Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**76**
Land:	Kosovo
Kilde:	International Crisis Group
Titel:	The Rule of Law in Independent Kosovo
Udgivet:	19. maj 2012
Optaget på baggrundsmaterialet:	14. september 2012

THE RULE OF LAW IN INDEPENDENT KOSOVO

Europe Report N°204 – 19 May 2010

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

TABLE OF CONTENTS

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

Europe Report N°204 **19 May 2010**

THE RULE OF LAW IN INDEPENDENT KOSOVO

EXECUTIVE SUMMARY AND RECOMMENDATIONS

More than two years after declaring independence, Kosovo struggles with uneven rule of law and a weak justice system that is failing its citizens. The police, public prosecutors and courts are erratic performers, prone to political interference and abuse of office. Organised crime and corruption are widespread and growing. Realising that prosperity, relations with the European Union (EU) and affirmation as an independent state depend on the rule of law, the government has taken important steps, replacing key officials and passing long-delayed reforms. But critical weaknesses remain, notably in the courts, and the government, supported by the international community, must act swiftly to curtail them.

Kosovo suffers from the widespread impression that it is run by a lawless political elite in control of every aspect of society. The EU rule of law mission, EULEX, is investigating widespread corruption at the highest levels, and its efforts to date have shown gaping holes in regulation and enforcement. This reputation keeps investment out and the country mired in poverty. A two-pronged approach is needed, tightening institutions and regulation to close off opportunities for corruption while investigating the worst of past abuses.

In some respects, Kosovo's reputation for lawlessness is exaggerated. The country has a low rate of violent crime, inter-ethnic crime is rare, and Serbs in most of Kosovo live securely. But the judicial system is weak. Few crimes end with their perpetrators in prison. Court procedures suffer from widespread distrust, fearful or unwilling witnesses and shoddy work by prosecutors. On the civil law side, it is all but impossible for citizens and domestic and international corporations to enforce their rights in court. Property disputes are widespread, and since they cannot be reliably resolved in court, occasionally degenerate into violence. The dysfunctional civil law system, choked with a backlog of cases stretching back to 2000-2001, scares off investment. Demoralised and exhausted judges both struggle under the case backlog and are dogged by a reputation for corrupion and favouritism. Plaintiffs endure baffling rounds of appeals, remands and delays, often featuring deliberate errors. Bribery and even violence have become attractive means of extrajudicial dispute resolution.

The police are one of Kosovo's genuinely multi-ethnic institutions, with Serbs and others integrated in all regions and at all levels. They have strong public support and a willing manpower pool but are poorly managed and lack vital skills as their leadership increasingly neglects training. The force can deal effectively with routine, low-level crime but has a limited ability to fight organised crime, financial crime and fraud, drugs and human trafficking and other specialised challenges. It has a hostile relationship with the public prosecutors, who are charged with leading all police investigations of serious crime. The consequence is that the police do as they please, and the prosecutors are under-serviced and overwhelmed.

The institutions that monitor the justice system – the Kosovo Judicial Council (KJC), which oversees judges, the Police Inspectorate of Kosovo (PIK), and the justice ministry, which supervises prosecutors – are not working properly. The Council is paralysed by lengthy vacancies in key positions. Its components, notably the Office of Disciplinary Counsel and the Judicial Audit, responsible for investigating corruption and other problems in the courts, work well; still, their findings remain without effect because the full body cannot act. The ministry suffers from weak leadership and a lack of political support, though a new minister appointed in April 2010 is expected to improve performance.

The justice system's weakness is visible above all in Kosovo north of the Ibar River, the small Serb-held zone that Serbia in effect controls. There is no real criminal justice in the North, as its Serbia-run courts cannot cooperate with the UN-mandated Kosovo Police (KP). Nevertheless, the North's crime levels are similar to those of Kosovo as a whole, and the small local population thrives on handouts from Belgrade. The border between Kosovo and Serbia has become much better controlled recently, and arrests, mainly in Serbia, have cut down drastically on smuggling. But the North remains a stumbling block in relations between Kosovo and Serbia and between both of these and EULEX. Out of excessive caution, the EU has not based its police in the North, leaving the area free for organised criminal gangs. Its efforts to replenish the Mitrovica court with local judges have failed, while offending both Pristina and Belgrade.

This report surveys the domestic legal system; a subsequent report will cover international aspects of the rule of law issue.

