



**Organization for Security and Co-operation in Europe
Mission in Kosovo**

Department of Human Rights and Rule of Law

Human Rights Division

Belgrade St. 29, 38000 Pristina
Telephone: +381-38-500-162. Fax: +381-38-500-188 and 500-358
Telephone (Sat): +871-762 009 981

**Observations And Recommendations Of The
OSCE Legal System Monitoring Section:**

REPORT 1 -- Material Needs Of The Emergency Judicial System

Pristina, 7 November 1999.

Introduction

As the third pillar in the UNMIK structure, the OSCE Mission in Kosovo is tasked with institution building, including the development of democratic institutions necessary to support the rule of law in Kosovo. The OSCE is also taking the lead role in monitoring, protecting, and promoting human rights in the province.

Pursuant to this mandate, the Department of Human Rights and Rule of Law has developed a programme for monitoring the functioning of the legal system in Kosovo. Through the Rule of Law Division's Legal System Monitoring Section, OSCE legal monitors have observed court proceedings; met regularly with judges, prosecutors and defence counsel; and have otherwise been in close contact with those involved in the legal system to monitor its functioning. Legal system monitors serve as independent, unbiased outside monitors. They do not represent the civil administration, any defendant, or any other group or individual.¹ The Legal System Monitoring Section will release periodic reports on its findings, with the goal of protecting and promoting human rights, encouraging improvements in the administration of justice, and suggesting systemic changes to the legal and judicial systems as necessary and appropriate. The Legal System

¹ In the event of any OSCE conflict of interest in a particular matter, OSCE legal monitors will: (1) announce the conflict; (2) withdraw from observation in the matter; and (3) recommend that another competent body undertake the observation.

Monitoring Section will avoid rendering opinions on the merits of cases currently under adjudication, unless this is necessary in a particular case to avoid human rights violations.

Issue

While the judicial system currently also faces other serious problems,² this first report from the OSCE Legal System Monitoring Section highlights the current material needs of the courts.

The Emergency Judicial System

Pursuant to UNMIK Emergency Decrees 1999/1 and 1999/2, upon the recommendation of the Joint Advisory Council for the Provisional Appointment of Judges and Prosecutors, and pursuant to his other authorities, the Special Representative of the UN Secretary General has appointed a total of fifty-five judges and prosecutors to serve in an Emergency Judicial System in Kosovo (EJS). These judges and prosecutors serve in provisional district courts and public prosecutors offices in Pristina, Prizren, Pec, and Mitrovica. An Ad Hoc Court of Final Appeal and an Ad Hoc Office of the Public Prosecutor has also been established in Pristina. A fifth district court is likely to be set up in the Gnjilane District in the near future. In the absence of a district court for Gnjilane, mobile teams of judges and prosecutors from the Pristina District Court have covered the district.³ The EJS does not yet include municipal courts.

Judges and prosecutors in the EJS are appointed for renewable three-month periods. One Serbian judge appointed to the system has left Kosovo and, consequently, was not available to be re-appointed. A total of six other Serbian judges and prosecutors have resigned from the EJS, leaving a total of only forty-eight judges and prosecutors in the current system.⁴ The ethnic composition of the judges and prosecutors still working is as follows: forty-two ethnic Albanians; four Muslims Slavs (Bosniak); one Roma; and one Turk. There are no ethnic Serbs currently working as judges or prosecutors in the EJS.

To date, the EJS has worked exclusively on criminal cases. The EJS has held initial detention hearings and has provided periodic review of detention for criminal suspects in serious cases.⁵ Thus far, the EJS has concluded at least seven criminal trials and several others have commenced. The investigation stage has been concluded in many other cases and these may proceed to trial in the near future.

² These other problems will be addressed in future reports.

³ Until recently, two mobile teams covered those areas not served by a district court. With the closure of the Lipljan detention facility and the transfer of detainees to Pristina, only one mobile unit continues to operate. This last remaining mobile unit covers Camp Bondsteel in the US KFOR sector.

⁴ The OSCE recommends that provisional three- to six-month renewable appointments of at least twenty-five judges, forty-nine lay judges, and twelve prosecutors be made immediately. This would, of course, address only the most emergent needs of the system. Many more judges and prosecutors will need to be appointed very quickly thereafter to address the backlog of criminal cases that has developed and to begin to handle civil cases.

⁵ As of Thursday, 4 November 1999, the mobile teams alone had reviewed 382 cases.

