

**Department of Human Rights and Communities**  
**Legal System Monitoring Section**

**INSUFFICIENT NUMBER OF PUBLIC PROSECUTORS IN KOSOVO**

**Monthly Report**

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## **Insufficient Number of Public Prosecutors in Kosovo**

The Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) is concerned that because of insufficient staffing, some public prosecution offices in Kosovo are unable to properly discharge their professional duties, which may lead to human rights violations.<sup>1</sup> Chronic and severe understaffing may severely impact the functioning of the prosecution service, undercutting its ability to conduct effective investigations and prosecutions. It may also cause unreasonable delays in the conduct of criminal proceedings, and delay or even deny victims' right to justice.

### **The role and duties of public prosecutors in Kosovo**

Both international instruments and Kosovo law prescribe that prosecutors have a duty to act with due diligence when investigating and prosecuting suspected criminal offences. Furthermore, prosecutors must perform their duties fairly, consistently, expeditiously and with due respect for human rights, so as to contribute to ensuring due process and smooth functioning of the criminal justice system.<sup>2</sup> Sufficient staffing is crucial to meeting these requirements.

According to the established case law of the European Court of Human Rights, prosecutors have a duty to conduct effective and expeditious investigations and prosecutions.<sup>3</sup> Additionally, the United Nations Guidelines on the Role of Prosecutors provide that prosecutors must perform an active role in criminal proceedings, in instituting prosecution, investigating crime and supervising the legality of investigations.<sup>4</sup> Similar principles are set forth in Council of Europe's Recommendation (2000)19 On the Role of Public Prosecution in the Criminal Justice System.<sup>5</sup>

In line with those international guidelines, the Kosovo code of criminal procedure provides that public prosecutors, along with the court and the police, "must truthfully and completely establish the facts which are important to rendering a lawful decision," and "have a duty to examine carefully and with maximum professional devotion and to

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<sup>1</sup> The OSCE has previously reported on this issue. See among others *Report on the Administration of Justice* (March 2002), pages 8-11; *Administration of Justice in Municipal Courts* (March 2004), pages 15-16; *LSMS Monthly Report – February 2008*, pages 2 and 4.

<sup>2</sup> Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, Section 12.

<sup>3</sup> The European Court of Human Rights has established this duty as a requirement inherent in the procedural limb of articles 2 and 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. See among others *Hugh Jordan v. the United Kingdom*, ECtHR Judgment of 4 May 2001, paragraphs 105-109, and 143; and *Labita v. Italy*, ECtHR Judgment of 6 April 2000, paragraph 131.

<sup>4</sup> Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, Section 11.

<sup>5</sup> Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19, 6 October 2000, par. 24 (a) and (c). See also the European Guidelines on Ethics and Conduct for Public Prosecutors ("the Budapest Guidelines") adopted by the Conference of Prosecutors General of Europe, 31 May 2005, paragraph I.1. and paragraph III-1 (c).

establish with equal attention the facts against the defendant as well as those in his or her favour.”<sup>6</sup> Public prosecutors are obliged under the law to initiate a criminal investigation in all cases where “there is a reasonable suspicion that that person has committed a criminal offence which is prosecuted *ex officio*.”<sup>7</sup> Investigations should normally be completed within a period of six months, extendable only in cases involving complex and severe crimes.<sup>8</sup> Public prosecutors are also responsible for supervising the work of the police in the course of investigations,<sup>9</sup> filing the indictment or summary indictment before the court,<sup>10</sup> presenting evidence in court,<sup>11</sup> making closing statements during trial at the completion of evidentiary proceedings,<sup>12</sup> filing appeals against court decisions,<sup>13</sup> as well as for other matters as provided by law.<sup>14</sup> They also have a duty “to ensure that the investigation is carried out with full respect for the rights of the defendant and that evidence is not collected in breach of [the law].”<sup>15</sup>

To ensure that Kosovo public prosecution offices can properly discharge all these important functions, they need to be properly staffed. The Kosovo Judicial Council (KJC), as the body temporarily responsible for the organisation and proper functioning of the judiciary, must determine the number of prosecutors in each jurisdiction and make recommendations for the establishment of new courts.<sup>16</sup>

An overview of the Kosovo public prosecution offices today reveals that many of them are significantly understaffed. The OSCE has noted with concern that in some prosecution offices vacancies remain unfilled for extended periods of time. This leads to extra strain on the existing prosecutors, and may have an adverse impact on their investigations and prosecutions. Furthermore, some prosecution offices, even when fully staffed, can barely cope with the heavy caseload.

