



Department of Human Rights and Communities

Legal System Monitoring Section

Intimidation of the Judiciary: Security of Judges and Prosecutors

Issue 3

April 2010

Intimidation of the Judiciary: Security of Judges and Prosecutors

The Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) is concerned that the lack of adequate security for judges and prosecutors may violate legal framework in Kosovo and international human rights standards. In the course of its monitoring of the justice system, the OSCE has witnessed and recorded a number of acts carried out against judicial and prosecutorial officials which indicate a continuing or even growing trend of insecurity and intimidation of the judiciary. This affects not only the independence and impartiality of the courts, or at least the perception of it, but it also undermines the credibility and authority of prosecutorial and judicial institutions in the eyes of the public. The findings and analysis in this report are based on most recent data and factual information collected by OSCE monitors. The monitored and reported incidents of judicial intimidation presented in this report occurred inside courthouses, in judges' and prosecutors' offices and/or courtrooms; during and outside working hours; and at all judicial and prosecutorial levels.

The OSCE has previously reported on the issue of security of judges and prosecutors.¹ The problem of security has also been raised regularly by judges and prosecutors during roundtables held by the OSCE.² OSCE monitors have reported on security-related incidents against judges, prosecutors and even court support staff, ranging from verbal insults, harassment and threats to severe beatings and bodily injuries.

Authorities have an affirmative obligation to ensure that the rights guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) are practical and effective, and not theoretical and illusory.³ The ECHR guarantees the right to an "independent and impartial tribunal established by law."⁴ In jurisprudence delineating the contours of this right, the European Court of Human Rights (ECtHR) has stressed that "[...] judges must not only meet objective criteria of impartiality but must also be seen to be impartial; what is at stake is the trust that the courts must inspire in those who are brought before them in a democratic society".⁵ The European Commission of Human Rights (Commission)⁶ has stated that in order to establish whether a judicial body can be considered independent, regard must be had, *inter alia*, to the manner of appointment of its

¹ OSCE Review on the Criminal Justice System "Protection of Witnesses in the Criminal Justice System" (March 2002-April 2003), at page 12.

² Following publications of monthly and/or thematic reports on the justice system, the OSCE regularly holds roundtable meetings with judges, prosecutors, police and other relevant stakeholders to discuss findings from the reports. In 2009, the OSCE organised and held 16 regional roundtables with judges and prosecutors, in which the issue of security of judges and prosecutors was regularly brought up.

³ See *Artico v. Italy*, ECtHR judgment of 13 May 1980, paragraph 33.

⁴ Art. 6 (1), ECHR.

⁵ *Findlay v. United Kingdom*, ECtHR judgment of 25 February 1997, paragraph 73; *Incal v. Turkey*, ECtHR judgment of 9 June 1998, paragraph 65. The ECtHR has further held that "the work of the courts, which are the guarantors of justice and which have a fundamental role in [. . .] the rule of law, needs to enjoy public confidence. It should therefore be protected from unfounded attacks." *Skalka v. Poland*, ECtHR judgment of 27 May 2003, paragraph 34. "The courts, as with all other public institutions, are not immune from criticism and scrutiny. Persons detained enjoy in this area the same rights as all other members of society. A clear distinction must, however, be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate punishment would not, in principle, constitute a violation of Art. 10 § 2 of the Convention." *Id.*

⁶ See Articles 20-37 of the ECHR before amendment by Protocol No. 11. The Commission was operational until 1 November 1998, when Protocol No. 11 entered into force.

members and their term of office, to the existence of guarantees against outside pressures, and to the question of whether the body presents an appearance of independence.⁷ The Commission also stated that it is irrelevant whether influence from outside sources or any actual bias has occurred; what is relevant in examining the independence and impartiality of a tribunal is that appearances must be taken into account.

As noted in the Report of the Special Rapporteur of the United Nations Commission on Human Rights⁸ “[...]it is not only a matter of defending individuals engaged in a judicial or related activity; there is an institutional context to the issue: separation of powers, democracy and the rule of law. The concepts of the impartiality and independence of the judiciary [that are the hallmarks of the legitimacy of the judicial function] postulate individual attributes as well as institutional condition ... Their absence leads to a denial of justice and makes the credibility of the judicial process dubious. It needs to be stressed that impartiality and independence of the judiciary is more a human right of the consumers of justice than a privilege of the judiciary for its own sake.”⁹

In 1985, the United Nations General Assembly adopted the *Basic Principles on the Independence of the Judiciary*, which outline the fundamental elements of an independent judiciary. These include a requirement that the independence of the judiciary be “guaranteed [...] and enshrined in the [...] [legislative instruments].”¹⁰

Accordingly, the legal framework in Kosovo foresees that “[judges] should act impartially and independently in all cases and free from any outside influence, and [they should] perform judicial duties based on the facts and the law applicable in each case, without any restriction, improper influence, inducements, pressures, threats of interferences, direct or indirect, from any quarter.”¹¹

OSCE monitors have observed that security is provided to judges and/or prosecutors by police officers only in cases involving defendants held in detention and/or in trials which are held in courtrooms, in the presence of a public audience. In many cases, as previously reported by the OSCE,¹² trials are held in judges’ offices. In addition, many of these cases relate to defendants who are not in detention. Thus, many trials are held in the absence of any security arrangements for judges and prosecutors.

