



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

**Monitoring Department**

**Legal System Monitoring Section**

**Monthly Report - May 2008**

## **The backlog of civil cases in the Kosovo courts affects the right to a trial within a reasonable time**

### **1) Summary**

International human rights standards establish that everyone is entitled to a fair hearing within a reasonable time.<sup>1</sup> This guarantee underlines “the importance of rendering justice without delays which might jeopardize its effectiveness and credibility.”<sup>2</sup> States therefore are obliged to organize their legal systems so as to allow the courts to comply with this right.<sup>3</sup> In line with these standards, the Law on Contested Procedure states that the court shall conduct civil proceedings without any unnecessary delay.<sup>4</sup>

At the end of 2007, there were 49,220 unsolved civil cases<sup>5</sup> pending before the municipal courts of Kosovo. At the beginning of 2007, 46,551 cases were uncompleted at the municipal courts. The courts received 13,401 cases during the year, and judges resolved 10,526 cases in 2007. Consequently, the municipal courts were unable to solve the incoming caseload during 2007.<sup>6</sup> The same situation with similar data occurred in 2006.<sup>7</sup> Therefore, of concern, each year additional cases are added to the nearly 50,000 unresolved civil cases still pending from the previous years. Some of these cases have been pending for longer than an acceptable time-frame between initiation of the lawsuit and a final decision in the dispute.

There are many factors contributing to delays in the civil cases. These include poor case management by judges and judicial support staff, poor working conditions and

---

<sup>1</sup> Article 6(1) of the European Convention of Human Rights (“the Convention”). The European Court of Human Rights has held that the reasonableness of the length of the proceedings depends on the particular circumstances of the case, including the complexity of the case, the conduct of the defendant and the conduct of the competent administrative and judicial authorities. See European Court of Human Rights, *Pailot v. France*, application no. 93/1997/877/1089, judgment, 22 April 1998, paragraph 61.

<sup>2</sup> European Court of Human Rights, *H. v. France*, application no. 10073/82, judgment, 24 October 1989, paragraph 58.

<sup>3</sup> European Court of Human Rights, *Muti v. Italy*, application no. 14146/88 judgment, 23 March 1994, paragraph 15.

<sup>4</sup> Article 10 of the Law on Contested Procedure, Official Gazette of Socialist Federal Republic of Yugoslavia No. 4/77, 1478, 36/80-1182, 69/82-1596.

<sup>5</sup> In direct monitoring of the civil justice system in Kosovo, the OSCE has not observed any intent to cause excessive delay on a particular community within Kosovo. Nor is it clear whether the overall delays affect one ethnic group more than another.

<sup>6</sup> Kosovo Judicial Council, Statistical Report on the Work of Regular Courts 2007. In the district courts, the backlog of civil cases is less severe. District courts of the first instance had 939 unresolved civil cases at the beginning of 2007. During 2007, the district courts of the first instance received 2,320 civil cases, resolved 2,205 civil cases, and had 1,054 unresolved cases at the end of 2007. In the second instance, the district courts managed to resolve more civil cases (3,449) than new incoming cases (3,120), resulting in 2,980 uncompleted cases at the end of 2007. About two thirds of the overall civil case backlog are disputes relating to property, see *Report of the Secretary-General on the United Nations Interim Administration in Kosovo*, S/2006/906, 20 November 2006.

<sup>7</sup> Kosovo Judicial Council, Statistical Report on the Work of Regular Courts 2006. At the end of 2006, there were approximately 46,551 unsolved civil cases pending before the municipal courts of Kosovo. At the beginning of 2006, 42,744 cases were uncompleted at the municipal courts. The courts received 13,245 cases during the year, and judges resolved 9,400 cases in 2006.

infrastructure, the failure of parties and witnesses to attend trial sessions, and problems in summoning parties.<sup>8</sup>