Observations

The LSMS has noted that inefficiency due to the lack of essential supplies and office equipment is currently contributing to delay. While this is certainly not the only problem in the system, the impact of the lack of material resources appears to be substantial.

For example, legal monitors note that court clerks are currently using inefficient mechanical typewriters. As there are no photocopying machines, carbon paper must be used for duplicate or triplicate documents. There are no standard forms available, thus requiring the judges to dictate entire documents. Binders or plastic folders are not available, leaving the clerks to improvise their own. Other basic office supplies and office equipment are also lacking.

Moreover, the physical conditions necessary for the smooth functioning of justice in the district courts are lacking. Some courthouses lack windows, some do not have functioning locking doors on all offices, others require other basic improvements needed to properly clothe justice in at least a minimally acceptable level of professionalism. Heating is not available in some courthouses. Overall, buildings need general repair, paint, and other simple measures to partially restore them to a functioning condition.

Judges, Prosecutors and defence lawyers participating in recent symposia for the judiciary highlighted these problems in their discussions.⁶ While recognising the work of the international community, the participants stressed the urgent need for immediate action to provide the necessary working conditions for the courts.

Recommendations

Given the multitude of tasks facing the interim civil administration of Kosovo and the serious limitations in the Kosovo budget, it is evident that these needs cannot be met immediately through the interim civil administration. At the same time, material resources are sorely needed to facilitate the functioning of justice. If support is not provided, those working in the judiciary will quickly lose confidence in the international community.⁷

The OSCE Legal System Monitoring Section therefore recommends that grant funding be immediately found to provide support to Kosovo's Emergency Judicial System as follows:

⁶ Kosovo Judicial Institute, OSCE Background Symposium for Appointed Judges and Prosecutors, held 24-25 September, 25-26, and 27-28 October 1999.

⁷ This report does not address the issue of the payment of judges, prosecutors, defence lawyers, lay judges and court staff—another serious issue facing the functioning of justice.

Immediate Needs

- Two lap-top computers and one bubble jet printer are needed for the mobile judicial team. This would enable, for example, statements by suspects or witnesses to be printed and signed immediately.
- One desk-top computer and one printer is needed for each court, each prosecutors office, the Ad Hoc Court of Final Appeal, and the Ad Hoc Office of the Public Prosecutor.
- Manual typewriters are needed in all courts and prosecutors offices.
- Until additional computers become available, standard forms should be prepared for the courts.
- Quick training should be provided for court clerks and other staff on use of the computers, office practices, and information technology, if necessary.
- Heating devices are needed in many of the offices.
- Other basic office supplies, such as stationary, legal forms, pens, paper, printer cartridges, binders, folders, and registry books are required for all courts.
- In addition, a small fund should be made available to each court building for repair of the physical premises and for the discretionary purchase of office equipment for the courts and prosecutors offices.

Short-term Needs

- Each court and prosecutors office requires a vehicle to deliver court documents, locate witnesses, transport at-risk personnel, and perform other basic functions outside the court.
- Additional desk-top computers, laser printers and bubble jet printers will quickly be needed for distribution to the four functioning district courts, the prosecutors offices, the district court to be formed in Gnjilane, the Ad Hoc Court of Final Appeal, and the Ad Hoc Office of the Public Prosecutor.
- Additional on-going training should be provided to court staff on court administration, office practices, computers, and information technology.
- Copy machines for each court and prosecutors office would facilitate the production of documents as required in duplicate or triplicate.
- Desks, chairs, file cabinets, and other office equipment are needed for many of the offices.
- An additional discretionary fund should be provided to each court and prosecutors for the purchase of routine items, additional repair of physical space, and the like.

Mid-term Needs

- The work of investigating judges and prosecutors would be greatly facilitated by a cellular telephone or radio, as these officials must be available to police authorities for on-scene investigation.
- Each office should eventually be equipped with a generator, if electrical power shortages are foreseen to be long term.
- Other needs should be addressed as the court system continues to develop. Notably, this recommendation does not address the needs of municipal courts to be established in the near future.

Conclusion

Although other serious questions in the court system need to be addressed in the near future -- such as increasing the number of judges, lay judges, prosecutors, and staff -- efficiency would be significantly improved by providing the EJS mobile units and the courts with the equipment and materials noted above. While needs such as these will ultimately have to be borne by the Kosovo budget, it is crucial to have these items provided immediately through non-budgetary funding.

7 November 1999