



**Monitoring Department**

**Legal System Monitoring Section**

**The Mitrovicë/Mitrovica Justice System:  
Continuing Human Rights Concerns and Recent  
Developments**

**Monthly Report - December 2008**

## I. Introduction

December 2008 marked the tenth month since the Mitrovicë/Mitrovica region's judicial system largely stopped functioning.<sup>1</sup> The absence of a justice system severely hampers the rule of law and contributes to serious violations of the right to liberty, the right of access to justice, and the right to trial within a reasonable time.<sup>2</sup>

UNMIK formally announced a three-phase plan to re-establish the region's judicial system in September 2008.<sup>3</sup> The plan, although delayed in its implementation, is a welcome development. However, it does not address the absence of courts handling civil cases and non-urgent criminal cases.<sup>4</sup> The recent deployment to Mitrovicë/Mitrovica of judges and prosecutors from the European Union Rule of Law Mission in Kosovo (EULEX) could help remedy the situation in the near future.

## II. Human rights violations resulting from non-functioning courts

Apart from urgent criminal cases and some criminal appeals which may be heard in northern Mitrovicë/Mitrovica,<sup>5</sup> as of December 2008 the following institutions have operated in a limited capacity or not at all since 21 February 2008:

- *Mitrovicë/Mitrovica District Court.* The court (temporarily operating on the premises of the Vushtrri/Vučitrn Municipal Court)<sup>6</sup> only addresses issues related to pre-trial detention such as initial orders for detention on remand, appeals of detention orders, and extension of detention. The court accepts some civil case filings, but does not schedule hearings or undertake any other actions.

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<sup>1</sup> See OSCE *Legal System Monitoring Section Monthly Report – March 2008, Reactions to Kosovo's declaration of independence severely impact the justice system in Mitrovicë/Mitrovica and negatively affect courts in other regions, resulting in human rights violations.*

<sup>2</sup> Articles 5 and 6, European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, "European Convention on Human Rights").

<sup>3</sup> UNMIK press release UNMIK/PR/1740 "UNMIK reopens court in north Mitrovicë/Mitrovica", 3 October 2008, (hereinafter "UNMIK/PR/1740"), available at [http://www.unmikonline.org/dpi/pressrelease.nsf/0/7DECCDA51DB11BE2C12574D70049E600/\\$FILE/pr1740.pdf](http://www.unmikonline.org/dpi/pressrelease.nsf/0/7DECCDA51DB11BE2C12574D70049E600/$FILE/pr1740.pdf).

<sup>4</sup> It is possible that some minor offences cases will be heard. OSCE interview with UNMIK Department of Justice official, 28 November 2008.

<sup>5</sup> As of December 2008 and aside from a detention hearing held on 11 October 2008, the OSCE is not aware of any criminal proceedings that have occurred in the Mitrovicë/Mitrovica court. Reportedly, international judges are still "selecting which cases to hear and identifying the status of the cases" (OSCE interview with an UNMIK Department of Justice official, 23 October 2008).

<sup>6</sup> Beginning 21 February 2008, a group of 50 to 200 protestors, among them employees of the pre-1999 justice system, gathered outside the Mitrovicë/Mitrovica court complex (which includes Mitrovicë/Mitrovica District Court, Municipal Court, Minor Offences Court, and Municipal and District Prosecutors' offices) on weekday mornings demanding entry to the building to return it to the Serbian court system. The protestors forcibly entered the premises on 14 March 2008. On 17 March 2008 in an operation supported by KFOR, UNMIK police entered the building and arrested the occupants. Serious civil unrest followed leading to the death of one international civilian police officer.