Three further factors hamper the right of access to justice. First, civil cases in the district court in Mitrovicë/Mitrovica and the municipal courts in Mitrovicë/Mitrovica, Leposavić/Leposaviq and Zubin Potok are stalled because those courts are currently not functioning. Second, the OSCE Mission in Kosovo (OSCE) is aware of more than 18,000 cases which the UNMIK Department of Justice ordered should not be processed. These cases involving civil claims for compensation relating to property that was damaged after the entry into Kosovo of North Atlantic Treaty Organization (NATO) forces in 1999.<sup>9</sup> While these cases are part of the backlog, they cannot be considered as delayed by the courts, since judges have not been allowed to process them. However, they involve unresolved disputes in which the plaintiff has a right to a final decision by the appropriate judicial body. Third, over 500 claims of Kosovo Albanians against the Republic of Serbia and/or Federal Republic of Yugoslavia for damages suffered during the conflict remain suspended.

Claims stalled pursuant to the UNMIK Department of Justice instruction and those against the Republic of Serbia and/or Federal Republic of Yugoslavia should not further contribute to case backlogs as their numbers have remained constant. However, poor case management, working conditions, and the failure of parties to attend trial, and the continued non-functioning of courts Mitrovicë/Mitrovica, Leposavić/Leposaviq and Zubin Potok, only serve to increase backlog. Thus, unfortunately, the OSCE believes that the civil case backlog in 2008 can only be expected to increase when compared with 2007.

## **2) Poor case management, failure of parties, lawyers and witnesses to attend trial sessions, and summoning problems**

The poor management of cases by the courts can be explained as follows. Often, courts do not impose time-limits for parties to propose evidence and proceed without plan for introducing evidence in a logical manner, which leads to avoidable delays in the cases.<sup>10</sup>

---

<sup>8</sup> The lack of or uneven distribution of judges also contributes to delays. See OSCE Monthly Report, *Insufficient number or uneven distribution of judges and prosecutors, and inadequate court facilities, may lead to violations of domestic law and human rights*, February 2008. The absence of a functioning electronic case management system in most Kosovo courts also prevents the effective administration of cases.

<sup>9</sup> Department of Justice, DOJ/JDD/449/lh/04, 26 August 2004.

<sup>10</sup> Although the Law on Contested Procedure does not impose deadlines for the submission of evidence, a number of provisions impose an obligation on the claimant to submit proposed evidence (particularly documentary evidence) together with the statement of claim or, at least, at the preliminary hearing. See Articles 286(1) and 186(1) of the Law on Contested Procedure. Therefore, the court should require that the parties justify the late submission of evidence. By accepting an unjustified late introduction of evidence during trial sessions and not requesting the parties to do so at an earlier stage of the proceedings, courts contribute to delays.

Another contributing factor to these postponements is the failure of witnesses to appear.<sup>11</sup> The following case serves as an example:

In a case before a court in the Pejë/Peć region involving a claim dated 18 February 2004, Kosovo Serb plaintiffs requested annulment of a property transaction contract that was allegedly based on a falsified authorization. In the first session dated 7 November 2005, the parties presented evidence and proposed to hear testimony from three witnesses. The court postponed the second session (18 November 2005) due to the absence of these witnesses.<sup>12</sup> In the next four sessions the witnesses also did not appear.<sup>13</sup> The defendant proposed that an expert examine the validity of two ID cards issued in the plaintiff's name (one of them used in the property transaction) in the sixth session (2 March 2006).<sup>14</sup> The court heard two witnesses during the seventh session (29 March 2006). The court postponed the eighth session (17 December 2007) due to the absence of a lawyer. In the ninth session (24 January 2008), the plaintiff's lawyer proposed that an expert examine the authenticity of a signature on the contested authorization, and the defendant's lawyer proposed to hear more witnesses. The court approved to hear the witnesses who did not appear in the tenth and eleventh sessions (18 March 2008 and 11 April 2008). In the last session, the plaintiff again requested that an expert verify the authenticity of a signature on the authorization. The case is still ongoing.

The OSCE is also concerned about multiple postponements due to the failure of lawyers to attend trial sessions<sup>15</sup> and the inability or failure of the court to summon defendants who are allegedly living at an unknown address.<sup>16</sup>

---

<sup>11</sup> According to the Law on Contested Procedure, witnesses are obliged to respond to summonses. If a witness who has been duly summoned fails to appear without justification, the court may impose a fine, according to Articles 235 and 248 of the Law on Contested Procedure.

