>24</sup> On the other hand, eight courts had a particularly high capacity and completed 98 percent or more of the number of cases filed, including four courts that completed more cases than they received during this period (see Table 3, Annex 2).

During 2002 the highest number of cases in process could again be found in Pejë/Peć Municipal Court (with 34,266 cases), and in Prishtinë/Priština Municipal Court (with 28,021 cases). Notably, in 2002 these courts had the lowest comparative capacity to deal with their caseload. In Pejë/Peć, the municipal court only completed 66 percent of the number of cases received during 2002 while in Prishtinë/Priština, the corresponding number was 68 percent. As against this, six smaller sized courts managed to complete 97 percent or more of the number of cases received in 2002. Of these, two courts completed close to 100 percent of the number of received cases (see Table 2, Annex 2).

Thus, the courts' capacity to handle the cases in the speed that they are lodged varies greatly between the different municipalities, between 66 and 100 percent in 2002. The statistics for 2003 indicate a general improvement in the courts' capacity (averaging from 82% in 2002 to 89% in 2003).

#### *Caseload per judge*

In order to appreciate the efficiency of the individual courts, it is important to consider the average caseload per judge. However, since different kinds of cases require notably different amounts of work, only complex cases have been included in this comparison. Complex cases are deemed to be investigations, criminal cases, juvenile cases, civil cases, inheritance, and non-contentious cases<sup>25</sup> (see Table 8 and 9, Annex 5).

There are notable discrepancies between the number of cases dealt with by judges from various regions, both in terms of caseload and of completed cases. With regard to caseload in 2003, at the higher end, seven courts received over 300 cases per judge; whereas at the lower end, seven courts received less than 150 cases per judge. The caseload ranges from 62.8 cases per judge in Dragash/Dragaš Municipal Court to 398.3 in Gjilan/Gnjilane Municipal Court and 424.3 in Gjakovë/Đakovica Municipal Court.<sup>26</sup>

With regard to the number of completed cases in 2003, at the higher end, four courts completed 250 or more cases per judge; whereas at the lower end, eight courts completed less than 150 cases per judge.<sup>27</sup>

<sup>24</sup> That is Gjilan/Gnjilane Municipal Court, Prizren Municipal Court, and Mitrovicë/Mitrovica Municipal Court. The remaining four courts with a capacity under 90 percent are Gjakovë/Đakovica Municipal Court, Istog/Istok Municipal Court, Ferizaj/Uroševac Municipal Court and Kaçanik/Kaçanik Municipal Court. The municipal courts of Leposavić/Leposaviq and Zubin Potok are not included in the comparison.

<sup>25</sup> The division in complex and non-complex cases follows the division made by the Ministry of Public Service, Department of Judicial Administration in their statistics.

<sup>26</sup> Relative efficiency of the Municipal Courts in Dragash/Dragaš, Gjilan/Gnjilane, and Gjakovë/Đakovica for the year 2003 was 104%, 75%, and 52%, respectively.

<sup>27</sup> The trends in the statistics from 2002 appear to be similar. The high and low marks can be found with the municipal courts in Dragash/Dragaš, with a caseload of 69.6 cases and 68.4 completed cases per judge and in Gjakovë/Đakovica with a caseload on 595.6 cases and 319 completed cases per judge.

Thus, there appears to be a stark difference in the number of complex cases assigned to judges in different courts. This could be addressed through a different allocation of judges. The OSCE Mission in Kosovo has reported on the imbalance in the caseload of the municipal judges previously, recommending that the appointment of judges should be revised in accordance with the average caseload, taking into account the courts' existing backlog.<sup>28</sup>

There also appears to be a significant difference in the number of complex cases completed per judge, in the different courts. Thus, 'best practices' should be identified and applied at all courts by all judges.

### *iii. Execution cases*

In total the municipal courts received 187,982 cases during 2003. Among these 16,068, were civil execution cases, constituting the second largest category of cases, after the category "other cases."<sup>29</sup>

Executions are court decisions aimed at securing a criminal or civil sanction. These are cases that should be dealt with quickly, as they are administrative in nature and do not require an in-depth evaluation of the facts. However, a study of the number of completed cases in 2002 in relation to the number of received cases, shows that the municipal courts only completed 17 percent of the received execution cases that year (see Table 4, Annex 3). In 2003, the municipal courts completed a notably higher percentage of the received execution cases, namely 48 percent of civil execution cases and 58 per cent of criminal execution cases.

Thus, despite an improvement from 2002, the percentage of completed execution cases remained low throughout 2003. This may constitute one of the main sources of the courts' backlogs.

### *iv. Juvenile cases*

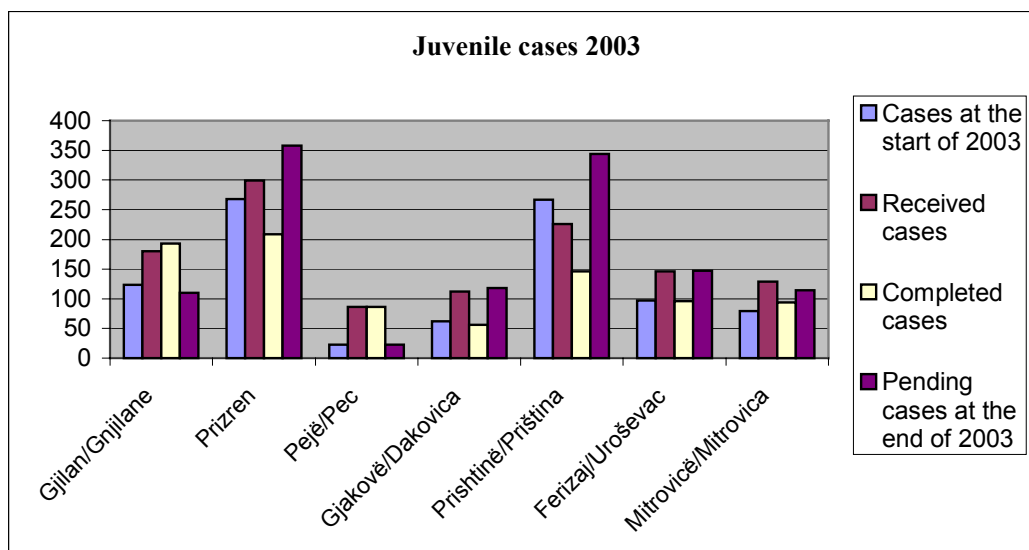
Cases involving juvenile offenders, i.e. offenders who were under the age of 18 at the time of the crime, are primarily handled by the municipal courts. A special court procedure is prescribed for dealing with juvenile cases in which the proceedings are presided over by so-called juvenile judges.<sup>30</sup> There are seven municipal courts that deal with juvenile cases, with one juvenile judge in each court (see chart below; and Annex 4).

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<sup>28</sup> See the OSCE Mission in Kosovo's Third Review of the Criminal Justice System entitled "Kosovo Review of the Criminal Justice System", October 2001, at p. 69.

<sup>29</sup> The category of "other cases" which includes cases such as authentication of contracts, the certification of signatures etc., accounted for 131,487 of the received cases during 2003.

<sup>30</sup> Article 452-492 FRY CPC.



It can be noted that the number of received and completed cases varies greatly among the juvenile courts. During 2003, the Municipal Court of Prizren received 299 cases, more than three times as many juvenile cases as Pejë/Peć Municipal Court, which only received 89 cases. Similar discrepancies could be noted during 2002 with Prizren Municipal Courts receiving 231 cases, while Gjakovë/Đakovica Municipal Court only received 67 cases. In total the number of received juvenile cases increased from 995 in 2002 to 1178 in 2003 (see Table 6 and 7, Annex 4).

A similar discrepancy can be noted between the number of completed cases. Prizren Municipal Court completed 209 cases, more than three times as many cases as Gjakovë/Đakovica Municipal Court, which completed 56 cases.

The number of completed juvenile cases merits special attention, since four of the courts only completed approximately half, or less, of the number of received juvenile cases during 2002. This is of concern since there is a special need to handle these cases in a prompt manner and thus reduce the adverse affect that the proceedings may have on the juveniles. In 2003, the number of completed cases increased both in relative terms and in absolute numbers. However, as the number of received cases increased even more, the backlog passed to 2004 was still bigger than the number of cases passed on from 2002. (see Table 7, Annex 4).

## 2. Delay Within the Trial Proceedings

### *i. Non-compliance with the applicable timeframes*

The OSCE Mission in Kosovo has previously reported on the lack of co-ordination and case flow management at the district court level.<sup>31</sup> The monitoring of the municipal courts has indicated similar problems, which are causing lengthy delays.