- *Mitrovicë/Mitrovica Municipal Court.*<sup>7</sup> The court (also temporarily operating on the premises of the Vushtrri/Vučitrn Municipal Court) addresses issues related to pre-trial detention such as initial orders for detention on remand, appeals of detention orders, and extension of detention. In addition, the court conducts confirmation of indictment hearings in cases where the defendant is in pre-trial detention. Like the Mitrovicë/Mitrovica District Court, the municipal court accepts some civil case filings, but does not schedule hearings or undertake any other actions.
- The legalization office of the Mitrovicë/Mitrovica Municipal Court and the court department which issues criminal history certificates operate two days per week from the premises of the Vushtrri/Vučitrn Municipal Court. The offices are accessed by residents from across the region, including Kosovo Serbs living in northern Mitrovicë/Mitrovica.
- *Mitrovicë/Mitrovica District Prosecutor's Office.*<sup>8</sup> Operating from the premises of the Vushtrri/Vučitrn Municipal Court, prosecutors perform all duties up to and including filing indictments. No confirmation hearings are conducted in cases under the jurisdiction of the Mitrovicë/Mitrovica District Court.
- *Mitrovicë/Mitrovica Municipal Prosecutor's Office.* For cases falling under the competence of the Mitrovicë/Mitrovica Municipal Court and occurring in southern Mitrovicë/Mitrovica, prosecutors perform all duties up to and including filing indictments and attending confirmation hearings for cases in which the defendants are in pre-trial detention. For alleged offences occurring in northern Mitrovicë/Mitrovica and Zvečan/Zveçan, prosecutors deal only with cases warranting pretrial detention. Prosecutors attempted to address three of the hundreds of criminal offences in Leposavić/Leposaviq and Zubin Potok. However, the absence of functioning municipal courts in those municipalities means indictments cannot be filed. The Mitrovicë/Mitrovica Municipal Prosecutor's Office also functions from the premises of the Vushtrri/Vučitrn Municipal Court.
- *Leposavić/Leposaviq and Zubin Potok Municipal and Minor Offences Courts.* These courts are not operating aside from some legalization office services.<sup>9</sup> The court in Zubin Potok has certified some documents with an UNMIK stamp since February 2008.
- *Mitrovicë/Mitrovica Minor Offences Court.*<sup>10</sup> The court is functioning in a limited capacity at a temporary location in the Vushtrri/Vučitrn Municipal Court for

<sup>7</sup> The Mitrovicë/Mitrovica Municipal Court also has jurisdiction over the Municipality of Zvečan/Zveçan.

<sup>8</sup> The Mitrovicë/Mitrovica district and municipal prosecutors' offices cover all municipalities in the region: Leposavić/Leposaviq, Mitrovicë/Mitrovica, Skenderaj/Srbica, Vushtrri/Vučitrn, Zubin Potok, and Zvečan/Zveçan.

<sup>9</sup> On 22 February 2008, the Serbian Ministry of Justice subsumed the Leposavić/Leposaviq and Zubin Potok Municipal and Minor Offences Courts. Parallel courts in northern Kosovo do not appear to be functioning, other than the occasional stamping of documents.

<sup>10</sup> The Mitrovicë/Mitrovica Minor Offences Court also has jurisdiction over the Municipality of Zvečan/Zveçan.

incidents occurring in southern Mitrovicë/Mitrovica. However, the minor offence court does not hear any cases related to incidents (such as traffic tickets) that occur in northern Mitrovicë/Mitrovica and Zvečan/Zveçan.<sup>11</sup>

#### **A) Right of access to justice**

According to the European Court of Human Rights, “Everyone [has] the right to have any claim relating to his civil rights and obligations brought before a court or tribunal.”<sup>12</sup> The Court also held that “hindrance, even of a temporary character, may contravene the [European] Convention [on Human Rights].”<sup>13</sup>

Since 20 February 2008, only minimal criminal and minor offence proceedings have occurred in the area covered by the Mitrovicë/Mitrovica Municipal and Minor Offences Courts, and there have been no civil proceedings. No criminal, civil, and minor offence proceedings have occurred in Zubin Potok and Leposavić/Leposaviq.

The implementation of the plan is a first step to remedy this situation. However, access to justice in the above-mentioned courts will still be denied in civil cases and non-urgent criminal cases.

In particular regarding civil cases, the absence of functioning municipal courts in Mitrovicë/Mitrovica, Zubin Potok, and Leposavić/Leposaviq prevents parties from filing property claims, insurance indemnity actions, labour cases, disturbance of property possession, inheritance,<sup>14</sup> and requests for protection orders in cases of domestic violence,<sup>15</sup> among other civil claims.