RECOMMENDATIONS

To the President, Government and Assembly of the Republic of Kosovo:

1. Support fully efforts to investigate high-level corruption and prevent its recurrence.
2. Adopt urgently the key framework laws for the judicial system, including:
   a) the laws on courts, prosecutors and the judicial and prosecutorial councils; and
   b) the amended criminal code, code of criminal procedure and code of contested procedure.
3. Appoint urgently the remaining members of the Kosovo Judicial Council.
4. Establish a high-level committee bringing together donors and international representatives with their counterparts in the Kosovo government, to:
   a) put the government back in control of important legislative and organisational decisions related to the rule of law; and
   b) compel the police, prosecutors and internal affairs and justice ministries to cooperate in the fight on crime.
5. Double, at a minimum, the number of judges and prosecutors and bring their salaries and benefits in line with those of other branches of government service, before the full implementation of judicial sector reform and no later than 31 December 2010.

To EULEX:

6. Provide technical help and political support to the PIK and the internal investigations unit of the KP.
7. Increase the capacity of the Mitrovica district court by:
   a) facilitating the appointment of Albanian and Serb judges without violating the integrity of Kosovo's jurisdiction; and
   b) transferring appropriate tasks to qualified local and international legal staff.

To the Kosovo Police, the State Prosecutor and the Internal Affairs and Justice Ministries:

8. Improve prosecutor-police cooperation by establishing joint teams for serious cases, including specialised ones for financial and other complex crimes.
9. Mandate training for police and prosecutors in specialised work on organised crime, drugs and human trafficking, financial crimes and counter-terrorism.
10. Establish urgently a database of crimes and cases, so that police and prosecutors can work together and formulate an effective anti-crime strategy.

To the Government of the Republic of Serbia:

11. Take steps to support strengthened rule of law in Kosovo, including
    a) return all official documents, including cadastral and property records and court files taken in 1999;
    b) support appointment of Serb judges under Kosovo law; and
    c) cooperate with EULEX and Kosovo on developing cross-border strategies to impede human trafficking and drug smuggling.

To the International Community in Kosovo:

12. Support EULEX in investigating and prosecuting high-level corruption and acting in the North of Kosovo.
13. Maintain strong pressure on the government to implement the rule of law and ensure that international advice and assistance are coordinated and consistent.

Pristina/Brussels, 19 May 2010

International Crisis Group
WORKING TO PREVENT CONFLICT WORLDWIDE

Europe Report N°204 **19 May 2010**

THE RULE OF LAW IN INDEPENDENT KOSOVO

I. INTRODUCTION

Kosovo lags far behind other former Yugoslav states in the rule of law. Serbian misrule and oppression in the 1990s, benevolent but poorly managed and feckless UN administration until 2008, a cacophony of advice from well-meaning foreign advisers and donors pushing incompatible agendas, deep poverty, entrenched suspicion of formal institutions and procedures and a leadership with very little experience of government have all played a role.

Rule of law has clearly improved since the period of UN interim administration (UNMIK, 1999-2008) and even more so since the years of Serbian rule.[1] The great achievement of the government of Prime Minister Hashim Thaçi has been to manage the transition to independence peacefully, largely preserving the administrative legacy of UNMIK and in some areas repairing inherited weaknesses.

But virtually none of Crisis Group's interlocutors in the judiciary, police and associated institutions and among EULEX and other international officials believe the government fully supports the rule of law.[2] Many expressed the opposite belief, that the government prefers a weak judiciary. An unregulated society and economy is an ideal environment for corruption: businessmen with connections thrive, while other investment is choked off. In this view, the extremely poor salaries paid to judges and prosecutors denote the judicial profession's low status in the government and society, keep more ambitious lawyers from entering public service and leave the judiciary open to pressure and bribery. Delays in passing critically important legislation and filling key vacancies likewise keep the system functioning poorly. Some observers also believe that the Kosovo elite is hostile to foreign investment, because it endangers their local monopolies, and that foreign companies cannot rely on the justice system.[3]

The November 2009 progress report of the European Commission (EC) assessed the justice system as "weak, vulnerable to political interference and inefficient" and noted that "an incomplete legal framework, corruption, weak rule of law, high level of informal activities... continued to impair the efficiency of market mechanisms". It added that government performance had actually become worse in some areas, notably the extremely lucrative one of public procurement.[4] The government was clearly stung by this criticism and has begun to take steps, including a shake-up in the justice and internal affairs ministries and the police. But it must do much more.