As a general rule, the date for the first session of the main trial should be set within two months of the filing of the indictment.<sup>32</sup> The OSCE Mission in Kosovo has monitored

<sup>31</sup> OSCE Mission in Kosovo Department of Human Rights and Rule of Law, Report No. 9, "On the Administration Of Justice", March 2002.

<sup>32</sup> Article 279 FRY CPC.

numerous cases where this time frame has been notably overstepped. A few examples are outlined below:

In one case before Pejë/Peć Municipal Court, the indictment was filed in May 2002, but the date for the main trial was not set until June 2003, 13 months later. Once the main trial was held in this rather straightforward case, it lasted for only half an hour. The trial took place on 25 June 2003 and the accused was found guilty as charged for illegal trading and sentenced to six months of imprisonment, suspended for one year.

In another case before Pejë/Peć Municipal Court, in which the accused was indicted for falsification of documents, a similar issue arose. The indictment was filed in January 2002, but the date of the first session was not set until 20 June 2003, 18 months later. When summoned to the main trial the accused did not appear before the court and an additional delay occurred as the court ordered the accused to be brought by the police.

In another case involving falsification charges, before Kaçanik/Kaçanik Municipal Court, the indictment was filed in January 2002, however the date for the main trial was not set until July 2003, 17 months later.

In a case before Gjilan/Gnjilane Municipal Court, a man stood accused for falsification of documents. The indictment was filed in September 2000, but the first summons was not issued until mid-October 2001. Not until June 2003 did the presiding judge issue a warrant of arrest for the accused.

The OSCE Mission in Kosovo monitored numerous other cases, which involved similar delays. The extent of the cases observed suggests a pattern of non-compliance with the established timeframes. Unjustified delays of this magnitude may amount to a breach of the accused's right to be tried within a reasonable time.

#### *ii. Securing the attendance of the accused and witnesses at the court*

One of the main reasons for the delays in criminal cases is the difficulties encountered in securing the attendance of the accused, witnesses, and injured parties at the trial. Of the cases monitored by the OSCE Mission in Kosovo that were adjourned, more than one third were adjourned due to the absence of the accused, the prosecutor or witnesses. In the vast majority of these cases it was the accused who was absent; in some cases up to a dozen consecutive adjournments were necessary before his or her appearance in court was secured.

Two such examples can be found before Pristinë/Priština Municipal Court. In the first case, an accused stood charged with having committed the criminal act of causing general danger in December 2000. The indictment was filed on 7 February 2001, however, on 30 June 2003, after having been summoned seven times, the accused was still not present in court.

In the second case, three defendants were accused of having threatened someone with a dangerous tool in a brawl and for illegal possession of weapons or explosive substances. On 10 July 2003, this case was postponed for the fifth time due to the non-attendance of the accused. By the end of 2003, both these Pristinë/Priština cases were still pending with no further actions taken since July 2003.

In three cases in Kaçanik/Kaçanik Municipal Court the accused persons stood charged with forest theft and were summoned 8, 9, and 13 times respectively. The

presiding judge decided at this point to issue an order to have the accused brought to court by the police. In all three cases serious delays resulted.

There appear to be multiple problems with the system of summoning.<sup>33</sup> The first problem for the court is to establish the correct address. Often the information presented in the case file does not include the correct information of where the accused or a witness resides. But even after a correct address has been identified there are problems with finding the location. During the last few years, street names have been changed, settlements altered etc., making it difficult both for the couriers and the police to find the right address. The work of trying to locate witnesses and accused is time-consuming both for the courts and the police. Within the police it is the Regional Unit of Warrants and Courts (RUWC) that is generally charged with serving the courts' arrest orders.<sup>34</sup>

To deal with this problem some municipal court judges and representatives from the RUWC suggested that the address should be included on the ID cards. As the file normally includes a copy of the ID card of the accused and witnesses, this would make it easier for the court to find the person.

Another way to improve the courts' ability to identify and locate people would be through an improved co-operation with the Civil Registry.<sup>35</sup> Administrative Direction No. 2002/16 establishes a procedure for UNMIK judicial authorities to request the disclosure of personal data from the Civil Registry.<sup>36</sup> The Direction states that the request should be submitted through the Director of the Department of Justice and addressed to the Directorate of Administrative Affairs.<sup>37</sup> In practice, once authorised, a search takes approximately five minutes to process.<sup>38</sup> However, most municipal court judges and police are not aware of this possibility for obtaining a person's address. Further, the established procedure, though it clearly allows for requests from the courts, does not seem to be designed to handle a large number of requests.

### *iii. Failure of prosecutors to attend*

Another cause of delay is the non-attendance of the prosecutor at the trial. According to the normal criminal procedure, the court is under an obligation to postpone the trial in the prosecutor's absence.<sup>39</sup> A number of trial sessions were monitored in which the prosecutor was absent.

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<sup>33</sup> Delivering summons in minority areas creates special problems. Both in Gjilan/Gnjilane and Mitrovicë/Mitrovica, the presidents of the municipal courts indicated that the court couriers do not deliver the summonses to these areas, due to the security situation. In Gjilan/Gnjilane the summonses therefore have to be delivered by post to the areas with a majority Kosovo-Serb population. In Mitrovicë/Mitrovica the court has reached an agreement with the police to have all summonses delivered to the northern part of the municipality by the police.

<sup>34</sup> As the unit is not present in all regions, the courts may also turn directly to the local police station for the execution of arrest warrants of accused and witnesses who have not answered to the court's summons.

<sup>35</sup> The Civil Registry was established pursuant to UNMIK Regulation 2000/13 On the Central Civil Registry. The Registry includes information on the residents of Kosovo, such as name, surname, date of birth, place of birth, current address and parent's data (when available). The registered person is given an ID number.

<sup>36</sup> Administrative Direction No. 2002/16, Implementing UNMIK Regulation No. 2000/13 as amended by Administrative Direction No. 2003/19.

<sup>37</sup> See Section 3.3 and 3.4 Administrative Direction No. 2002/16.

<sup>38</sup> According to the Deputy Civil Registrar.

<sup>39</sup> Article 299 FRY CPC.

The trial scheduled for 1 July 2003 before Glogovac/Glogovac Municipal Court involving four accused charged with the criminal offence of concealment in conjunction with aggravated theft, was adjourned due to the absence of prosecutor. There were no reasons given by the presiding judge why the prosecutor did not attend the hearing.

In a trial held on 27 June 2003 before Gjilan/Gnjilane Municipal Court, involving two accused charged with prevention of an official person from executing his duty, the prosecutor left the session to take an urgent call. Due to the absence of the prosecutor the session was interrupted and adjourned for an unspecified date.

Numerous other such cases have been observed. One of the reasons for the lack of co-ordination between the courts and the prosecutors could be the fact that the prosecutors are assigned to the municipal court of the regional capital and not to the respective municipal court(s) they are working with.<sup>40</sup> Several of the presidents of the courts stated that the prosecutors should be assigned directly to a specific municipal court rather than having to travel throughout the region. Such a change could improve the co-ordination between the courts and the prosecutors. This may prove particularly important when prosecutors assume new responsibilities under the Provisional Criminal Procedural Code.<sup>41</sup>

#### *iv. Lack of judges in Zubin Potok and Leposavić/Leposaviq*

While most municipal courts were set up in 2000 this was not the case in certain municipalities in the northern parts of Mitrovicë/Mitrovica region.<sup>42</sup> However, following a joint declaration between the Minister of Justice of the Republic of Serbia and the Deputy Special Representative of the Secretary General for Police and Justice of UNMIK in July 2002, UNMIK decided to open two municipal courts in the Mitrovicë/Mitrovica region, one in Zubin Potok, and the other in Leposavić/Leposaviq.<sup>43</sup> These courts were opened in January 2003.

Initially, with the opening of the courts, one judge was appointed to the municipal court in Zubin Potok and three judges to the municipal court in Leposavić/Leposaviq. However, during a long period only one professional judge was working in the Leposavić/Leposaviq court. By the end of 2003 a second judge had assumed her work and a third judge took up his duties in the beginning of 2004. So far no lay judges have been assigned to either of the courts. The lack of judges has caused delays in the processing of cases in both courts.

Since the opening of the courts they have both received cases from the Mitrovicë/Mitrovica District Court, which fall within their territorial jurisdiction. By the end of 2003 the Leposavić/Leposaviq Municipal Court had received 74 criminal cases ready for trial and 62 cases under investigation. However it was not until the third judge assumed his post, in the beginning of 2004, that the court had the capacity to deal with any of these cases. At present

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<sup>40</sup> In addition to Prishtinë/Priština, Gjilan/Gnjilane, Mitrovicë/Mitrovica, Pejë/Peć, and Prizren prosecutors are also placed in Ferizaj/Uroševac, covering the municipal courts in Ferizaj/Uroševac and Kaçanik/Kaçanik, and Gjakovë/Đakovica, covering the municipal court in Gjakovë/Đakovica.