### **Understaffed public prosecution offices**

According to official statistics, the Kosovo public prosecution system comprises a total of 94 prosecutors: 51 municipal public prosecutors, 31 district public prosecutors, six Special Prosecutors, and six prosecutors working for the Public Prosecutors’ Office of

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<sup>6</sup> Article 7 Provisional Criminal Procedure Code of Kosovo, promulgated by UNMIK Regulation No. 2003/26, 6 July 2003, with subsequent amendments (PCPCK).

<sup>7</sup> Articles 220(1) and 6(3) PCPCK .

<sup>8</sup> Article 225(1,2) .

<sup>9</sup> Article 46(1) PCPCK.

<sup>10</sup> Article 47(2)2 PCPCK .

<sup>11</sup> Article 360(3) PCPCK.

<sup>12</sup> Article 378(1) PCPCK.

<sup>13</sup> Article 47(2)3 PCPCK.

<sup>14</sup> Articles 46(1) and 47(3) PCPCK.

<sup>15</sup> Article 46(3) PCPCK.

<sup>16</sup> See law No. 03/L-123 on the Temporary Composition of the Kosovo Judicial Council, adopted on 16 December 2008. See also Section 1.7, UNMIK Regulation No. 2005/52 on the Establishment of the Kosovo Judicial Council, of 20 December 2005.

Kosovo.<sup>17</sup> There are also 22 professional assistants spread throughout prosecution offices in Kosovo. Their main task is to assist public prosecutors, through clerical and research services, in the exercise of their official duties.

The number of Kosovo public prosecutors is slowly increasing from one year to the next, but the staffing dynamics in public prosecution offices seem to be lagging behind the gradual increase in the prosecutors' caseload. Thus, in 2008 only six new prosecutors were hired, while two prosecutors were suspended in that same period, and two Kosovo Serb prosecutors stopped working after February 2008.<sup>18</sup> Compared to some countries from the region, Kosovo has by far the lowest number of public prosecutors *per capita*.<sup>19</sup>

At the same time, prosecutors' caseload is steadily on the rise. The determined "annual norm," as regards prosecutors' caseload, is of 250 penal charges for each municipal public prosecutor, and of 60 penal charges for each district public prosecutor, in the course of one calendar year.<sup>20</sup> In reality, however, in the year 2008 each municipal public prosecutor has solved, on the average, 488 criminal reports, while each district public prosecutor has solved an average of 90 criminal reports.<sup>21</sup> This shows that some Kosovo public prosecutors handle almost double the determined normal annual caseload. Particularly high annual caseloads are handled by municipal public prosecutors in Gjilan/Gnjilane, Pejë/Peć and Prishtinë/Priština, and by district public prosecutors in Prishtinë/Priština.<sup>22</sup>

Faced with a steadily increasing caseload, and in an effort to better re-distribute existing limited human resources, some prosecution offices resort to *ad hoc* arrangements whereby some public prosecutors are temporarily re-assigned from one office to another. For instance, the Pristine/Priština municipal public prosecution office tries to cover existing vacancies by borrowing one or two public prosecutors from the Ferizaj/Uroševac municipal public prosecution office, on renewable temporary assignments lasting three months. Such a practice may help alleviate understaffing and the case overload at the receiving office, but it drains the sending office of scarce human resources. It may also prove ineffective for the prosecution of cases which require lengthier investigation and prosecution.