<sup>12</sup> The court properly summoned the witnesses, but they failed to appear. However, the court did not impose any fine as allowed by Article 248 of the Law on Contested Procedure.

<sup>13</sup> Dated 2 December 2005, 27 December 2005, 26 January 2006, and 2 March 2006. It is unclear if the court summoned the witnesses to these sessions.

<sup>14</sup> However, the court only approved the proposal of the defendant to have the competent authorities examine changes of the cover pages of the ID cards.

<sup>15</sup> According to the Kosovo Chamber of Advocates, Code of Lawyers' Professional Ethics, 11 June 2005, Article 29, lawyers must advise and defend with diligence and zeal. Therefore, the failure to appear for a trial session without justification violates the Code of Lawyers' Professional Ethics. According to Article 295 of the Law on Contested Procedure, the trial can also be held also in the absence of the parties, if they have been properly summoned. Furthermore, according to Article 332 of the Law on Contested Procedure, the court can issue a "judgment in default", if the defendant (or his/her lawyer, if he/she is represented by a lawyer) fails to appear and other conditions are met.

<sup>16</sup> Of note, the plaintiff must indicate in the claim the address of the defendant. See Article 106 of the Law on Contested Procedure. However, "[i]f the party cannot find out the address of the person to whom the writ is to be served [...] the court shall try to obtain the required information from the competent administrative body, or to obtain the necessary information in some other way" (Article 186 of the Law on Contested Procedure). Furthermore, under Article 84 of the Law on Contested Procedure, the court can appoint a temporary representative for the defendant, if his/her whereabouts is unknown. See also OSCE Monthly Report, *Failure of courts to contact the competent administrative body or use reasonable alternative means to locate the defendants violates domestic law and possibly the right to a fair trial*, April 2008.

In a property case before a court in the Mitrovicë/Mitrovica region initiated on 25 September 2006, the court has since scheduled eight sessions without discussing the merits of the case. The court postponed the first two sessions<sup>17</sup> due to the absence of one or both of the plaintiffs' attorneys and the Kosovo Serb defendants who are allegedly living at an unknown address. In the third session, both attorneys for the plaintiffs attended, but not the defendants or their attorneys (since the defendants had not been summoned). The plaintiffs' attorneys requested a postponement because they required documents from their clients. In the fifth session,<sup>18</sup> the plaintiff proposed to appoint a temporary representative for the defendants. The court scheduled the sixth session on a holiday. It postponed the seventh and eighth sessions<sup>19</sup> due to the absence of one of the plaintiffs' attorney.<sup>20</sup> The case is still ongoing.

The OSCE has observed severe delays in civil cases when the party to be summoned resides outside Kosovo.<sup>21</sup> In cases where parties or witnesses reside outside Kosovo, Justice Circular 2003/03 On International Legal Assistance in Civil and Criminal Matters states that the request for the delivery of summonses shall be communicated in writing by the court and addressed to the Director of the Department of Justice.<sup>22</sup>

In a case before a court in the Prishtinë/Priština region initiated on 18 December 2006, the court decided on 13 November 2007 to summon the Kosovo Serb defendant residing outside Kosovo through the Department of Justice. Since by the next trial session on 14 May 2008, the Department of Justice had not answered the court's request, the court rescheduled the session for 3 December 2008.

### **3) Non-functioning of municipal and district courts in Mitrovicë/Mitrovica region**

The non-functioning of the district and municipal courts in the Mitrovicë/Mitrovica region, since shortly after 17 February 2008, has further contributed to the judicial backlog in civil cases.<sup>23</sup> Since that time, plaintiffs have been unable to file new civil

---

<sup>17</sup> Dated 14 and 28 December 2007. In the session dated 28 December, one of the lawyers did not justify his absence and the other lawyer claimed that he was engaged in another trial at the same time.