<sup>41</sup> One of the new tasks assigned to the prosecutor in the new Provisional Criminal Procedural Code is to supervise the work of the judicial police during the investigations and collect evidence for initiating criminal proceedings. See Article 46 of the mentioned law.

<sup>42</sup> Instead parallel courts operated in Mitrovicë/Mitrovica Region. See further see OSCE Mission in Kosovo "Report Parallel Structures in Kosovo", October 2003, p. 17.

<sup>43</sup> These two courts were established as part of an attempt to dismantle the parallel court structure in the minority Serb areas and to bring these courts under the umbrella of the UNMIK court system. For further detail on the history and current situation of the parallel court system see OSCE Mission in Kosovo "Report Parallel Structures in Kosovo", October 2003, p. 17.



the court can carry out the investigations and deal with those criminal cases that can be adjudicated by a single judge.

The Zubin Potok Municipal Court received 56 cases from the Mitrovicë/Mitrovica District Court in June 2003 and is continuously receiving more cases from the prosecutor. So far the court has been able to complete some of the investigations, however the court can not carry out any trials due to lack of professional and lay judges.

The lack of professional and lay judges in these two courts is thus causing delays and may compromise the accused's right to be tried within a reasonable time.

### **C. The Provisional Criminal Procedure Code of Kosovo**

On 6 April 2004 the new Provisional Criminal Procedure Code of Kosovo<sup>44</sup> will enter into force replacing, *inter alia*, FRY CPC. The new code reforms several aspects of the criminal procedure. In relation to the right to be tried within reasonable time, however, the new procedural criminal code does not include any major changes to the existing law. There are, though, a few changes that are worth mentioning.

The measures that the court may take to ensure the presence of the accused include those outlined in FRY CPC.<sup>45</sup> In addition to these, the new code provides that the courts may order the accused to appear periodically at the police station or to be held in house detention.<sup>46</sup> When it comes to summoning witnesses the new code allows for the court to compel a witness to appear before the court if he or she fails to present himself without justification when duly summoned.<sup>47</sup> The court may in this case also fine the witness.<sup>48</sup>

### **D. Conclusion**

It is axiomatic that delays in the processing of cases and the increasing backlog adversely affect the administration of justice in relation to both criminal and civil matters. The growing backlog should therefore be urgently addressed before it is allowed to become a source of additional delays in itself. Greater efficiency could be achieved by identifying the practices used in the courts with a higher level of efficiency and applying these throughout Kosovo. In addition, the vacant posts should be filled and, where necessary, judges redistributed between the courts.

In 2003, the Kosovo Judicial and Prosecutorial Council commissioned an assessment of the Kosovo Judicial System which was carried out in co-operation with the Judicial Development Division of the Department of Justice of UNMIK, the US Department of Justice Office of Overseas Prosecutorial Development, Assistance and Training, and the Council of Europe. The project assessed the current court structure in Kosovo, including the required number of judicial and prosecutorial posts. The results will be presented in a forthcoming report.

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<sup>44</sup> On the same day the new Provisional Criminal Code also enter into force, UNMIK Regulation 2003/25 On the Provisional Criminal Code of Kosovo.

<sup>45</sup> Namely, summons, order for arrest, promise that the accused will not leave his residency and bail. See Article 268 Provisional Procedural Criminal Code.

<sup>46</sup> Articles 268, 273 and 278 Provisional Procedural Criminal Code.

<sup>47</sup> Article 343 Provisional Procedural Criminal Code.

<sup>48</sup> Article 167 Provisional Procedural Criminal Code.

## SECTION 3

### THE RIGHT TO BE TRIED BY A TRIBUNAL ESTABLISHED BY LAW

The right to a fair trial includes the requirements that the tribunal be established by law and function in accordance with the law.

#### A. Applicable domestic and international law

The right to a fair trial includes the right to be tried by a tribunal established by law.<sup>49</sup> In furtherance of this requirement, the European Court of Human Rights (European Court) has held that a court should be properly composed “*in accordance with law*” stating that this principle is infringed, if the tribunal does not function in accordance with the requirements of applicable procedural law.<sup>50</sup>

Applicable law states that crimes which carry a maximum penalty of between one and fifteen years of imprisonment should be tried by a panel consisting of one professional judge and two lay judges.<sup>51</sup> The law further states that the judges should be present throughout the trial;<sup>52</sup> the presiding judge is required to see that the subject matter is fully examined<sup>53</sup> and that members of the panel, the court clerk, and the alternate and lay judges are “continuously present at the main trial”.<sup>54</sup>

#### B. Findings

Trial monitors have recorded violations of the applicable law in terms of the composition of the trial panel and the requirement that judges remain continuously present at the main trial.

In one trial, heard before Viti/Vitina Municipal Court on 9 September 2003, the accused was convicted for falsification of documents and sentenced to three months conditional imprisonment. The trial panel was composed of one professional judge and only one lay judge. The second lay judge whom the minutes recorded as having been assigned to the case did not attend. Notably, the minutes of the hearing incorrectly recorded that there had in fact been two lay judges on the panel.

In another case, this time before Kačanik/Kaçanik Municipal Court, a similar situation arose. During the trial, which was held on 10 October 2003, a professional and only one lay judge was present. The accused was found guilty for falsification of documents and sentenced to four months of imprisonment suspended for one year. In this case also, the minutes incorrectly recorded that two lay judges had been present during the trial.

The failures to ensure that the correct number of lay judges were present in the above trials led to a breach of the applicable provisions and, therefore, of the accuseds’ right to be tried by a tribunal established in accordance with the law.

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<sup>49</sup> Article 14(1) ICCPR and Article 6(1) ECHR.

<sup>50</sup> *Zand v. Italy*, Commission Report No. 7360/76, 15 DR 70 (1978) and *Rossi v. France* Commission Report No. 11879/85, 63 DR 105 (1989).

<sup>51</sup> Article 23 FRY CPC.

<sup>52</sup> Article 291 FRY CPC.

<sup>53</sup> See article 292(2) FRY CPC. The law also provides that if it appears that the main trial will be lengthy and judges may possibly leave the panel, substitute judges may be appointed to attend the main trial in order to replace members of the panel who may subsequently be prevented from attending the main trial.

<sup>54</sup> Article 291(1) FRY CPC.

### **C. Provisional Criminal Procedure Code of Kosovo**

In order for any court to comply with the requirements of being “established by law” it should comply with the applicable procedural provisions. In this regard, it should be noted that, under the new code, a single judge would be allowed to handle criminal offences punishable with a fine or up to three years of imprisonment.<sup>55</sup>

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<sup>55</sup> Article 22(2) Provisional Criminal Procedure Code in comparison with Article 23(1) FRY CPC.

## SECTION 4

### THE RIGHT TO AN IMPARTIAL TRIBUNAL

Issues of legal, practical, and structural character can affect the impartiality of a tribunal and thus the accused's right to a fair trial. This section deals with impartiality issues that may arise in the current system due to the composition of the panel in summary proceedings, juvenile procedures, and retrials.

#### A. Applicable domestic and international law

Everyone charged with a criminal offence is entitled to a fair and public hearing by an impartial tribunal.<sup>56</sup> The right to an impartial tribunal includes both a subjective and an objective requirement.<sup>57</sup> It has been held that the subjective test must be determined “*on the basis of the personal conviction and behaviour of a particular judge in a given case*” while the objective test should be assessed on the basis of whether, quite apart from the judge's conduct, “*there are ascertainable facts, which may raise doubts as to his impartiality.*”<sup>58</sup> In considering whether there are facts which might raise such a doubt, the crucial issue is whether the doubt can be “*objectively*” justified.<sup>59</sup> In this regard, “*appearances*” or whether (from the perspective of the public) there are other facts that raise doubt about a judge's impartiality, have been considered important.<sup>60</sup>

The European Court has found ‘legitimate doubt’ relating to impartiality in cases where a judge has taken part in the preparation of a case for trial.<sup>61</sup> The key issue was whether the judge's pre-trial involvement in the case could be seen to have left the judge with a view as to the guilt of the accused<sup>62</sup> (or to have a “high degree of clarity” on this question).<sup>63</sup> According to the court a positive finding on this issue was sufficient to give rise in the eyes of the public to doubts as to the judge's impartiality at the trial. The court has also considered that, if the judge performs the functions of the prosecutor during trial, the impartiality of the court may be objectively questionable.<sup>64</sup>

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<sup>56</sup> This right is central to an accused's right to a fair trial and international law imposes an obligation on courts to ensure that it is respected in all cases, see Article 14(1) ICCPR; Article 6(1) ECHR.