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<sup>17</sup> Statistics taken from the Ministry of Justice 2008 Annual Report *On the Performance of Public Prosecution Offices* (April 2009), page 11. The figures contained therein are provided as of 31 December 2008. Although the report cites a total number of 88 prosecutors, that number does not include the six Special Prosecutors.

<sup>18</sup> *Ibidem*, page 49.

<sup>19</sup> Per 100,000 inhabitants, Kosovo has only 3.7 public prosecutors. In Bosnia and Herzegovina the number of prosecutors per 100,000 inhabitants is 7.3; in Slovenia, 9.0; in Croatia, 13.0; in Montenegro, 13.4. Source: *EULEX Programme Report* (July 2009), page 89, available at: <http://www.eulex-kosovo.eu/news/docs/programmereport/EULEX-PROGRAMME-REPORT-July-2009-new.pdf>

<sup>20</sup> See the Ministry of Justice 2008 Annual Report *On the Performance of Public Prosecution Offices* (April 2009), page 12. The report does not explain, however, how that "annual norm" was determined.

<sup>21</sup> *Ibidem*, page 12.

<sup>22</sup> *Ibidem*, page 12. In all those offices, the public prosecutors handle an annual caseload which is more than double the determined "annual norm."

Thus, many Kosovo public prosecutors face a daunting and ever-increasing workload, and they should be commended for their daily efforts to handle it efficiently and effectively. Nonetheless, the understaffing of prosecution offices many times inevitably affects their functioning.

### **Negative impact of understaffing in public prosecution offices**

The understaffing in public prosecution offices unavoidably affects prosecutors' ability to conduct comprehensive, timely and effective investigations, as well as their capacity to prosecute criminal offences in general.

Public prosecutors may have insufficient time and facilities to draft adequately reasoned documents, such as requests for detention or indictments. Because of their busy agenda and/or conflicting schedules, public prosecutors are sometimes unable to attend all detention or trial hearings, and have to ask the court to cut short some hearings and/or announce postponements.<sup>23</sup>

The OSCE has noted that many Kosovo public prosecutors, when unable to attend a hearing, have the practice of sending another prosecutor from the same office as a replacement. This is often problematic because the replacing prosecutor, who is usually busy with his own cases, may have little time or opportunity to study that case-file and prepare a strong case. Moreover, the OSCE has been informed that in some isolated cases public prosecutors even ask their professional assistants to interview on their behalf witnesses or suspects, or even to represent the prosecution at some court sessions. Such a practice violates Kosovo criminal procedure law, which places the duty of criminal investigation and prosecution squarely and solely on the prosecutor.

Another concern is that the understaffing of public prosecution offices, coupled with the heavy caseload, makes it nearly impossible for prosecutors to specialize on specific categories of cases, such as cases involving particular complex crimes or specific offenders such as juveniles. It is also extremely difficult for prosecutors to keep well-informed, trained and abreast of relevant legal and social developments.<sup>24</sup>

In extreme cases, understaffing can even cause delays that may eventually result in the expiry of the period of statutory limitation for the prosecution of some crimes.<sup>25</sup> Such

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<sup>23</sup> The OSCE has also observed that some public prosecutors occasionally fail to inform the court of their inability to attend pre-scheduled hearings, which then leads to loss of time and frustration on the part of witnesses, defendants, police officers and judges, who have no choice but to postpone the hearing because of prosecutor's unavailability.

<sup>24</sup> See Section II (e) of the *European Guidelines on Ethics and Conduct for Public Prosecutors* (the "Budapest Guidelines"), adopted by the Conference of Prosecutors General of Europe, 31 May 2005. See also Section II(a)1 of the *Code of Ethics and Professional Conduct for Prosecutors*, adopted by the Kosovo Judicial and Prosecutorial Council, 31 July 2001.

<sup>25</sup> See the Ministry of Justice 2008 Annual Report *On the Performance of Public Prosecution Offices* (April 2009), page 52.

prosecutorial failures severely undermine the rule of law and public trust in the criminal justice system.