⁷ See Application No. 19589/92, *B Company v. the Netherlands*, paragraph 60, Report of the European Commission of Human Rights, 19 May 1994.

⁸ Commission on Human Rights, Sixtieth session, Item 11 of the provisional agenda: Civil and Political rights, including the questions of Independence of the Judiciary, Administration of Justice, Impunity, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy. E/CN.4/2004/60, 31 December 2003.

⁹ E/CN.4/Sub.2/1985/18 and Add.1-6, paragraph 75. The “Singhvi Declaration” was prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary in the year 1989. The Special Rapporteur was entrusted with the preparation of a report on the independence and impartiality of the judiciary and the independence of lawyers by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1980. The Declaration itself is contained in document E/CN.4/Sub.2/1985/18/Add.5/Rev.1.

¹⁰ UNGA Resolutions 40/32 and 40/146. The Principles were originally adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Milan, August, 1985.

¹¹ Code of Ethics and Professional Conduct for Judges, adopted on 25 April 2006, Specific Rules of Ethics A1, 3(A.)

¹² OSCE Review of the Criminal Justice System: *The administration of Justice in the Municipal Courts* (March 2004), page 26; OSCE Report on *The Administration of Justice* (March 2002), page 19.

The following examples illustrate the type of incidents which have occurred in the absence of adequate security arrangements.

On 16 December 2009, during the course of a trial held in a judge's office in the Prishtinë/Priština municipal court, a defendant insulted the judge in the case in a very offensive and vulgar manner, and then pushed him down from the chair. The recording clerk intervened and moved the defendant out of the office. When the judge stepped out to the corridor to inform the police, the defendant, who was waiting for him, kicked him hard in the stomach, inflicting light bodily injuries. On 23 December 2009 a summary indictment was filed against the assailant.

On 18 November 2009, in a case before district court in Gjilan/Gnjilane, a defendant was found guilty for commission of the criminal offence of attempted murder. After the verdict was pronounced, the defendant insulted the prosecutor and threatened him that "as soon as [he] gets out, [he] will cut [him] in pieces". Criminal proceedings were initiated against the defendant and he was found guilty of threat against an official person.

On 18 February 2009, prior to the start of a trial before district court Prishtinë/Priština involving two defendants charged with aggravated murder and attempted aggravated murder, the presiding judge of the judging panel addressed the defendants' family members, who were part of the audience, to stop calling her on the phone and sending her threatening mail. She warned them that the president of the court and the public prosecutor had been notified of these intimidating actions.

On 13 August 2009, a convicted person, while on three days home leave from a prison where he was serving his sentence for commission of the criminal offence of trafficking in persons, went to the premises of Vushtrri/Vučitrn municipal court (the current location of the Mitrovicë/Mitrovica district public prosecutor's office). There, he met the district public prosecutor who handled his case and in a threatening manner addressed him with the words "Prosecutor, I came to see you, and obviously you are doing fine, but you won't be for long". A summary indictment has been filed against the man on charges of threat. After the main trial, the defendant was found guilty for having committed the criminal offence of threat and was sentenced to three months imprisonment.

On 7 October 2009, at the beginning of a court hearing before the district court in Gjilan/Gnjilane, the public prosecutor, while reading the amendments to the indictment was assaulted by the defendant, initially charged with aggravated murder and attempted aggravated murder. When the prosecutor addressed the sensitive issue of who stabbed the victim, the defendant who was sitting not far from him, grabbed a chair and threw it at him. As a result, the prosecutor suffered bodily injuries. On 26 January 2010, the defendant was found guilty of attacking official persons performing official duties and sentenced to six months imprisonment.

On 15 January 2009, in the district public prosecutor's office Mitrovicë/Mitrovica (located in the premises of Vushtrri/Vučitrn municipal court), a party in a court case entered the office of the public prosecutor and in presence of other prosecutor's office employees, in a intimidating manner, threatened him with the words: "[...] I am giving you my word that your children will become orphans [...]". On 17 January

2009, the case was reported to the police. The defendant was found guilty for having committed the criminal offence of threat and was sentenced to five months imprisonment

If it is expected that “[a] judge shall act at all times in a manner that promotes public confidence in the dignity, integrity and independence of the judiciary”, as required by the Code of Ethics,¹³ judges should be entitled to all facilities which will enable them to properly fulfil the tasks of the office.

The continuing inequality of treatment between the judiciary and institutions of the legislative and executive branches in terms of compensation packages, logistical facilities and personal security is frequently discussed. Over the past years, during the course of roundtables organized by the OSCE, judges and prosecutors have complained about the constant pressure that is put on them from the international community and of the constant public attention they receive, and yet, at the same time, of the lack of attention with which competent institutions have so far dealt with their demands, regarding, *inter alia*, personal safety.

Denying the judiciary adequate and appropriate consideration for their security not only further deepens the gap between the judicial, executive and legislative branches of power but also weakens the confidence that the law-seeking public has in the judiciary.