<sup>57</sup> *Ferrantelli and Santangelo v. Italy*, European Court of Human Rights 7 August 1996, para. 56-58.

<sup>58</sup> *Ibid* para. 56-58.

<sup>59</sup> *Hauschildt v. Denmark*, European Court of Human Rights 24 May 1989 at para. 48; *Fey v. Austria*, European Court of Human Rights 24 February 1993 at para. 30.

<sup>60</sup> *Hauschildt v. Denmark*, 24 May 1989 para. 48; *Fey v. Austria*, 24 February 1993 para. 30,

<sup>61</sup> Some of these cases involved long established national practices. See e.g., *De Cubber v. Belgium*, 26 October 1984; *Pfeifer and Plankl v. Austria*, European Court of Human Rights 25 February 1992.

<sup>62</sup> *Fey v. Austria*, 24 February 1993, at para. 35. See also *De Cubber v. Belgium*, 26 October 1984. para. 29, where the European Court held that since the trial judge had acted as the investigating judge “*it is quite conceivable that he might, in the eyes of the accused, appear, [...] to have a pre-formed opinion which is liable to weigh heavily in the balance at the moment of the decision. In addition, the criminal court (tribunal correctionnel) may, like the court of appeal, [...] have to review the lawfulness of measures taken or ordered by the investigating judge. The accused may view with some alarm the prospect of the investigating judge being actively involved in this process of review.*”

<sup>63</sup> See *Hauschildt v. Denmark*, 24 May 1989 at para. 52. Note also *Ferrantelli & Santangelo v. Italy*, 7 August 1996, where the court held that the applicants' (the juveniles') fears as to the lack of impartiality of the juvenile court, were objectively justified. A judge who had presided over a case in the adult court and subsequently presided in the juvenile court in relation to the same juvenile defendants charged with the same offence used pre-determined arguments and assessments of evidence from one case into the other, thus bringing about an appearance of partiality over the subsequent proceedings.

<sup>64</sup> The European Court considered this issue in the case of *Thorgeir Thorgeirsson v. Iceland*, 25 June 1992.

Thus an accused has a right to a trial in which no objective grounds exist for questioning the impartiality of the trial panel. However, applicable domestic laws and practices in Kosovo may not accord with international human rights standards and jurisprudence. While the normal procedure governing proceedings in the municipal court expressly precludes a judge from sitting on a trial panel if he has previously performed investigating actions in the case,<sup>65</sup> there is no such prohibition in summary proceedings, juvenile proceedings, or retrials.

## **B. Findings**

### **1. Summary Proceedings**

The applicable law establishes summary proceedings for dealing with criminal cases before a court of first instance, for which the maximum penalty is a fine or a period of imprisonment of up to three years.<sup>66</sup> This procedure is designed to fast track less serious cases.<sup>67</sup> The application of a shortened procedure in less serious criminal cases is used in many countries to speed up trials. However, such a procedure should not be allowed to adversely affect the accused's basic procedural rights.

i. In relation to the composition of the panel the law on summary proceedings states that a "judge who has conducted investigating actions is not disqualified from participating in the main trial as presiding judge or as a member of the panel."<sup>68</sup> Such a prior involvement in the case may be a ground to question the judge's impartiality. It may be noted that this provision deviates from the general rules of disqualification of a judge contained elsewhere in the procedural law.

ii. Further, applicable law on summary proceedings permits a trial to proceed even when the public prosecutor fails to attend, despite having been notified.<sup>69</sup>

In Pejë/Peć Municipal Court a man was convicted for arbitrariness and, on 27 August 2003, sentenced to four months of imprisonment (on a conditional sentence). Although two sessions were held during the main trial the prosecutor was not present at any moment of the trial.

In a case before Gjilan/Gnjilane Municipal Court, on 11 September 2003, the prosecutor was absent during the entire proceedings. In this case the accused faced charges of light bodily injury and was convicted to five months imprisonment (suspended).

In such cases, the judge(s) inevitably assumes, to some extent, the role of the prosecutor, which may be thought to affect the judge's neutrality and objectivity in determining the matter.<sup>70</sup> Again, this may offend the principle of impartiality under international law.

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<sup>65</sup> Article 39(4) and (6) FRY CPC.

<sup>66</sup> Article 430-446 FRY CPC.

<sup>67</sup> Summary proceeding differs from the normal procedure on several counts, such as investigating measures, pre-indictment detention, the right to a defence counsel, the prosecutor's role in the proceedings, trials *in absentia* and the announcement of the verdict.

<sup>68</sup> Article 441(2) FRY CPC.

<sup>69</sup> Article 442(1) FRY CPC. In such cases the law prescribes that the injured party has the right to defend the accusation in the main trial within the limits of the bill of indictment, see Article 442(2) FRY CPC.

<sup>70</sup> Pursuant to the applicable law the role of the judge/trial panel is to see that the issues are fully examined and that the truth is found (Article 292 FRY CPC). On the other hand, the role of the prosecutor at the trial is to present the evidence *against* the accused to prove the charges, (Articles 45 and 340 FRY CPC) additionally the prosecutor may amend or withdraw from the indictment at any time during the trial (Articles 51 and 337 FRY CPC).

## 2. Juvenile Procedure

Juvenile cases are largely handled by the municipal courts. To ensure that the special needs of juvenile offenders are met, a special procedure is prescribed in the applicable law, called the 'juvenile procedure.'<sup>71</sup> Additionally, as an extra safeguard, specialist judges, known as juvenile judges, handle these cases.<sup>72</sup>

According to the juvenile procedure, the proceedings are initiated through preparatory proceedings instead of investigative hearings; the preparatory proceedings thus replace the investigative stage in adult cases. During the preparatory proceedings the juvenile judge is empowered to conduct investigative actions in order to establish, *inter alia*, the facts pertaining to the criminal act. It has been noted that, under the current system - where there is only one juvenile judge per court - the judge must also act as the presiding judge during the main trial.

In light of the European Court's case law this practice may compromise the juvenile accused's right to be tried by an impartial tribunal. The handling of a juvenile case by the judge during the preparatory proceedings may include actions that can affect the appearance of the judge's impartiality and therefore cause the juvenile to justifiably question whether the judge has formed an opinion as to his or her guilt.

One example of this practice was observed in a juvenile case before Pejë/Peć Municipal Court. In this case two juveniles were charged with theft. The court found the juveniles guilty as charged and ordered educational measure of raised observation by the parents.<sup>73</sup> The juvenile judge who acted as presiding judges during the main trial had also carried out the preparatory proceedings.

In three cases (on 30 January 2002, 23 July 2003, and 28 July 2003) before Prizren Municipal Court, juveniles were tried for aggravated theft. In all three cases the juveniles were found guilty and the court ordered raised observation of the juveniles by the parents.<sup>74</sup> The same juvenile judge had conducted the preparatory proceedings as well as acted as the presiding judge during the main trial.

The OSCE Mission in Kosovo has previously reported on this issue.<sup>75</sup> While it is recognised that the system of engaging specialised judges in juvenile cases is motivated by the special needs of the juvenile accused, this concern should not be allowed to affect the appearance of impartiality of the tribunal. This problem could be remedied in a variety of ways.<sup>76</sup>

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<sup>71</sup> See Articles 452-492 FRY CPC.

<sup>72</sup> There are seven juvenile judges working with juvenile cases in the municipal courts in Kosovo. (See Table 6 and 7, Annex 4)

<sup>73</sup> In accordance with Article 14 Criminal Law of Socialist Autonomy Province of Kosovo, OG SAPK, No. 20/77, (KPC)

<sup>74</sup> In accordance with Article 14 KPC

<sup>75</sup> See OSCE Mission in Kosovo's Third Review of the Criminal Justice System entitled "Kosovo Review of the Criminal Justice System, October 2001", p. 73.

<sup>76</sup> For example, having a system where two juvenile judges alternate between working part time with juvenile cases and part time with other criminal cases. Another possibility would be to increase the co-operation between juvenile judges in different courts, allowing them to share the caseload of both courts. See Recommendations on page 31.

### 3. Retrials

As part of the right to a fair trial everyone who has been convicted of a criminal offence has the right to appeal to a higher court.<sup>77</sup> In cases where the appeal court orders a retrial, an accused has the right to be retried by an impartial tribunal, i.e. by triers of fact (be they judges or jurors) who do not have pre-established opinions or prejudices in relation to the case.

