

**Organization for Security and Co-operation in Europe  
MISSION IN KOSOVO**

**Gender Composition of Judges and Prosecutors  
in Kosovo  
(2010)**

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## Executive Summary

The Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) reviewed the gender composition of judges and prosecutors appointments that were made in Kosovo in 2010. An Independent Judicial and Prosecutorial Commission (IJPC) was established in 2008 and tasked with assessing the suitability of all judges and prosecutors in Kosovo.<sup>1</sup> These appointments include new judges and prosecutors and re-appointments of those who were retained for the new mandate. Approximately 246 judges and 88 prosecutors were appointed or re-appointed in 2010.<sup>2</sup> This report reviews the gender composition of judges and prosecutors from the end of 2009 until immediately following the appointment process that concluded in October 2010.

Although the overall gender composition for judges remained unchanged with 28 per cent women, in some courts with greater jurisdiction, such as district courts, the appointment process indicates a modest upward trend. For other courts, such as municipal courts, there was an overall downward trend. However, within the municipal courts, women court presidents increased from 13 to 32 per cent. The overall gender composition for prosecutors increased from 24 to 30 per cent women, with no women chief municipal prosecutors in 2009 to 29 per cent women chief municipal prosecutors after the 2010 appointments. This is another upward trend.

The OSCE commends the progress that has been made toward gender balance but is concerned that gender equality, even as defined by the legal framework in Kosovo, has not been achieved in the courts.

## International Standards

A right to equal opportunities without regard to gender and protection from gender-based discrimination is found in numerous international conventions, the three most relevant of which are identified here.

The International Covenant on Civil and Political Rights (ICCPR) guarantees “the right and the opportunity [...] to take part in the conduct of public affairs”<sup>3</sup> and requires that “[e]ach [...] Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race,

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<sup>1</sup> United Nations Interim Administration Mission in Kosovo, Administrative Direction No 2008/2, 17 January 2008, Section 1.1, established The Independent Judicial and Prosecutorial Commission (IJPC) “for the purpose of conducting a one-time, comprehensive, Kosovo-wide review of the suitability of all applicants for permanent appointments...as judges and prosecutors...At the conclusion of this process, the routine recruitment and selection of judges and public prosecutors shall be carried out in accordance with all other applicable law.”

<sup>2</sup> All statistical data on judges and prosecutors were supplied by the Kosovo Judicial Council and gathered by OSCE court monitors in interviews with Presidents of the Courts, Court Administrators and other relevant judicial interlocutors. In addition references to Presidents of the Courts and Chiefs Prosecutors include those acting in the position up to their permanent appointment.

<sup>3</sup> See Article 2.1 International Covenant on Civil and Political Rights (ICCPR).

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>4</sup>

Additionally, Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)<sup>5</sup> prohibits discrimination “[...] on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Finally, Article 7 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>6</sup> requires that relevant institutions “take all appropriate measures to eliminate discrimination against women in the political and public life.”<sup>7</sup> The UN Committee on the Elimination of All forms of Discrimination Against Women, in its General Recommendation 23, is clear that participation in “political and public life” includes performing in all “public functions at all levels of government”.<sup>8</sup>

### **Legal Framework in Kosovo**

Kosovo institutions have incorporated relevant international law concerning gender equality into its legal framework. Article 22 of the constitution accepts the direct applicability of numerous international agreements and instruments, including the ECHR, the ICCPR and CEDAW.<sup>9</sup> Article 7 describes gender equality in terms of fundamental values: “... Kosovo ensures gender equality as a fundamental value for the democratic development of the society, providing equal opportunities for both female and male participation in the political, economic, social, cultural and other areas of societal life.”

Additional laws contain provisions relating to gender equality.<sup>10</sup> In particular, the law on gender equality<sup>11</sup> that came into force on 1 July 2007 aims to “preserve, treat and establish gender equality as a fundamental value for the democratic development of the Kosovo society, providing equal opportunities for both female and male

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<sup>4</sup> Ibid, Article 25.

<sup>5</sup> See Article 14, Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

<sup>7</sup> Ibid, Article 7.

<sup>8</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendation No. 23: Article 7 of the Convention (Women in Political and Public Life)*, 1997, 16<sup>th</sup> session, available at: <http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> (accessed November 11, 2010).

<sup>9</sup> Article 22(2), (3) and (6) of the Kosovo constitution.

<sup>10</sup> See Law No. 2004/03 on Anti-Discrimination, 19 February 2004, as promulgated by UNMIK Regulation 2004/32, 20 August 2004: “The principle of equal treatment shall mean that there shall be no direct or indirect discrimination against any person or persons, based on sex, gender, age, marital status...birth or any other status.” Article 2(a); Law No. 2004/32 on Family, 20 January 2006, as promulgated by UNMIK Regulation 2006/7, 16 February 2006: “All persons enjoy equal treatment of rights and obligations set forth in this Law. There shall be no direct or indirect discrimination against any person or persons based on sex, age, marital status [...]birth or any other status.”