From a human rights perspective, the understaffing of prosecution offices may also severely impact victims' quest for justice. A failure to effectively investigate and prosecute crimes, even if caused by objective factors such as understaffing, may amount to a breach of prosecutors' professional obligations and due diligence duties. It may also constitute a violation of international human rights standards, according to which flagrant and serious deficiencies in the criminal investigation and prosecution of even less serious crimes, may amount to a failure by authorities to fulfil their positive obligations to protect human rights.<sup>26</sup>

Ultimately, the understaffing of prosecution offices not only affects their functioning, it also erodes public confidence in the criminal justice system and in the rule of law in general.

### **Conclusion and recommendations**

International standards recommend the institution of adequate organisational conditions, including sufficient personnel, as a guarantee that public prosecutors are able to fulfil their professional duties and responsibilities.<sup>27</sup> Considering their central role in the conduct of criminal investigations and prosecutions, a continuing failure to appoint a sufficient number of prosecutors may amount to a violation of authorities' positive obligations under international human rights law to ensure effective investigations of suspected crimes.<sup>28</sup>

Therefore, it is crucial that a comprehensive staffing needs assessment is conducted within the Kosovo prosecution service, based on the caseload registered at the various public prosecution offices. Depending upon the results of that assessment, new appointments should be made as soon as possible to the offices which are particularly understaffed and overloaded with cases, and if necessary, some prosecutors should be reallocated among offices according to existing caseload. Only when their offices are adequately staffed can it be reasonably expected that Kosovo public prosecutors will in all cases discharge their professional duties with diligence, efficiency and integrity, and earn the general public's full trust as upholders of legality.

To ensure that Kosovo public prosecutors are able to effectively discharge their professional duties, the OSCE recommends that:

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<sup>26</sup> See *Blumberga v. Latvia*, ECtHR Judgment of 14 October 2008, paragraph 67.

<sup>27</sup> Committee of Ministers of the Council of Europe, Recommendation Rec(2000)19, 6 October 2000, paragraph 4. See also *Lignes directrices du centre Saturn pour la gestion du temps judiciaire*, adopted by the European Commission for the Efficiency of Justice at its 12<sup>th</sup> meeting on 10–11 December 2008, Section I(E).

<sup>28</sup> As developed in ECtHR's case law, see footnote 4 above. See also the General Recommendation No. 31(80) paragraph 8 of the UN International Covenant of Civil and Political Rights.

- The Kosovo Judicial Council (KJC) should appoint more public prosecutors to the offices which face a particularly high caseload.
- Prosecution offices should closely co-operate to identify and share best practices on how to streamline criminal investigations and prosecutions.
- A case management system should be implemented in public prosecution offices, so as to increase work efficiency.
- Due consideration should be given to alternatives to prosecution,<sup>29</sup> as a possible way of relieving prosecutors of an excessive burden of cases.
- If necessary, a commission could be established, with representatives of judges, prosecutors, and support staff to assess the real staffing needs of the prosecution service in Kosovo and make a proposal to the KJC, the Assembly of Kosovo, the Ministry of Justice and the Ministry of Economy and Finance on increasing the number of public prosecutors and their support staff.
- The KJC, the Assembly of Kosovo, the Ministry of Justice and the Ministry of Economy and Finance should continue to support the Kosovo Judicial Institute so that it may increase the number of new candidates for prosecutors' posts it trains each year.<sup>30</sup>
- To ensure that well-qualified jurists are hired and retained in the prosecution system, prosecutors' salaries should be increased and their work conditions should be improved.<sup>31</sup>

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<sup>29</sup> Such as the mediation procedure, which is expressly provided for by article 228 PCPCK, but not yet implemented in practice.

<sup>30</sup> The Kosovo Judicial Institute is the principal judicial training centre for Kosovo, and has the legislated responsibility to provide professional training for all judges and prosecutors in Kosovo. See law No. 02/L-25 on Establishing the Kosovo Judicial Institute, adopted on 23 February 2006.

<sup>31</sup> As recommended by the *Guidelines on the Role of Prosecutors*, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990 (U.N. Doc. A/CONF.144/28/Rev.1 at 189 (1990)).