As already considered above, a judge's previous involvement in a case is one factor that can call into question the impartiality of the court.<sup>78</sup> Different domestic jurisdictions outside Kosovo have applied different procedures to ensure that judges and jurors, who may be seen as partial due to prior involvement, do not sit on the retrial panel or jury. It would appear that many domestic judicial systems, which are subject to the jurisdiction of the European Court (such as the systems in France, Germany, Ireland, and the United Kingdom) have opted for a rule that prohibits judges or jurors who took part in the initial trial, from sitting on the retrial. This appears to be the most sure and consistent way to avoid doubts being raised about a retrial panel's impartiality.

In Kosovo however, there is no requirement that the retrial must be heard before a differently composed panel. Rather, the applicable law states that, if the case is sent back to the municipal court for retrial, the district court *may* order that it should be held in front of an entirely different panel.<sup>79</sup> But there is little to guide the courts as to when they should order the retrial to be heard before a new panel.

The OSCE Mission in Kosovo has found it to be common practice for the retrial panel to be composed of (entirely or partly) the same judges as at the trial.

For example, in a case dealt with by Prizren Municipal Court, the accused was convicted for grave acts against public traffic safety and sentenced to one year and six months imprisonment. The defence appealed to the Prizren District Court. The District Court granted the appeal and sent the case back to the municipal court for retrial. The panel, during the retrial, included the same presiding judge as well as one of the lay judges who had sat at trial. The accused was found guilty and again sentenced to one year and six months imprisonment.

In another case before the same court, on 30 August 2001, the two accused were convicted for aggravated theft and sentenced to 6 months of imprisonment. The District Court granted the appeal and ordered a retrial. In September 2002 the case was retried by a panel presided over by the same judge. The charges against one of the accused were dropped, while the second accused was found guilty and sentenced to five months of imprisonment suspended for one year.

In a case before the Mitrovicë/Mitrovica Municipal Court on 11 July 2002, the accused was convicted for causing light bodily injury and illegal possession of weapons and sentenced to eight months imprisonment, suspended for two years. In December 2002, the Mitrovicë/Mitrovica District Court ordered a retrial on one of the

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<sup>77</sup> Article 14(5) ICCPR and Article 7 Protocol No. 7 to the ECHR.

<sup>78</sup> Ultimately, this will depend on a number of factors. The European Court has stated that there may be circumstances in which the same panel may retry a case, without violating the rule against partiality. Thus, it cannot be stated as an absolute rule that a superior court must always send the case for re-hearing to a differently composed panel. See *Ringeisen v. Austria*, 6 July 1971, Series A no. 13, para. 97. The specific circumstances in each case must be taken into account when evaluating the panel's impartiality, applying the subjective and objective elements. *Thomann v. Switzerland*, 10 June 1996, paragraph 30–36, and *De Haan v. The Netherlands*, 26 August 1998, paragraph 49 – 51.

<sup>79</sup> Article 385(2) FRY CPC.

charges. During the retrial the panel included the same presiding judge as at trial. The municipal court convicted the accused and sentenced him to three months of imprisonment, suspended for one year.

The presidents of the municipal courts have stated that the same presiding judge almost always deals with cases that are sent back for retrial. The panel is only changed in those cases where the district court expressly orders it. One of the municipal court presidents declared that it is seen as an insult if the district court orders that the case should be tried before a different panel.

The practice of sending a case back for retrial before the same (or partly the same) panel, may lead to the impartiality of the retrial panel being compromised. In order to avoid this, courts should adopt a practice whereby judges, who have made an evidential assessment as to the guilt or innocence of the accused, are prohibited from sitting on the retrial in the same case.

### **C. The Provisional Criminal Procedure Code of Kosovo**

The procedure for summary proceedings is preserved in the Provisional Criminal Procedure Code, but the provision which allowed a judge to participate in the summary trial when he has conducted investigating actions has been excluded.<sup>80</sup> Instead, the new code imposes a blanket exclusion on any judge sitting on the trial panel, if he has participated in pre-trial proceedings in the same case or in a case against the same defendant.<sup>81</sup>

Another positive change is that the provision, which permitted the holding of the trial in the absence of the prosecutor, is not preserved in the new code. The new code expressly prescribes that if the prosecutor fails to appear at the main trial upon an indictment that he or she has filed, the trial shall be adjourned.<sup>82</sup>

There is no specific section in the new code that deals with juvenile procedure. The Working Group tasked with drafting laws on juvenile justice completed its work in late 2002. The draft laws have not yet been promulgated.

When it comes to the composition of the panel in cases of retrial it should be noted that the new code does not include provisions allowing the court of second instance to order the retrial to be held before an entirely different panel.<sup>83</sup> The question of the composition of the retrial panel is thus left without regulation.

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<sup>80</sup> Namely, that corresponding to Article 441(2) FRY CPC.

<sup>81</sup> See Article 40(2)(1). This article is applicable *mutatis mutandis* to summary proceedings, as per Article 461 of the new criminal procedure code.

<sup>82</sup> See the provisions governing the normal procedure at Article 340 of the new code. This article is deemed to be applicable, *mutatis mutandis*, to summary proceedings, see Article 461 of the new code.

<sup>83</sup> See Article 424 Provisional Criminal Procedural Code in comparison with Article 385 FRY CPC.



## SECTION 5

### THE RIGHT TO A PUBLIC TRIAL

The holding of court hearings in public constitutes a fundamental principle of the right to a fair trial, keeping the justice system open to public scrutiny and thereby protecting the parties from the exercise of arbitrary state power.

#### A. Applicable domestic and international law

The right to a public trial is enshrined in international law.<sup>84</sup> The European Court has stated that “[...] a trial complies with the requirement of publicity only if the public is able to obtain information about its date and place [...]”.<sup>85</sup> Therefore, as part of their obligation of ensuring the publicity of the hearing, the authorities must ensure that information on the date and place of the hearing is readily available to the public.<sup>86</sup> Further, for the trial to be public it has been held that it must be open to people in general to attend and access can not be restricted to certain categories of persons.<sup>87</sup>

Applicable law in Kosovo is consistent with this requirement. It prescribes that the main trial shall be public<sup>88</sup> and the exclusion of the public is permitted only in certain limited circumstances.<sup>89</sup>

#### B. Findings

The OSCE Mission in Kosovo has identified a number of municipal courts throughout Kosovo where information concerning the date and place of hearings is not readily available on a consistent basis. Trial schedules are regularly not displayed (either outside the courthouse, the individual courtrooms, or the offices of the presiding judges), and information regarding hearings may not be available from the administrator of the court.<sup>90</sup> The inconsistency of the procedure – both between courts and from day to day in a given court –

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<sup>84</sup> International law prescribes that “everyone is entitled to a ... public hearing”, see Article 6(1) ECHR; Article 14(1) ICCPR; Article 10 Universal Declaration of Human Rights. Note however that 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.

<sup>85</sup> *Riepan v. Austria*, European court of Human Rights, 14 November 2000, para. 29. See also *Van Meurs v. The Netherlands*, Human Rights Committee, Communication Number 215/1986, 13 July 1990.

<sup>86</sup> *Van Meurs v. The Netherlands*, Human Rights Committee, Communication Number 215/1986, 13 July 1990 paragraph 6.2.

<sup>87</sup> See Human Rights Committee, General Comment 13; Equality before the courts and the right to a fair and public hearing by an independent court established by law, paragraph 6.

<sup>88</sup> Article 287(1) FRY CPC.

<sup>89</sup> See Article 288 FRY CPC which permits the exclusion of the public if this is required to preserve secrecy, to preserve the law and order, to protect morality, to protect the interests of a juvenile or to protect other particular community interests. Further, Article 324(3) FRY CPC permits the trial panel to exclude the public if a person under the age of 14 is being heard as a witness. Note also Articles 461 and 482 FRY CPC in relation to the exclusion of the public when hearing juvenile proceedings.

<sup>90</sup> Generally trial schedules are not displayed by municipal courts. Exceptions are Mitrovicë/Mitrovica, Skenderaj/Srbica and Vushtrri/Vučitrn Municipal Courts where the trial schedules are posted outside the office of the respective presiding judges while in Malishevë/Mališevo Municipal Court a monthly schedule of cases is posted on a public billboard. It should be noted that the trial schedule in Vushtrri/Vučitrn Municipal Court does not list the names of the accused.

for providing such information, compounds the problem.<sup>91</sup> In many instances, the only way to obtain the requisite information is to speak personally with the presiding judge of the case.