<sup>11</sup> Law No. 2004/2 on Gender Equality, 19 February 2004, as promulgated by UNMIK Regulation 2004/18, 7 June 2004 (but not published in the Kosovo Official Gazette until 1 July 2007).

participation in the political, economic, social, cultural and other fields of social life.”<sup>12</sup>

This law defines gender equality as “equal participation for females and males in all relevant fields of social live [sic], equal status, equal opportunities to be entitled to their rights and make use of their individual skills for the development of the society and equal benefit from the results of such development.”<sup>13</sup> Interestingly, however, rather than striving for a 50 per cent equal gender participation balance “[e]qual gender participation [...] is achieved in cases where the participation of the particular gender in the institutions, bodies or at the level of authority is 40%.”<sup>14</sup> This means that, under the legal framework in Kosovo, gender equality is achieved when the ratio of men to women is 60 to 40 per cent respectively. To assist with achieving this gender percentage goal, the law allows for “implementation of legal and affirmative measures [to] establish equal participation for both females and males in legislative, executive, judicial bodies of all levels and in public institutions, so that representation of both genders in these institutions [achieves] its level of their representation in the general population of Kosovo.”<sup>15</sup>

The law on courts<sup>16</sup> provides additional commitment to gender equality with the requirement that “[t]he composition of the judiciary shall reflect the ethnic diversity [...] and internationally recognized principles of gender equality.”<sup>17</sup>

### **Appointment of Judges and Prosecutors**

The appointment process required all judges and prosecutors to pass examinations and background checks. Those who completed this process successfully were appointed (or re-appointed) to judge and prosecutor positions. This vetting process began in 2008, and concluded in October 2010. Judge and prosecutor re-appointments were made in 2010. There remain approximately 146 approved judge positions, and 16 prosecutor positions that are vacant and will be filled through future appointments.

Prior to the re-appointment process 28 per cent of all judges were women (80 out of 281). Following the re-appointment process the gender composition remained the same.

Prior to the re-appointment process 24 per cent of all prosecutors were women (21 out of 89). Following the re-appointment process the proportion of women prosecutors increased to 30 per cent (26 out of 88).

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<sup>12</sup> Ibid., Article 1.1.

<sup>13</sup> Ibid., Article 2.1.

<sup>14</sup> Ibid., Article 3.2.

<sup>15</sup> Ibid., Article 3.1.

<sup>16</sup> Law No 03/L-199 on Courts, 24 August 2010. Article 43 provides that “[t]his Law shall enter into force on January 1, 2011, for Articles 29, 35, 36, 38 and 40, while for other articles it shall begin to be implemented from January 1, 2013.”

<sup>17</sup> Ibid, Article 5.

## **Appointment of Judges**

### **Upward trends in higher and special courts**

Prior to the appointment process 43 per cent of judges in Supreme Court, the Special Chamber of the Supreme Court, the commercial court, and the high court of minor offences, were women (9 out of 21). Following the appointment process the proportion of women judges for these courts rose to 48 per cent (11 out of 23). Prior to the appointment 21 per cent of judges in the district courts were women (10 out of 48). Following the appointment process the proportion of women judges of these courts rose to 26 per cent (12 out of 46).

Prior to the appointment process the Supreme Court, the commercial court, and the high court of minor offence had no women presidents. Following the appointment process two out of three presidents were women. Prior to the appointment process there were 13 per cent (3 out of 24) women presidents in municipal courts. Following the appointment process it rose to 32 per cent (7 out of 22) women presidents.

### **Downward trends in municipal and minor offence courts**

Prior to the appointment process 27 per cent of judges in the municipal courts were women (34 out of 126). Following the appointment process the proportion of women judges in these courts fell to 25 per cent (30 out of 121). Prior to the appointment process 31 per cent of judges in minor offence courts were women (27 out of 86). Following the appointment process the proportion of women judges in these court fell to 29 per cent (16 out of 56).

Prior to the appointment process 36 per cent of minor offence court presidents were women (9 out of 25). Following the appointment process the proportion of women court presidents fell to 17 per cent (4 out of 23).

### **No change at district courts**

The five districts courts were all managed by male presidents in 2009 and 2010.

## **Appointment of Chief Prosecutors in municipal and district offices**

### **Upward trend with chief municipal prosecutors**

Prior to the appointment process there were no women chief municipal prosecutors in 2009. Following the appointment process there was an increase to 29 per cent (2 out of 7) women chief municipal prosecutors.

### **No change with chief district prosecutors**

All chief district prosecutors in 2009 and 2010 were males.