The international community has driven much of the progress on police and judicial reform, but with mixed results and at the cost of marginalising the government at times. As described below, its involvement has caused long delays in passing important laws. EU and U.S. advisers often squabble over the merits of their respective legal systems;[5] consequently Kosovo is implementing two incompatible border control systems, one favoured by Washington, the other funded by Brussels. EC officials say the U.S. model does not adequately protect the privacy of individuals' data,[6] while U.S. experts argue that some EU member states, such as Malta, use it in conjunction with other tools.[7]

[1] Kosovo has gradually improved on the World Bank's Rule of Law index, from a low of 13th (out of 100) in 2003 to 24th in 2007, rising to 30th in 2008, its first independent year (and the most recent available). Serbia is, after Kosovo, the worst performer in former Yugoslavia, though it too has improved, from 19th in 2003 to 40th in 2008. Worldwide Governance Indicators project, World Bank, 2009.

[2] Crisis Group interviews, senior officials in justice ministry, Kosovo Judicial Council, Office of Disciplinary Counsel, Anti-Corruption Agency and EULEX, and prosecutors, judges, and diplomats, Pristina, Brussels and Washington DC, December 2009 to April 2010.

[3] Crisis Group interview, Western ambassador to Kosovo, Pristina, 21 December 2009.

[4] "Kosovo under UNSCR 1244/99 2009 Progress Report", European Commission SEC (2009) 1340, 14 October 2009, pp. 11, 31.

[5] Crisis Group interview, official, European Council Secretariat, Brussels, March 2010.

[6] Arguing it allows the state (and, through data-sharing, the U.S.) access to too much information. Crisis Group interview, EU official, 24 March 2010. The EULEX Program Report noted that the system "does not fulfil Schengen requirements", p. 80. The system, PISCES (Personal Identification Secure Comparison and Evaluation System), is described by its originator, the U.S. firm Booz Allen Hamilton, as a "critical tool in the war on terror"; www.boozallen.com/consulting/industries_article/659016.

[7] Crisis Group interview, U.S. jutice department official, Pristina, 22 March 2010.

Though Kosovo's border police are enthusiastic about the American system,[8] Europeans tend to resent what they see as excessive American influence. They claim that the U.S. Agency for International Development (USAID) drafts new legislation about which the Kosovo government only later consults with the EC on its compatability with the acquis communautaire.[9] EU leverage is growing, especially as Kosovo begins working on the requirements for gaining visa-free travel to the Schengen zone. Such squabbles will continue to slow reform until the government seizes control of the legislative agenda and takes the lead on coordinating international input and assistance.

A. BACKGROUND

The rule of law rests on three main institutions: the police, the public prosecutors and the courts. The police force is much larger than the other two: over 7,000 strong, compared to fewer than 300 judges and 100 prosecutors. Many feel the police are the most effective of the three institutions and that their ability to fight crime is compromised by ineffective prosecutors and courts.

The three institutions grew out of what UNMIK established early in its tenure, when it faced enormous challenges.[10] Retreating Serb authorities took all Kosovo's court files, records and equipment with them in 1999 and have not returned them. A decade of discrimination and abuse under Serbian president Slobodan Milošević had forced out most Albanian lawyers and discredited the ones who stayed. The legal framework itself was tarred by association with Milošević. The breakdown of state authority in the summer of 1999 left a huge backlog of civil and criminal cases, ranging from property disputes to multiple homicides. UNMIK had to build a justice system from the ground up, while simultaneously protecting public order and negotiating co-existence with Albanian ad hoc institutions.[11]

UNMIK preserved a strict separation between the competencies it transferred to the Provisional Institutions of Self-Government (PISG), as it called Kosovo's government, and those it reserved for itself, including competencies related to sovereignty, such as foreign affairs and customs, and those related to the rule of law, such as police, security and justice. The Kosovo Police Service (KPS), staffed by Kosovars, gradually took over from the UNMIK police but remained answerable to UNMIK, not the PISG.[12] Most police stations and many departments did not pass to KPS control until 2006, which is also when UNMIK established internal affairs and justice ministries.[13]

Having long sought to take over policing and justice, the Kosovo government proved unprepared when the time came. It was several months late in launching the internal affairs and justice ministries and initially gave them few resources and limited capacity, while UNMIK slowed transfer of the remaining competencies in politically sensitive areas. Power-sharing led many to view the nascent Kosovo police and courts as foreign-dominated, not genuinely Kosovar, and sapped their effectiveness.