Apart from the difficulties in obtaining information about the date and place of hearings, there have been cases where the public's access to trials has also been restricted. In some cases only persons summoned to attend trials or persons related to the parties have been allowed to enter the courthouse, thus impeding the public's access to the court.<sup>92</sup> Further, the vast majority of the trials in the municipal courts are held in the offices of the presiding judges. These offices are not designed to allow for the public to attend, given that the presence of the court personnel, the parties, and their legal representatives take up the capacity of the office.

The above practices often make it difficult for the public to obtain information and to attend public hearings in the municipal courts. Although the information and access to the trial may eventually be granted to a determined member of the public with knowledge of the system, the enormous effort required in many instances may, effectively, act as a barrier to observing the trial. This, in turn, may adversely affect the right of the accused to a public trial.

It should be noted that, following a previous recommendation by the OSCE, the DOJ issued a Justice Circular, dated 4 February 2004, on public access to justice.<sup>93</sup> Therein the DOJ urged the Department of Judicial Administration to ensure that the Justice Circular is implemented. The OSCE Mission in Kosovo welcomes this initiative.

### **C. The Provisional Criminal Procedure Code of Kosovo**

The Provisional Criminal Procedure Code of Kosovo preserves the right to a public trial with the exclusion of the public being permitted only in certain limited circumstances.<sup>94</sup> These provisions are comparable with the FRY CPC, with the addition of a provision whereby a judge may exclude the public to protect an injured party and / or a witness.

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<sup>91</sup> For example, on one occasion the court administrator will be available with the information, while on the next, he will not; on one occasion the trial schedule will be displayed while on the next, it will not.

<sup>92</sup> This has taken place in Mitrovicë/Mitrovica Municipal Court, where the public's access is limited by the restrictions on transport to the court, which is located in North Mitrovicë/Mitrovica, from South Mitrovicë/Mitrovica.

<sup>93</sup> Justice Circular 2003/7.

<sup>94</sup> Articles 328(1) and 329 Provisional Criminal Procedure Code.

## SECTION 6

### THE RIGHT TO CROSS-EXAMINE WITNESSES

Difficulties in ensuring the attendance of the parties and witnesses during the trial may affect the accused's right to cross-examine witnesses as well as cause unnecessary delays.

#### A. Applicable domestic and international law

The right of an accused to examine or have examined witnesses testifying against him or her constitutes a fundamental aspect of the right to a fair trial, and the court is obliged to take positive steps to ensure that this right is observed in the conduct of the proceedings.<sup>95</sup> In this regard, it has been held that pre-trial statements of witnesses for the prosecution, taken in the absence of defence counsel or the accused, cannot form the basis for a verdict.<sup>96</sup>

In Kosovo it is normal practice that witnesses testify live at trials, even though they may have already given evidence before the investigating judge at the pre-trial stage. Domestic law permits some deviation from this procedure in certain limited circumstances.<sup>97</sup> This practise thereby allows the accused or his or her defence counsel, the possibility to examine and question the witness during the trial.<sup>98</sup> Additionally, the applicable law foresees the opportunity for the prosecutor, the suspect, and the defence counsel to attend the examination of the witness at the investigative hearing and to question the witness in certain circumstances.<sup>99</sup>

#### B. Findings

In numerous cases where difficulties have been encountered in securing the attendance of witnesses at trial, the court has read the witnesses' earlier statements given at the investigative stage of the proceedings into the trial record, notwithstanding the fact that the statements were given in the absence of the defence counsel or the accused.

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<sup>95</sup> Article 14(3)(e) ICCPR and Article 6(3)(d) ECHR. See also *Barbera, Messegue and Jabardo v. Spain*, European Court of Human Rights, 6 December 1988, para. 78.

<sup>96</sup> The use as evidence of a statement made in the pre-trial phase by a witness who, subsequently, does not give evidence before the trial court, is not in itself incompatible with Article 6(3)(d) ECHR. However, such evidence may lead to a conviction only if there exists evidence that corroborates that statement, see *Delta v. France*, European Court of Human Rights, 19 December, 1990 para. 37, and *Asch v. Austria*, European Court of Human Rights, 26 April, 1991, para. 28 - 31. However, note that it is not vital that the accused, or his defence counsel, is allowed to cross-examine the person during the main trial, if they have been given a possibility to do so during the investigative stage of the proceedings, see *Solakov v. The Former Yugoslav Republic of Macedonia*, European Court of Human Rights, 31 October 2001 (Final 31 January 2002), para. 59-66. Note also the Human Rights Committee's General Comment no. 13 at para. 12.

<sup>97</sup> Article 333(2) FRY CPC permits the statement of a witness given before the investigating judge to be read into the trial record in certain circumstances, such as where the parties consent or in a limited number of exceptional cases (such as where the witness has died, become mentally ill, or cannot be found.) However, Article 333(2) must be interpreted and applied in the light of international fair trial standards. Thus, written statements of evidence for the prosecution, taken in the absence of an accused or his defence counsel, cannot form the basis for a verdict.

<sup>98</sup> Concerning the accused's right to put questions to the witness see Article 327 FRY CPC. See also the Supreme Court of Kosovo in *Saramati v. The Public Prosecutor*, 9 October, 2002 (at para. 39) where the Court applied these principles and held that "as a rule, these rights require that an accused should be given an adequate opportunity to challenge and question a witness against him."

<sup>99</sup> See Articles 168(4) and (8) FRY CPC. The provision is designed to mitigate the prejudice to the accused where the witness's statement is subsequently read into the trial record.

For example, in one case held before Prishtinë/Priština Municipal Court on 24 July 2003, two accused were charged with aggravated theft and sentenced to one year and three months imprisonment. The two prosecution witnesses did not attend on the day of trial and, consequently, the court decided to read into the record the statements they had given before the investigating judge; these statements had been taken in the absence of the accused and their defence counsel. Notably, the court appointed defence counsel did not object to the readings of the testimonies.<sup>100</sup>

In a case before Prizren Municipal Court on 25 June 2003, the main witness and the injured party did not appear at trial despite having been properly summoned. In order not to postpone the trial, their written statements which had been taken in the absence of the accused, were read into the record. This was done despite the fact that the court had made only one attempt to summon the witnesses. The verdict was given on the same day. The accused was found guilty of light bodily injury and sentenced to four months of imprisonment suspended for one year. In this case, the accused was defending himself and thus had no defence counsel.

The OSCE Mission in Kosovo is of the view that the manner in which evidence was heard in these cases, not allowing for the accused to cross-examine the witnesses whose statements composed the main basis for the verdict, constituted a breach of the applicable law and may have prejudiced the accused's right to a fair trial. The OSCE Mission in Kosovo reiterates that statements taken of witnesses without the presence of defence counsel or the defendant shall not be admitted and cannot form the basis of a verdict.<sup>101</sup>

### **C. The Provisional Criminal Procedure Code of Kosovo**

The Provisional Criminal Procedure Code does not include a direct reference to the accused's right to cross-examine a witness against him. However, it does state that, after the prosecution and trial panel have examined the witness, the presiding judge should ask the accused if he has anything to present.<sup>102</sup> In any event, there can be little doubt that such a right remains under the new code. Indeed, the new code provides that a witness statement given to the police or prosecutor is only admissible at trial if the defence had the possibility to question the witness during some stage of the criminal proceedings.

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<sup>100</sup> It is important to note that, despite the lack of objection by defence counsel on behalf of the accused, the accused's right to cross-examine witnesses against him remained, as any waiver of this right must be unequivocal. See, *Sadak and others v Turkey*, European Court of Human Rights, 17 August 2001, 29900/96; 29901/96; 29902/96 and 29903/96, para 67; *Colozza v. Italy*, European Court of Human Rights, 12 February 1985, 9024/80, para 28.

<sup>101</sup> See also the OSCE's First Review of the Criminal Justice System, 1 February 2000 – 31 July 2000, at p. 21.

<sup>102</sup> Article 370 Provisional Criminal Procedural Code.

## **SECTION 7**

### **CONCLUSION**

The municipal courts fulfil a vital role in the judicial system in Kosovo. However, the courts are currently facing a number of difficulties that affect the administration of justice in general and the right to a fair trial in particular.

Many of the problems - such as the increasing backlog and delays - require structural reforms; others require legislative or administrative solutions. The Provisional Criminal Procedural Code will only go some way to addressing these problems. The OSCE is of the view that many of the difficulties can be addressed without costly or comprehensive reforms. In any event, the situation should be addressed urgently. If the existing problems are left unchecked the situation may deteriorate; the increasing backlog may infect the entire system, and fair trial standards may be further compromised in an effort to reduce the workload.