Moreover, the absence of a district court prevents civil cases from being appealed. As the district courts also have first-instance jurisdiction in certain types of civil disputes,<sup>16</sup> residents of the entire region (including Skenderaj/Srbica and Vushtrri/Vučitrn) are prevented from filing some cases in the district court such as divorce and intellectual property and certain spousal support, child custody, and paternity cases.<sup>17</sup>

#### **B) Right to a trial within a reasonable time**

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<sup>11</sup> According to information available to the OSCE, the court appears to hear “summary” and urgent cases, such as those not involving evidentiary hearings and those involving non-Kosovo residents in Vushtrri/Vučitrn. See Article 201, Law on Minor Offences, Official Gazette of the Socialist Autonomous Province of Kosovo 23/1979.

<sup>12</sup> European Court of Human Rights, *Golder v. United Kingdom*, 4451/70, Judgment, 21 February 1975, paragraph 36.

<sup>13</sup> European Court of Human Rights, *Palaoro v. Austria*, 16718/90, Judgment, 23 October 1995, paragraph 41.

<sup>14</sup> Article 26, Law on Regular Courts, Official Gazette Socialist Autonomous Province of Kosovo 21/1978.

<sup>15</sup> Section 5, UNMIK Regulation No. 2003/12 on Protection Against Domestic Violence, 9 May 2003.

<sup>16</sup> Article 29, Law on Regular Courts, Official Gazette Socialist Autonomous Province of Kosovo 21/1978, as amended.

<sup>17</sup> The OSCE, the presidents of the region’s various courts, and regional court staff have all received questions, requests, and complaints from individuals concerned about their inability to access the courts. People have specifically expressed an interest in filing claims for divorce, domestic violence protection orders, requests for child support and spousal support, and civil commitment.

The European Convention on Human Rights guarantees everyone the right to a trial within a reasonable time.<sup>18</sup> “Public unrest” in a region where a trial was held could be a valid justification for delays in the proceedings but only insofar as public authorities took steps to transfer the caseload to another jurisdiction.<sup>19</sup> In fact, public authorities have a duty to organize their legal systems to enable the courts to comply with the “reasonable time” requirement.<sup>20</sup>

The interruption of court activities in Mitrovicë/Mitrovica, Leposavić/Leposaviq, and Zubin Potok led to delays in, and outright suspensions of, civil and criminal proceedings, implicating the right to a trial within a reasonable time.<sup>21</sup> This is especially troubling in cases requiring special urgency such as applications for domestic violence protection orders or cases against suspects in detention on remand.

In criminal cases, prosecutors have been filing indictments, but confirmation hearings in most cases have not been held within the time limits required by the Provisional Criminal Procedure Code.<sup>22</sup> As of December 2008, there are at least 61 criminal cases for offences occurring on or after 21 February 2008 in the jurisdiction of the Mitrovicë/Mitrovica District and Municipal Courts pending confirmation of indictment.<sup>23</sup> In addition, a number of cases predating 21 February 2008 are also pending confirmation of indictment. The following case serves as an example:

On 26 May 2008 a Mitrovicë/Mitrovica district prosecutor filed an indictment against a Kosovo Albanian police officer charging him with attempted aggravated murder;<sup>24</sup> unauthorized ownership, control, possession, or use of a weapon;<sup>25</sup> accepting bribes;<sup>26</sup> abusing official position or authority;<sup>27</sup> fraud;<sup>28</sup> and two counts of mistreatment in exercising duties.<sup>29</sup> A confirmation hearing has yet to be scheduled. The

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<sup>18</sup> Article 6(1), European Convention on Human Rights.

<sup>19</sup> See European Court of Human Rights, *Foti v. Italy*, 7604/76, 7719/76, 7781/77 and 7913/77, Judgment, 10 December 1982, paragraph 61.