<sup>18</sup> Dated 3 March 2008.

<sup>19</sup> Dated 25 March 2008 (plaintiff's lawyer claimed to be engaged in a different trial at the same time), and 12 May 2008 (both lawyers failed to appear without justification).

<sup>20</sup> In the meantime, a lawyer appeared in court offering an authorization to represent two of the defendants. This lawyer was also the nephew of one of the plaintiffs' attorneys.

<sup>21</sup> See OSCE Quarterly Report (January – March 2007), III. B. *Delays in civil proceedings due to problems in delivering summonses to respondents residing outside Kosovo.*

<sup>22</sup> Issued by the Department of Justice on 5 September 2003. It applies both to requests for International Legal Assistance and for legal assistance concerning Serbia and Montenegro. See also Article 133, Law on Contested Procedure.

<sup>23</sup> See OSCE Monthly Report, *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*, March 2008.

claims and pending civil cases have not progressed. The following case serves as example:

In a property case before a court in the Mitrovicë/Mitrovica region the Kosovo Serb defendant filed a request for retrial on 4 April 2005.<sup>24</sup> The hearing on the request was only scheduled almost two and a half years later, on 6 November 2007.<sup>25</sup> After the hearing, the presiding judge said he would render his decision “within the legally-permitted period of time.”<sup>26</sup> Although the court apparently decided to approve the request for re-trial the same day,<sup>27</sup> to date the court has not scheduled a re-trial. The case is currently stalled because the court has not been functioning since February 2008.<sup>28</sup>

Thus, in the above case, the court has still not scheduled trial sessions for the re-trial more than three years after the initial request.<sup>29</sup>

#### **4) Claims by Kosovo Serbs for damage compensation not processed at the instruction of the Department of Justice within UNMIK**

The OSCE is aware that more than 18,000 claims<sup>30</sup> filed by Kosovo Serbs for property damages allegedly caused since 1999 when NATO entered Kosovo are “on hold” following a letter from the UNMIK Department of Justice to the presidents of the Supreme, district and municipal courts of Kosovo in August 2004.<sup>31</sup> Most are compensation claims against UNMIK, KFOR, municipalities and individuals. The Department of Justice revised this instruction in part by a justice circular dated 15 November 2005,<sup>32</sup> and urged the courts to immediately process claims for damage allegedly committed by identified natural persons or after October 2000. However, to date, the courts have only processed a few cases based on this new instruction.<sup>33</sup>

Claims filed against UNMIK or KFOR, who are immune from any legal process according to UNMIK Regulation No. 2000/47 On the Status, Privileges and Immunities

---

<sup>24</sup> In the original trial, the court in Mitrovicë/Mitrovica region confirmed in a judgment dated 20 January 2004 that the Kosovo Albanian plaintiff is the owner of the contested parcel. The trial occurred without the presence or knowledge of the defendant, and the court had appointed a temporary representative for her. According to the defendant, she only learned about the judgment in March 2005, when she went to the cadastre and found the plaintiff registered there.

<sup>25</sup> In a conversation with the OSCE, the judge justified the delay as caused by his excessive caseload.

<sup>26</sup> However, the Law on Contested Procedure does not specify such time.

<sup>27</sup> The OSCE only received a copy of the decision on 9 January 2008.

<sup>28</sup> Of note, in the meantime the plaintiff has sold the contested parcel to a third party.

<sup>29</sup> In addition, a Kosovo Serb judge does not report to work since 17 February. This also contributes to delays as his cases are currently not processed. See OSCE Monthly Report, *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*, March 2008.

<sup>30</sup> According to information provided by the Head of the Court Liaison Office in Gračanica/Graçanicë to the OSCE in May 2008.

<sup>31</sup> Department of Justice, DOJ/JDD/449/lh/04, 26 August 2004.

<sup>32</sup> Department of Justice, DOJ/JDD/04562/ia/05, 15 November 2005.