The authorities should therefore take immediate steps to implement the changes necessary to ensure the proper functioning of the administration of justice in the municipal courts.

## RECOMMENDATIONS

### **The right to be tried within reasonable time**

- The Kosovo Judicial and Prosecutorial Council should revise the number of assigned judges to the individual municipal courts with a view to redressing the current imbalance in terms of caseload. Furthermore, the appointment of new municipal judges to fill the vacant post should be prioritised.
- The DOJ should conduct research to establish the reasons for greater case-flow management in certain municipal courts. Once determined, these administrative ‘best practices’ of the courts should be shared with the presidents of all the courts. The DOJ should assist the courts in the implementation of these best practices to help the courts make better use of their resources and avoid unnecessary delays in processing cases.
- The DOJ should introduce a mechanism that ensures a more direct link between the municipal courts and the respective prosecutors. In all regions, the prosecutors should be assigned to one or several municipal courts, rather than being assigned to an entire region.
- The DOJ should issue a Justice Circular informing judges, investigating police and members of Regional Unit of Warrants and Courts of the procedure established by Administrative Direction No. 2002/16.<sup>103</sup> Additionally a more flexible system for requests of information from the courts to the Civil Registry should be designed, including a standardised form to be filled out by the presiding judge and passed on to the Civil Registry through the co-ordination of the DOJ.

### **The right to be tried by a tribunal established by law**

- The Municipal Court Presidents and the Municipal Court Judges should ensure that the required numbers of lay judges are assigned to each case. If a lay judge fails to appear for the main trial the session should be adjourned until the assigned lay judge or his or her replacement can attend.

### **The right to an impartial tribunal**

- The Kosovo Judicial Institute should, as part of the training for judges on the Provisional Criminal Procedure Code, highlight the changes in the summary procedure. This will help to ensure compliance with international human right standards.
- The Municipal Court Presidents should ensure that juvenile cases are dealt with in such a way so that one juvenile judge handles the preparatory proceedings of a case and a different juvenile judge presides at the main trial.
- The Municipal Court Presidents should adopt a policy whereby a different panel from the initial trial panel should be assigned to handle the retrial in the same case, following the appeal. This will alleviate doubts as to the impartiality of the tribunal at the retrial.

### **The right to a public trial**

- The Department of Judicial Administration should ensure that Justice Circular 2003/7 is implemented as soon as possible.

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<sup>103</sup> Administrative Direction No. 2002/16, Implementing UNMIK regulation No. 2000/13 as amended by Administrative Direction No, 2003/19.

### **The right to cross-examine witnesses**

- The trial courts and the Supreme Court should ensure that witness statements taken in the absence of defence counsel or the defendant shall not be admitted and cannot form the basis of a verdict.
- The Kosovo Judicial Institute should, as part of the training for judges on the Provisional Criminal Procedure Code, highlight the new provision included in article 156(2) of the code, which states that a witness statement given before the police or the prosecutor is admissible evidence in court only when the accused or his or her defence counsel has been given the opportunity to challenge it by questioning the witness during some stage of the criminal proceedings.

## ANNEX 1: MUNICIPAL COURT JUDGES

**Table 1. Number of judges in 1989 and 2003**

Municipal Court	Number of posts in 1989	Number of posts in 2003	Number of employed judges in 2003 (DJA) <sup>104</sup>
Gjilan/Gnjilane Municipal Court	11	8	6
Kamenicë/Kamenica Municipal Court	5	6	3
Viti/Vitina Municipal Court	6	4	3
Prizren Municipal Court	16	10	9
Dragash/Dragaš Municipal Court	4	6	5
Malishevë/ Mališevo Municipal Court	5	4	3
Rahovec/Orahovac Municipal Court	7	6	6
Suharekë/Suva Reka Municipal Court	8	5	4
Pejë/Peć Municipal Court	15	10	10
Deçan/Dečani Municipal Court	6	4	4
Gjakovë/Dakovica Municipal Court	10	8	6
Istog/Istok Municipal Court	6	4	3
Klinë/Klina Municipal Court	6	4	3
Prishtinë/Priština Municipal Court	32	28	22
Ferizaj/Uroševac Municipal Court	11	8	7
Glogovc/Glogovac Municipal Court	5	5	3
Kaçanik/Kaçanik Municipal Court	4	1	1
Lipjan/Lipljan Municipal Court	7	6	5
Podujevë/Podujevo Municipal Court	6	6	5
Mitrovicë/Mitrovica Municipal Court	17	9	9
Skenderaj/Srbica Municipal Court	4	4	4
Vushtrri/Vučitrn Municipal Court	8	8	5
Leposavić/Leposaviq Municipal Court	6	5	1
Zubin Potok Municipal Court	4	4	1
Shtërpçë/Štrpce Department	-	2	0
<b>Total</b>	<b>209</b>	<b>165</b>	<b>128</b>

<sup>104</sup> As stated above it should be noted that according to the Kosovo Judicial and Prosecutorial Council, due to a different way of assessment of the numbers, 137 municipal court judges were employed in 2003, and that 28 post remained vacant.



## ANNEX 2: CASES PER COURT

**Table 2. Number of cases in courts 2002<sup>105</sup>**

<b>Municipal Court</b>	<b>Cases at the start of 2002</b>	<b>Received cases 2002</b>	<b>Total cases in process 2002</b>	<b>Completed cases 2002</b>	<b>Capacity v. caseload</b>
Gjilan/Gnjilane	2,336	6,624	8,960	5,387	81%
Kamenicë/Kamenica	314	2,821	3,135	2,817	100%
Viti/Vitina	531	2,917	3,448	2,635	90%
Prizren	6,108	12,759	18,867	11,251	88%
Dragash/Dragaš	77	2,394	2,471	2,347	98%
Malishevë/ Mališevo	391	4,486	4,877	4,384	98%
Rahovec/Orahovac	1,202	6,698	7,900	6,671	100%
Suharekë/Suva Reka	1,187	4,992	6,179	4,912	98%
Pejë/Peć	8,304	25,962	34,266	17,172	66%
Deçan/Dečani	404	3,033	3,437	2,838	94%
Gjakovë/Đakovica	1,662	15,012	16,674	9,991	67%
Istog/Istok	617	3,672	4,289	3,455	94%
Klinë/Klina	679	4,268	4,947	3,883	91%
Prishtinë/Priština	5,143	22,878	28,021	15,604	68%
Ferizaj/Uroševac	1,778	8,028	9,806	7,064	88%
Gllgovc/Glogovac	216	2,893	3,109	2,689	93%
Kaçanik/Kaçanik	723	3,913	4,636	3,426	88%
Lipjan/Lipljan	139	5,876	6,015	5,802	99%
Podujevë/Podujevo	332	4,281	4,613	3,845	90%
Mitrovicë/Mitrovica	1,049	4,897	5,946	4,086	83%
Skenderaj/Srbica	43	2,479	2,522	2,399	97%
Vushtrri/Vučitrn	303	5,662	5,965	5,255	93%
Leposavić/Leposaviq	0	0	0	0	
Zubin Potok	0	0	0	0	
<b>Total</b>	<b>33,538</b>	<b>156,545</b>	<b>190,083</b>	<b>127,913</b>	<b>82%<sup>106</sup></b>

<sup>105</sup> All numbers are based on statistical information made available by the Department of Judicial Administration.

<sup>106</sup> This shows the percentage of the total number of completed cases in comparison to the total number of received cases during 2002.