UNMIK did too little to build up Kosovo's own capacity during the decade it ran the territory. It created a Kosovar-staffed police force but did not train independent senior managers or foster strong leaders, thus producing a managerial weakness that still handicaps the KP.[14] It failed to renew the ageing and dwindling supply of jurists and allowed the backlog of civil and criminal cases to grow out of control. Many of these problems remain. The number of uncompleted cases was over 200,000 at the end of 2009 and growing steadily.[15] There are presently fewer judges than there were early in UNMIK's mandate, and virtually no new ones have been appointed.[16]

Meanwhile the transfer from the UN to the EU did not go smoothly. The UN-mandated final status process was meant to produce consensus that would allow Kosovo to become independent with the blessing of the Security Council and with a transitional EU rule of law mission to strengthen its institutions and monitor their performance. This did not happen. With Security Council action blocked

[8] Crisis Group interview, senior police border pillar official, Pristina, 10 February 2010.
[9] Crisis Group interview, EU official, Pristina, 24 March 2010. The acquis communitaire is the body of EU laws and regulations that each member state must adopt and apply.
[10] See Crisis Group Europe Reports N°125, *Kosovo Roadmap (II): Internal Benchmarks*, 1 March 2002, pp. 9-15; and N°134, *Finding the Balance: The Scales of Justice in Kosovo*, 12 September 2002, for background on the origins of Kosovo's judiciary and police.
[11] Crisis Group Report, *Finding the Balance*, op. cit., p. 1.
[12] "Report on the Situation in Kosovo", UN Security Council (UNSC) S/2004/932, 30 November 2004, p. 17. After independence, the police were renamed the Kosovo Police (KP); Serb officers in the North retain the old, UNMIK KPS insignia.
[13] "Report of the Secretary-General on the United Nations Interim Administrative Mission in Kosovo", UNSC S/2006/707, 1 September 2006, p. 4.
[14] Crisis Group interviews, Kosovo Police senior official, April 2010; EU official, 24 March 2010.
[15] There were 185,762 uncompleted cases left at the end of 2008 and 213,967 by the end of 2009. "Report for 2009: Statistics on Regular Courts", Kosovo Judicial Council, p. 2.
[16] In September 2002, there were 295 judges and 46 prosecutors in Kosovo; Crisis Group Report, *Finding the Balance*, op. cit., p. 11. By March 2010, only 176 judges were still at work; "Report for 2009", op. cit., p. 2. There were also 79 prosecutors who in 2004 took over many of the duties previously done by investigating judges; Crisis Group interview, Ismet Kabashi, chief prosecutor of Kosovo, Pristina, 31 March 2010.

by Russia, Kosovo declared independence unilaterally, invited the EU to deploy and transferred some of its sovereign powers to EULEX. Kosovars understood this to be an exchange: they would accept temporary limits on their state's sovereignty in return for recognition of its independence. But because the UN and the EU failed to reach consensus, EULEX could not deliver its side of the bargain and instead deployed as a status-neutral organisation under the "overall authority of the UN".[17] This has left Kosovo feeling cheated and EULEX hobbled by confusion. A subsequent report will elaborate on the difficult relationship betwee EULEX and the Kosovo government.

B. THE CRIME PROBLEM

Kosovo in 2010 is far safer and more peaceful than it was a decade ago. The homicide rate has dropped precipitously from 11.8 per 100,000 inhabitants in 2000 to 2.9 in 2005 and between 2.6 and 3.2 in 2009.[18] This is still higher than the regional average and much higher than the EU average (though it is below the U.S. rate). Other forms of violent crime, such as robbery, burglary and motor vehicle theft are, according to the KP, well below the EU average.[19] But crimes are under-reported by a population that still largely and reflexively fears the police and so prefers not to involve them if possible.[20] No one has made an effort "to research the probable level of unreported crime in Kosovo".[21]