The Kosovo Judicial Council (KJC) is the entity responsible for ensuring the independence and impartiality of the judicial system. Therefore, it is up to the KJC to safeguard the independent work of the courts and, implicitly, the individual independence of judges and autonomy of prosecutors. Currently, guards stationed at the entrance to courthouses are the only form of security guaranteed for judges and prosecutors by the KJC, even when more extensive arrangements are necessary because of signalled or indicated security risks. The OSCE considers that the issue of security for local members of judiciary should be taken into serious account and properly addressed by the KJC on a case-by-case basis.

The United Nations Interim Administration Mission in Kosovo (UNMIK) had a Threat Assessment Committee, which individually assessed threats or perceived threats against members of the judiciary and prosecution. If the committee determined that sufficient danger existed, close protection was assigned to the judge or prosecutor. However, this was only applicable for international personnel. The only option for local judges and prosecutors was to inform the Kosovo police of their concerns, which normally did not result in a truly increased level of protection. The European Union Rule of Law Mission in Kosovo (EULEX) has a mechanism in place to determine the level of threats against any of its international judges or prosecutors and a close protection unit that provides security to EULEX judges and prosecutors when needed.¹⁴

The OSCE has monitored cases where local judges and prosecutors transferred cases to their EULEX colleagues because of security concerns. Such practice is not the most appropriate way to address the matter, but apparently it is the only one used so far.

In a case initiated by the Kosovo special prosecutors’ office, on 23 July 2007, five suspects were indicted for attempting, on two occasions, to kill a high-profile political

¹³ Code of Ethics and Professional Conduct for Judges, adopted on 25 April 2006. .

¹⁴ The EULEX Close Protection Unit functions with the structure of the EULEX Mission’s Security Office.

figure. In a trial session on 8 October 2008 before a local judging panel of the district court in Prishtinë/Priština, one of the defendants directed serious threats towards the trial panel saying that “[...] he shall burn up everything and they [the judging panel] will realize who is he”. The members of the panel also received threatening letters. The presiding judge of the panel, for security reasons, requested on 11 June 2009 that the case be transferred to EULEX judges. On 6 October 2009, the case was transferred to EULEX and proceedings resumed before a three member panel (two EULEX judges and one local judge). On 20 November 2009, the defendants were found guilty.

On a related note, in a case involving high profile political figures, a local judge made public to the media his dissenting opinion, which had been presented in the course of confidential deliberations.¹⁵ EULEX reported that “[...] the judiciary does not appear to have sufficient protection from outside interference. Kosovo judges work in a difficult environment where threats are made and pressure exerted.”¹⁶ EULEX stressed that the KJC should strengthen their commitment to ensure that judges and prosecutors work in an environment free from any kind of threats, pressure or promises.

The OSCE has also monitored cases where the administrative support staff of the courts were targets of insults, threats and attacks by individuals involved in court cases.

On 7 May 2009, in the Prizren municipal courthouse, two individuals insulted, threatened and used physical violence against the court clerk, causing him grave bodily injuries. They also physically assaulted a female security worker of the court, causing her light bodily injuries. A criminal proceeding was initiated against the assailants and on 9 June 2009, the municipal court in Rahovec/Orahovac found the defendants guilty and sentenced them to three months of imprisonment.

On 30 December 2008 a rape trial involving four defendants began in the district court of Prishtinë/Priština. At the end of the session, after the trial panel left the courtroom, two of the defendants threatened to burn down the courthouse and pushed one of the security police officers to the floor. In the meantime, the other defendants hit the other police officer. As the situation in the courtroom got out of control, family members in the audience intervened and calmed down the defendants until supporting police officers entered the courtroom and handcuffed the defendants.

Conclusion

Independence in a functional sense implies non-interference of other non-judicial organs in the performance of judicial functions. It also obliges institutions to safeguard the independent work of the courts and, implicitly, the individual independence of the judges.

As emphasized above, judges and prosecutors must be free to make decisions without fear of physical harm to themselves or to members of their families. The authority and credibility of the judicial and prosecutorial offices stems from and is built on the professional and personal

¹⁵ Article 122, UNMIK Regulation 2003/25 on the Provisional Criminal Procedure Code of Kosovo, 6 July 2003. The code was supplemented and amended on 27 November 2008.

¹⁶ EULEX Press Statement – *Deliberations are confidential*, 6 October 2009.

integrity of the officials appointed and mandated by the law to deliver justice. Recorded threats and assaults against judges and prosecutors strike not only at them individually, or at the judicial institution they represent, but at the core of the justice system as a whole.

The OSCE considers that, if expected to meet standards of impartiality and independence, local members of the judiciary should be treated on an equal footing with the officials in executive and legislative branches of power. Local judges and prosecutors are not being provided with the necessary support to develop into a respected and highly qualified core of professionals. Under the circumstances, any capacity-building effort is seriously diminished and cannot properly ascertain its goals.

Recommendations:

To the Kosovo Judicial Council:

- Consider establishing a committee for dealing with security related concerns raised by judges and prosecutors.
- Ensure the independence and impartiality of the Kosovo judiciary by providing adequate security for judges and prosecutors.