**Table 3. Number of cases in courts 2003<sup>107</sup>**

<b>Municipal Court</b>	<b>Cases at the start of 2003</b>	<b>Received cases in 2003</b>	<b>Total cases in process</b>	<b>Completed cases</b>	<b>Capacity v. caseload</b>
Gjilan/Gnjilane	3,569	7,341	10,910	6,485	88%
Kamenicë/Kamenica	305	3,326	3,631	3,262	98%
Viti/Vitina	800	4,715	5,515	4,245	90%
Prizren	7,599	12,258	19,857	10,532	86%
Dragash/Dragaš	121	3,628	3,749	3,646	100%
Malishevë/ Mališevo	487	6,491	6,978	6,341	98%
Rahovec/Orahovac	1,229	7,122	8,351	6,829	96%
Suharekë/Suva Reka	1,009	6,141	7,150	6,115	100%
Pejë/Pec	17,062	18,802	35,864	16,582	88%
Deçan/Deçani	598	3,959	4,557	3,871	98%
Gjakovë/Đakovica	6,683	13,958	20,641	11,844	85%
Istog/Istok	834	5,121	5,955	4,567	89%
Klinë/Klina	1,063	6,505	7,568	6,184	95%
Prishtinë/Priština	12,404	32,055	44,459	25,690	80%
Ferizaj/Uroševac	2,742	11,269	14,011	9,660	86%
Glogovac/Glogovac	419	5,454	5,873	5,438	100%
Kaçanik/Kaçanik	1,170	4,318	5,488	3,189	74%
Lipjan/Lipljan	205	7,144	7,349	7,052	99%
Podujevë/Podujevo	768	5,745	6,513	5,218	91%
Mitrovicë/Mitrovica	1,860	9,285	11,145	8,156	88%
Skenderaj/Srbica	118	4,923	5,041	4,742	96%
Vushtrri/Vučitrn	668	7,609	8,277	7,590	100%
Leposavić/Leposaviq	0	590	590	395	67%
Zubin Potok	0	223	223	162	73%
<b>Total</b>	<b>61,713</b>	<b>187,982</b>	<b>249,695</b>	<b>167,795</b>	<b>89%<sup>108</sup></b>

<sup>107</sup> Note that cases in process at the start of the 2003 reporting period does not include those cases from 2002 that were transferred to other instances.

<sup>108</sup> This shows the percentage of the total number of completed cases in comparison to the total number of received cases during 2003.

### ANNEX 3: TYPES OF CASES

**Table 4. Number of cases by category 2002**

Type of case	Cases Received	Cases in process	Completed cases	Pending cases 2001	Transferred cases <sup>109</sup>
Investigations	3,689	5,343	3,025	2,224	94
Appeals on inv.	631	634	610	2	22
Criminal cases	9,434	16,234	5,371	10,647	216
Civil cases	10,188	18,968	5,868	12,999	101
Juvenile cases	995	1,588	669	919	0
Land registers	1,259	1,259	1,259	0	0
Executions	21,870	35,005	3,750	31,255	0
Inheritances	3,505	4,570	2,894	1,676	0
Non-contested procedure	4,621	5,728	4,216	1,512	0
Other cases	99,909	100,168	99,749	418	1
Payment orders	444	586	502	84	0
<b>Total</b>	<b>156,545</b>	<b>190,083</b>	<b>127,913</b>	<b>61,736</b>	<b>434</b>

**Table 5. Number of cases by category 2003**

Type of case	Received Cases	Cases in process	Completed cases	Pending cases 2002	Transfer-red cases
Investigations	4,178	6,402	3,958	2,224	3
Appeals on inv.	686	688	660	2	30
Criminal cases 1st inst.	10,595	21,242	5,458	10,647	62
Juvenile cases	1,178	2,097	880	919	3
Civil cases	10,767	23,766	6,288	12,999	401
Inheritances	3,436	5,112	3,150	1,676	3
Non-contested procedure	3,818	5,330	3,120	1,512	4
Intabulations <sup>110</sup>	3,907	3,907	3,843	0	1
Civil execution	16,068	46,964	7,660	30,896	13
Criminal executions	1,862	2,198	1,080	336	11
Other cases	131,487	131,989	131,698	502	12
<b>Total</b>	<b>187,982</b>	<b>249,695</b>	<b>167,795</b>	<b>61,713</b>	<b>543</b>

<sup>109</sup> Cases transferred to other courts.

<sup>110</sup> Such as encumbrances.

#### ANNEX 4: JUVENILE CASES

**Table 6. Juvenile cases 2002**

<b>Municipal Court</b>	<b>Received cases</b>	<b>Total cases in process</b>	<b>Completed cases</b>	<b>Pending cases</b>	<b>Transferred cases<sup>111</sup></b>
Gjilan/Gnjilane	174	291	168	123	0
Prizren	231	440	172	268	0
Pejë/Peć	105	117	94	23	0
Prishtinë/Priština	202	368	101	62	0
Ferizaj/Uroševac	91	145	48	267	0
Mitrovicë/Mitrovica	125	126	47	97	0
Gjakovë/Đakovica	67	101	39	79	0
<b>Total</b>	<b>995</b>	<b>1588</b>	<b>669</b>	<b>919</b>	<b>0</b>

**Table 7. Juvenile cases 2003**

<b>Municipal Court</b>	<b>Received cases</b>	<b>Total cases in process</b>	<b>Completed cases</b>	<b>Pending cases</b>	<b>Transferred cases<sup>112</sup></b>
Gjilan/Gnjilane	180	303	193	110	0
Prizren	299	567	209	358	0
Pejë/Peć	86	109	86	23	0
Gjakovë/Đakovica	112	174	56	118	0
Prishtinë/Priština	226	493	146	344	3
Ferizaj/Uroševac	146	243	96	147	0
Mitrovicë/Mitrovica	129	208	94	114	0
<b>Total</b>	<b>1178</b>	<b>2097</b>	<b>880</b>	<b>1214</b>	<b>3</b>

<sup>111</sup> Cases transferred to other courts.

<sup>112</sup> Cases transferred to other courts.

## ANNEX 5: CASELOAD PER JUDGE

**Table 8. Average number of complex cases per judge 2002**

Municipal Court	Number of judges <sup>113</sup>	Received cases	Caseload per judge	Completed cases per judge
Gjilan/Gnjilane	6	2,102	350.3	261.7
Kamenicë/Kamenica	4	473	118.3	133.3
Viti/Vitina	4	679	169.8	130.8
Prizren	10	3,378	337.8	225.3
Dragash/Dragaš	5	348	69.6	68.4
Malishevë/ Mališevo	3	574	191.3	186.7
Rahovec/Orahovac	6	1,376	229.3	215.0
Suharekë/Suva Reka	4	731	182.8	163.0
Pejë/Pec	9	1,940	215.6	171.4
Deçan/Decani	4	608	152.0	126.3
Gjakovë/Đakovica	7	4,169	595.6	319.0
Istog/Istok	3	449	149.7	126.0
Klinë/Klina	2	765	382.5	250.0
Prishtinë/Priština	22	5,521	251.0	120.3
Ferizaj/Uroševac	8	1,993	249.1	207.3
Glllogovc/Glogovac	2	477	238.5	180.0
Kaçanik/Kacanik	1	893	893.0	580.0
Lipjan/Lipljan	5	637	127.4	126.0
Podujevë/Podujevo	6	869	144.8	124.3
Mitrovicë/Mitrovica	4	1,404	351.0	215.8
Skenderaj/Srbica	4	498	124.5	120.8
Vushtri/Vucitrn	5	1,319	263.8	238.8
Leposavic/Leposaviq	0	0	0.0	0.0
Zubin Potok	0	0	0.0	0.0
<b>Total</b>	<b>124</b>	<b>31,203</b>	<b>241.1</b>	<b>178.7</b>

<sup>113</sup> The number of judges is based on information provided by the Department of Judicial Administration and reflects the filled positions of judges in the municipal courts.

**Table 9. Average number of complex cases per judge 2003**

<b>Municipal Court</b>	<b>Number of judges</b>	<b>Received cases</b>	<b>Caseload per judge</b>	<b>Solved cases per judge</b>
Gjilan/Gnjilane	6	2,390	398.3	298.3
Kamenicë/Kamenica	3	527	175.7	159.3
Viti/Vitina	3	909	303.0	232.3
Prizren	9	3,844	427.1	257.7
Dragash/Dragaš	5	314	62.8	65.2
Malishevë/ Mališevo	3	610	203.3	163.3
Rahovec/Orahovac	6	1,198	199.7	166.7
Suharekë/Suva Reka	4	762	190.5	172.3
Pejë/Pec	10	1,995	199.5	165.3
Deçan/Deçani	4	576	144.0	153.3
Gjakovë/Đakovica	6	2,546	424.3	222.7
Istog/Istok	3	571	190.3	113.0
Klinë/Klina	3	716	238.7	166.7
Prishtinë/Priština	22	6,991	317.8	141.9
Ferizaj/Uroševac	7	2,440	348.6	226.0
Glogovac/Glogovac	3	385	128.3	129.7
Kaçanik/Kaçanik	1	1,063	1063.0	451.0
Lipjan/Lipljan	5	823	164.6	147.8
Podujevë/Podujevo	5	1,356	271.2	171.0
Mitrovicë/Mitrovica	9	1,789	198.8	175.6
Skenderaj/Srbica	4	539	134.8	126.5
Vushtri/Vučitrn	5	1,366	273.2	275.6
Leposavić/Leposaviq	1	200	200.0	18.0
Zubin Potok	1	62	62.0	5.0
<b>Total</b>	<b>128</b>	<b>33,972</b>	<b>265.4</b>	<b>178.5</b>