<sup>20</sup> See, e.g., European Court of Human Rights, *Eckle v. Germany*, 8130/78, Judgment, 15 July 1982, paragraph 92. In another case the Court held that “a temporary backlog of business does not involve liability on the part of the Contracting States provided that they take, with the requisite promptness, remedial action to deal with an exceptional situation” (European Court of Human Rights, *Milasi v. Italy*, 10527/83, Judgment, 25 June 1987, paragraph 18).

<sup>21</sup> These delays also affect minor offences courts. Of particular concern, persons whose driving license or passport was temporarily confiscated to ensure payment of a fine cannot obtain these documents. Even if they wanted to pay the fine, they could not do so since they have no access to the court. Minor offence court judges do not have access to their court and thus could not return these documents to the rightful owners.

<sup>22</sup> The law requires courts to schedule confirmation of indictment hearings immediately and no later than two months from the date the indictment is filed. Articles 309(1) and 312(2), Provisional Criminal Procedure Code of Kosovo, promulgated by UNMIK Regulation No. 2003/26, 6 July 2003 (“Provisional Criminal Procedure Code”).

<sup>23</sup> Numbers for cases falling under the jurisdiction of the Leposavić/Leposaviq and Zubin Potok Municipal Courts were not readily available.

<sup>24</sup> Article 147, Provisional Criminal Code of Kosovo, promulgated by UNMIK Regulation No. 2003/25, 6 July 2003 (“Provisional Criminal Code”).

<sup>25</sup> *Id.* Article 328(2).

<sup>26</sup> *Id.* Article 343.

<sup>27</sup> *Id.* Article 339.

<sup>28</sup> *Id.* Article 261.

<sup>29</sup> *Id.* Article 164.

defendant was initially held in detention on remand from 12 March 2008 to 26 May 2008. He was then released and is now required to regularly report to the police station.

The non functioning of the courts has also led to delays in civil cases, implicating the right of the parties to a trial within a reasonable time:

In a case initiated in May 2003, the plaintiffs sued to confirm their ownership of property located in Mitrovicë/Mitrovica. Without undertaking any search for the respondents, the court appointed a temporary representative and eventually ruled for the plaintiffs. The respondents, who had been living and working in Mitrovicë/Mitrovica and Zvečan/Zvečan the entire time, learned of the judgment and submitted a proposal for retrial. In November 2007, the court granted respondents' proposal. No hearing was held and the case is currently stalled due to the non-functioning of the Mitrovicë/Mitrovica Municipal Court. In May 2008, the OSCE spoke to one of the respondents, who had heard nothing about his case.

The deployment of EULEX judges assigned to handle civil cases may help in the future, but for the time being serious violations persist. A fully-functioning justice system is essential to protect human rights and the rule of law.

### C) Right to liberty

Kosovo law establishes deadlines for pre-trial detention which must be initially validated and then periodically reviewed by a competent court.<sup>30</sup> To justify the continued detention on remand of a suspect, public authorities must not only show that the grounds for it continue to exist but also apply "special diligence" in the conduct of the proceedings.<sup>31</sup> Otherwise, detention becomes unlawful, and the person must be released pending trial.<sup>32</sup> In fact, public authorities must ensure that detention on remand of a person lasts no longer than necessary.<sup>33</sup> According to the European Court of Human Rights, states have a duty to organise their legal systems so as to enable the courts to comply with the right to a trial within a reasonable time.<sup>34</sup> When faced with a temporary backlog of business, public authorities must take, with the requisite promptness, remedial action to deal with an exceptional situation of this kind.<sup>35</sup>

From 20 to 27 February 2008, the Mitrovicë/Mitrovica Municipal and District Courts could not hear any detention-related matter. During that time at least two suspects

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<sup>30</sup> Article 212(4) and Articles 284-287, Provisional Criminal Procedure Code.

<sup>31</sup> European Court of Human Rights, *Dobrev v. Bulgaria*, 55389/00, Judgment, 10 August 2006, paragraph 79.

<sup>32</sup> See Articles 5(1)(c) and 5(3), European Convention on Human Rights.

<sup>33</sup> "Continued detention can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty" (European Court of Human Rights, *Labita v. Italy*, 26772/95, Judgment, 6 April 2000, paragraph 152).