Observers concur that daily, small-scale crime is not a big problem; the challenge is instead large-scale organised crime, trafficking and corruption.[22] The regional drug trade, which tends to be "highly organised, reliant on high-level corruption and close to the destination markets", contributes little to local violent crime.[23] Drug use is low, though some synthetic drugs have been imported from Serbia, and the KP has seized a shipment of cocaine from Belgium. Western experts consider Kosovo "primarily a transit country for Afghan drugs destined for Europe".[24] Reliable statistics are hard to come by, though the street price of heroin is markedly lower than in neighbouring countries, suggesting lax enforcement and interdiction efforts.[25]

Yet, none of the institutions involved in investigating and prosecuting crime – the police, prosecutors, courts, internal affairs and justice ministries and EULEX – know even approximately how many crimes have been committed, successfully investigated and prosecuted and what has happened to their perpetrators.[26] No one Crisis Group interviewed in the KP could say, for example, how many murders had been solved in 2009. There is disagreement about the number of murders, with the police reporting 52 and prosecutors 58. Thus KP claims to have reduced the overall crime rate by 5 per cent in 2009 may not be reliable.[27]

The same confusion exists for inter-ethnic crime. In 2009, according to a police report made available to Crisis Group, only 25 such crimes were committed. However, prosecutors had 320 such crimes on their books prior to January 2009, some going back to the March 2004 riots or earlier, and another 280 crimes (involving 340 suspects) in 2009 – and noted that the majority of these cases were given to them by the KP. Courts sentenced more than 350 people for inter-ethnic crimes in 2009 (most for earlier conduct).[28] A senior Serb police official told Crisis Group that inter-ethnic crime was probably only slightly higher than officially reported and often had a non-ethnic motive, such as to drive down the market price of Serb-owned property.[29] Likewise, information about sexual crimes varies enormously. Police reported 174 in 2009, while prosecutors claimed to have received only nine cases from the police.[30]

[17] "Summary of the Intervention of Javier Solana, EU High Representative before the Meeting of International Organizations Active on the Ground of Kosovo", EU Council S257/08, 18 July 2008.
[18] "Crime and its Impact on the Balkans and affected countries", UN Office on Drugs and Crime, March 2008, p. 39; EULEX Program Report, p. 23. Kosovo's population is estimated between 1.8 and 2.2 million; per-capita figures for Kosovo in this report will be given using these two numbers.
[19] EULEX Program Report, p. 23.
[20] Crisis Group interview, KP officer, Pristina, 12 March 2010.
[21] EULEX Program Report, p. 37.
[22] Crisis Group interviews, Kosovo and international officials, Pristina, January-April 2010.
[23] "World Drug Report 2009", UN Office on Drugs and Crime, pp. 176-177.
[24] "2010 International Narcotics Control Strategy Report", U.S. Department of State, 1 March 2010.
[25] Heroin costs €10 to €15 a gram in Kosovo, compared to €15 to €25 in Bosnia and Herzegovina and over €25 in Albania, Macedonia and Serbia; Kosovo's marijuana and cocaine prices are close to the regional average. "Europe: Kosovo has lowest illicit drug prices in region", *Drug War Chronicle*, 26 September 2008.
[26] Crisis Group made repeated oral and email requests for this information to the KP, justice ministry and EULEX.
[27] Crisis Group interview, KP officials, Pristina, 5 March 2010.
[28] Crisis Group interview, senior official, statistics office, justice ministry, 16 April 2010, and statistics made available by latter to Crisis Group. Inter-ethnic crimes are all crimes committed by Kosovo Albanians against non-Kosovo Albanians (Serbs, Turks, Bosniaks, Roma, Egyptians, Ashkali), and against Albanians where they are locally a non-majority community (e.g. North Kosovo). Serbs, Roma and Egyptians are the most vulnerable communities.
[29] Crisis Group interview, Pristina, 17 March 2010.
[30] Kosovo police crime report for 2009 and prosecution reports from statistics department, justice ministry, made available to Crisis Group.