<sup>33</sup> Interview with the Head of the Court Liaison Office in Gračanica/Graçanicë, and municipal and district court presidents in Kosovo in May 2008.

of KFOR and UNMIK and Their Personnel in Kosovo, and which fall outside the courts' mandate, must be distinguished from claims filed against Kosovo municipalities or individual persons. While there is a legal basis (such as immunity) for not processing claims against UNMIK or KFOR, there is no sound legal grounds for not allowing claims for compensation against the municipalities or non-KFOR or non-UNMIK individual persons.

The Department of Justice instructions have impeded the right of access to courts by the Kosovo Serbs claimants and may violate the right to have a case tried within a reasonable time.<sup>34</sup> Consequently, these claims should be heard by the courts or otherwise resolved in compliance with international human rights standards.

### **5) Claims of Kosovo Albanians against the Republic of Serbia and/or Federal Republic of Yugoslavia for damages suffered during the conflict**

There are currently 544 suspended claims by Kosovo Albanians against the Republic of Serbia and/or Federal Republic of Yugoslavia for damages allegedly suffered during the conflict. A court in the Pejë/Peć region (where plaintiffs filed these claims)<sup>35</sup> suspended them according to article 215 Paragraph 3 of the Law on Contested Procedure (“since the legal relations between the first and second respondent [Republic of Serbia and Federal Republic of Yugoslavia] and Kosovo, which is still under interim administration of the United Nations, have not been yet regulated, [the court is unable to solve this dispute]”).<sup>36</sup> In addition to the 544 cases, the court has not formally suspended 716 other cases, but instead has not processed them.<sup>37</sup> This raises issues of state responsibility for injuries caused to individuals. Since all parties to the conflict suffered property damages, a solution to these cases must be found.

---

<sup>34</sup> The European Court of Human Rights has noted on several occasions that the right of access to the court is part of the right to a fair trial. See European Court of Human Rights, *Golder v. United Kingdom*, application no. 4451/70, judgment, 21 February 1975, paragraph 25. Although under certain circumstances the authorities may impose restrictions regarding the exercise of this right, the ‘margin of appreciation’ at their disposal shall not lead to limitations which would impair the very essence of the right. See European Court of Human Rights, *Ashingdane v. United Kingdom*, application no. 8225/78, judgment, 28 May 1985, paragraph 57. Also, any restrictions must have a “legitimate aim” and comply with the principle of proportionality. This means that there shall be “a reasonable relationship of proportionality between the means employed and the aim sought to be achieved” (Id.). In light of these legal standards, it is debatable whether the suspension of these cases complies with international human rights standards. The Ombudsperson Institution in Kosovo objected to the suspension of these cases and has raised the issue with the Department of Justice on several occasions. See Ombudsperson Institution in Kosovo, *Fifth Annual Report 2004-2005 addressed to the Special Representative of the Secretary-General of the United Nations*, 11 July 2005, available at <http://www.ombudspersonkosovo.org>.

<sup>35</sup> According to information provided by the head of the statistical office of the Kosovo Judicial Council to the OSCE in May 2008.

<sup>36</sup> See decision of the court in the Pejë/Peć region dated 9 October 2002 in a case of a Kosovo Albanian against the Republic of Serbia and the Federal Republic of Yugoslavia.

<sup>37</sup> Information provided by the president of a court in the Pejë/Peć region to the OSCE in May 2008.

## **6) Recommendations**

It is the position of the OSCE that:

- Judges must use all available means to ensure that trials can be concluded without delay, such as by imposing fines on witnesses who do not appear.
- It is recommended that the Kosovo Judicial Institute train judges on efficient case management.
- Lawyers must represent clients with diligence and not cause delays in court proceedings.
- The Department of Justice must seek to expedite the process of summoning parties outside Kosovo.
- The non-functioning of courts in Mitrovicë/Mitrovica region must be resolved.
- The Kosovo Judicial Council and the Department of Justice must create a plan for solving the more than 18,000 claims by Kosovo Serbs have not been processed at the instruction of the Department of Justice.
- The approximately 1,200 claims by Kosovo Albanians against the Republic of Serbia and/or Federal Republic of Yugoslavia for damages during the 1999 conflict must be resolved.