<sup>34</sup> Article 5(3), and 6(1), European Convention on Human Rights. See *Spentzouris v. Greece*, 47891/99, Judgment, 7 May 2002, paragraph 27.

<sup>35</sup> See *Baggetta v. Italy*, 10256/83, Judgment, 25 June 1987, paragraph 23.

were released from detention because the detention order against them expired.<sup>36</sup> The Mitrovicë/Mitrovica District and Municipal Courts began conducting detention hearings in the Vushtrri/Vučitrn Municipal Court facilities on 27 February 2008.<sup>37</sup>

The OSCE has monitored cases where the Mitrovicë/Mitrovica District Court extended detention on remand against a defendant *inter alia* because the prosecutor, due to the non-functioning of the courts, could not continue investigations against the suspect:

On 12 March 2008, the Mitrovicë/Mitrovica District Court extended detention on remand against a defendant suspected of grave cases of theft in nature of robbery.<sup>38</sup> Among the grounds for extending the detention, the court considered the fact that several witnesses could not be heard since “as of 17 February 2008 the work in the District Prosecutor’s office cannot be performed regularly.” The defendant has been in detention since December 2007.

In another case before the Mitrovicë/Mitrovica District Court, a defendant charged with aggravated murder,<sup>39</sup> attempted murder,<sup>40</sup> and unauthorized ownership, control, possession, or use of weapons<sup>41</sup> has been in detention since 6 February 2007. His trial was at the final stage when the court stopped functioning, but no progress has been made since. The court extended his detention on remand until 3 January 2009.

Also before the Mitrovicë/Mitrovica District Court, a defendant charged with murder<sup>42</sup> and unauthorized ownership, control, possession, or use of weapons<sup>43</sup> has been in detention since 31 May 2007. At the time the courts stopped functioning his trial had not started. The court extended his detention on remand until 11 January 2009. The absence of fully-functioning courts has compounded delays in this case.

With the introduction of UNMIK international judges and prosecutors, right to liberty violations in some of these cases may be remedied. However, pending cases involving non-Kosovo Serb defendants will not be heard. In addition, the limited international staffing of the court cannot ensure all cases against Kosovo Serbs will progress.

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<sup>36</sup> OSCE interview with an attorney, 20 March 2008. The two detainees suspected of kidnapping were released on 22 February 2008.

<sup>37</sup> This includes both hearings within 72 hours of the initial arrest and hearings to decide on the extension of detention orders. To avoid the release of people currently held in detention on remand, some Mitrovicë/Mitrovica judges conducted hearings in the Lipjan/Lipljane detention centre.

<sup>38</sup> Article 256(1) as read with article 255(1), Provisional Criminal Code.

<sup>39</sup> Article 147(1), 23, Provisional Criminal Code.

<sup>40</sup> Id. Articles 146(1), 20 and 23.

<sup>41</sup> Id. Article 328(2).

<sup>42</sup> Id. Article 146.

<sup>43</sup> Id. Article 382(2).

## **D) Other negative effects on the rule of law**

The absence of functioning courts in northern Kosovo has other negative effects on the rule of law.

For example, individuals who obtained money judgments in a civil lawsuit cannot enforce them since there is no court available to compel judgment debtors to pay. The following case serves as an example:

In a case before the Leposavić/Leposaviq Municipal Court, a Kosovo Serb plaintiff prevailed in a proceeding for damages to her apartment caused by flooding from the respondent's apartment. After the plaintiff initiated execution proceedings, the respondent paid his debt to the court in instalments. The plaintiff declined to collect the payments until all were deposited. In the meantime, the court ceased functioning. In July 2008, the OSCE spoke to the plaintiff who reported not receiving any of the money owed to her.

In addition, the non-functioning courts have impeded law enforcement by preventing the imprisonment of fugitives:

In early September 2008, authorities captured and detained an individual who had been convicted but not imprisoned as sentenced. Shortly thereafter, police released the person because the prison would not admit him without the official judgment, which remained in the case file in the Mitrovicë/Mitrovica courthouse.

## **III. The three-phase plan to hear some criminal cases in northern Mitrovicë/Mitrovica**

The UNMIK plan to re-establish the region's judicial system has three phases.<sup>44</sup> The first phase of the plan, which began on 3 October 2008 and was initially estimated to last 60 days,<sup>45</sup> has still not been completed as of December 2008. Under this phase, it is foreseen that international judges and prosecutors will conduct proceedings in "urgent criminal cases" in northern Mitrovicë/Mitrovica using "UNMIK law and procedure."<sup>46</sup> Civil cases will "not be heard."<sup>47</sup> During the first phase, UNMIK and Serbian representatives intended to continue technical discussions on the implementation of future phases.<sup>48</sup> Unfortunately, as of December 2008 little action has been taken in any criminal case.

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<sup>44</sup> UNMIK/PR/1740.

<sup>45</sup> OSCE interviews with an UNMIK Department of Justice official, 23 October and 28 November 2008.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Announcement, Serbian Ministry of Justice (18 September 2008) available at [www.mpravde.sr.gov.yu/cr/news/vesti/sud-u-mitrovici-pocinje-sa-radom-pocetkom-oktobra.html](http://www.mpravde.sr.gov.yu/cr/news/vesti/sud-u-mitrovici-pocinje-sa-radom-pocetkom-oktobra.html), according to which "During this period technical talks with UNMIK regarding the inclusion of local judges and prosecutors in the work of the judicial system after the expiry of 60 days will continue" (OSCE's unofficial translation). See also UNMIK press release No. 1740 ("UNMIK is currently holding discussions with relevant stakeholders in order to expedite movement towards the next phase.")



The second phase foresees the introduction of local judicial and court staff, thus increasing the court's "capacity to deal with more cases."<sup>49</sup> Little direct public comment has been made on the third phase, but it apparently involves the "withdrawal of internationals."<sup>50</sup> The plan is not fixed and will be adapted as problems arise or the situation on the ground changes.

For now, the sole application of UNMIK criminal law and criminal procedure should not cause any significant problems because the criminal code and criminal procedure code are UNMIK regulations and apply in all Kosovo courts.<sup>51</sup> However, should any new criminal laws (such as the witness protection law) or amendments to the Provisional Criminal Code or Criminal Procedural Code be passed by the Kosovo Assembly, without SRSG's signature, conflicts may arise.

However, the OSCE is concerned by reports that the court will initially only address cases involving Kosovo Serb defendants.<sup>52</sup> Consequently, Kosovo Albanian defendants are likely to remain in custody longer than Kosovo Serb defendants since their cases will not progress. Selecting which cases to hear based on the ethnicity of the defendants raises concerns of equality before the law.<sup>53</sup>

In addition, UNMIK stated publicly that only "urgent" cases will be addressed.<sup>54</sup> Since "urgent" has not been defined, judges and prosecutors will have wide, arguably too much, discretion in selecting cases. The criteria for selecting cases should be transparent, publicly disclosed, and narrowly defined to increase public confidence in the procedure.

According to information available to the OSCE, cases in which the defendant is in detention will have priority.<sup>55</sup> However, as of December 2008, there are 56 people currently in detention on remand (in addition to 25 people in house detention)<sup>56</sup> and

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<sup>49</sup> UNMIK/PR/1740.

<sup>50</sup> Comments of Principal Deputy Special Representative of the Secretary General David Harland, "Dialogue between Belgrade and Pristina-Judiciary and Police" (29 September 2008) Media Centre Čagllavicë/Čaglavica, available at <http://www.medijacentar.org/modules.php?name=Content&pa=showpage&pid=165>.

<sup>51</sup> Provisional Criminal Code of Kosovo, promulgated by UNMIK Regulation No. 2003/25, 6 July 2003 ("Provisional Criminal Code"); Provisional Criminal Procedure Code of Kosovo, promulgated by UNMIK Regulation No. 2003/26, 6 July 2003 ("Provisional Criminal Procedure Code").

<sup>52</sup> Interview with an UNMIK official, 14 October 2008. Security issues were raised as one of the reasons that might prevent Kosovo Albanians to be tried in northern Mitrovicë/Mitrovica for the time being.

<sup>53</sup> Article 14 of the European Convention of Human Rights reads: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without 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."

<sup>54</sup> UNMIK/PR/1740.

<sup>55</sup> Domestic law establishes that courts should act with special urgency when the suspect is held in detention (see Articles 279(2) and 463(4), Provisional Criminal Procedure Code).

<sup>56</sup> These statistics are for cases in the jurisdiction of the Mitrovicë/Mitrovica Municipal and District Courts.

only a small number of international judges and prosecutors,<sup>57</sup> not all cases can be heard quickly.

In addition, the relevant authorities should consider the following issues related to re-opening the court:

- As the security situation may make witnesses other than Kosovo Serbs reluctant to go to the Mitrovicë/Mitrovica courthouse premises, defendants in proceedings before international judges may be prevented from calling witnesses to their defense.<sup>58</sup>
- Tight security surrounding the northern Mitrovicë/Mitrovica courthouse may put at risk the right to a public hearing.<sup>59</sup> International judges must also ensure that judgments are rendered publicly.<sup>60</sup>
- It is important that all communities of Kosovo have access to the court, the court hears cases involving all communities of Kosovo, and the court staff provides translation services for all the relevant languages in Kosovo (including Albanian and Serbian) necessary for witnesses and parties.
- The small number of international judges assigned to the court makes composing panels difficult as judges who participate in early phases of the proceedings may be disqualified from later proceedings. If the same judge participates in different stages of the proceedings, the Provisional Criminal Procedure Code may be violated (and also the right to an impartial tribunal and/or a tribunal established by law).<sup>61</sup> Consequently, the number of judges and prosecutors will need to increase.

In summary, the new UNMIK plan is promising and long overdue. However, it does not remedy the paralyzed civil justice system in the entire Mitrovicë/Mitrovica region and the vast majority of criminal cases that will not be heard. EULEX deployment may at some point help remedy the situation. Within this reporting period, it is unclear the extent to which EULEX will be able to handle cases occurring in the northern municipalities of Leposavić/Leposaviq, Zubin Potok, and Zvečan/Zveçan. Thus, the OSCE is concerned that human rights violations related to the non-functioning courts may continue.

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<sup>57</sup> According to information available to the OSCE, all five international judges currently working with the UNMIK Department of Justice, in addition to at least three international prosecutors, are assigned to work in Mitrovicë/Mitrovica on a rotating basis.

<sup>58</sup> See Article 6(3)(d), European Convention on Human Rights. Similarly, Kosovo non-Serb injured parties might be prevented from testifying against defendants and/or to propose witnesses (see Article 80, Provisional Criminal Procedure Code).

<sup>59</sup> See Article 6(1), European Convention on Human Rights. Even though the Convention foresees “national security” as one of the grounds to restrict the publicity of a trial, the European Court of Human Rights has restrictively interpreted this exception, holding that “security problems are a common feature of many criminal proceedings, but cases in which security concerns justify excluding the public from a trial are nevertheless rare” (see *Riepan v. Austria*, 35115/97, Judgment, 14 November 2000, paragraph 34).

<sup>60</sup> See Article 6(1), European Convention on Human Rights.

<sup>61</sup> See Article 40, Provisional Criminal Procedure Code, and Article 6(1), European Convention of Human Rights. See also European Court of Human Rights, *Hauschildt v. Denmark*, 10486/83, Judgment, 24 May 1989, paragraphs 48-53, and *Fey v. Austria*, 14396/88, Judgment, 24 February 1993, paragraphs 30-36.

#### **IV. Conclusion**

The absence of a functioning judicial system in northern Kosovo has led to serious human rights violations including the right of access to justice, the right to trial within a reasonable time, and the right to liberty. While the plan that initially provides for international judges and prosecutors to handle urgent criminal cases is promising, it still does not address the paralyzed civil justice system and many stalled criminal cases. As the implementation of the three-phase plan continues, the OSCE stresses the need for a functioning, multi-ethnic civil and criminal justice system in the Mitrovicë/Mitrovica region as soon as possible.