High-level corruption is a more serious problem. In 2009 the Kosovo Anti-Corruption Agency (KAA) received 175 reports, up from 130 the previous year, an increase it attributes to growing popular trust and awareness.[31] Many of the complaints related to judges and court officials (53, of which only eighteen were referred for prosecution); government officials were the subject of 34 complaints, seventeen of which were referred to prosecutors.[32] Public procurement contracts account for much of this. Senior officials must disclose their income and property to the KAA, but many contracts are signed by junior officials not subject to scrutiny, who accept bribes – 10 to 20 per cent of the tender price is apparently common – on behalf of their superiors. Ministries have occasionally refused payment for completed work so as to extort additional bribes.[33]

The KAA does what it can, but its impact is limited; of the 168 cases it sent to public prosecutors from its establishment in February 2007 through the end of 2009, only five have resulted in indictment and another five in arrests.[34] There are many choke points between complaint and conviction – the KAA itself, police investigators, prosecutors, and judges – at any of which a case can be delayed, sabotaged or dismissed.[35] The newly appointed chief prosecutor complained that police had only reported on a handful of KAA cases; he and the new chief of the KP crime pillar both identified these cases as a priority.[36] Kosovo's justice institutions have yet to indict, let alone convict, a single senior government official. As in the other former Yugoslav states, independence has been followed by a period of high-level impunity and apparent enrichment.

That impunity may be ending. The most sensitive cases have been transferred to EULEX, which has apparently been working on them slowly.[37] On 28 April 2010, however, EULEX raided the transport and telecommunications ministry and several other sites in Pristina, including all private residences used by the minister, Fatmir Limaj, in an investigation involving "several tenders related to the construction of roads in Kosovo in the period 2007-2009".[38] Suspicion of Limaj, an influential former UÇK[39] commander acquitted in 2005 of war crimes by the International Criminal Tribunal for the former Yugoslavia (ICTY), surfaced in 2009.[40] By the spring of 2010, EULEX's interest in him was "the worst kept political secret" in Pristina.[41] The EULEX investigation split the international community, with some governments and the International Civilian Office (ICO) pushing for prosecution and other governments, including powerful members of the Quint, for a "soft landing".[42] Limaj has not been charged or interrogated, and he has denied any wrongdoing.[43] He has reportedly declined a diplomatic post outside Kosovo as part of a deal to withdraw from the scene.[44]

As a recent media article describes it, from 2007 to 2009, the transport ministry was in overdrive, building about 1,000 kilometres of roads through a large number of contractors, at a cost of about €170 million.[45] If EULEX establishes there is widespread corruption within the transportation ministry, which is responsible for a large portion of public spending, then a number of officials in government could be implicated.[46] EULEX is also investigating a number of other ministries and government institutions for possible corruption; since these entities are headed by representatives of two rival parties, EULEX's strategy will have political implications.[47]

[31] "Annual Report 2009", KAA, p. 7. The KAA reportedly estimated the cost of corruption in 2008 as at least €30 million; "2010 Human Rights Report, Kosovo", U.S. Department of State.
[32] "Annual Report 2009", KAA, pp. 7-8.
[33] Crisis Group interview, senior KAA official, Pristina, 12 January 2010.
[34] "Annual Report 2009", KAA, p. 16.
[35] Crisis Group interviews, senior KAA official, Pristina, 12 January 2010; senior EULEX investigations official, executive police department, Pristina, 16 March 2010.
[36] Crisis Group interviews, Kadri Arifi, assistant director of police crime pillar, Pristina, 31 March 2010; Ismet Kabashi, chief prosecutor of Kosovo, Pristina, 31 March 2010.
[37] Crisis Group interview, senior KAA official, Pristina, 12 January 2010.
[38] EULEX press release, 29 April 2010.
[39] Ushtria Çlirimtare e Kosovës, Kosovo Liberation Army.
[40] Lawrence Marzouk, "Fatmir Limaj, Kosovo's Road-builder", *Balkan Insight*, 6 May 2010.
[41] Lawrence Marzouk and Petrit Collaku, "Kosovo Minister's Friends Flourish from Road Bonanza", *Balkan Insight*, 8 April 2010.
[42] The Quint consists of France, Germany, Italy, the UK and the U.S. These states have an informal role leading and coordinating international community policy on Kosovo. Crisis Group interviews, diplomats, Pristina, 12 March 2010; Petrit Collaku and Lawrence Marzouk, "Praise and Anger Follow Raids on Kosovo Minister", *Balkan Insight*, 6 May 2010. The ICO, headed by the International Civilian Representative (ICR), Pieter Feith, monitors implementation of Kosovo's transition to independence; the ICR has broad executive authority that he has thus far declined to use.
[43] Petrit Collaku, "Kosovo's Limaj: 'I am Clean as a Tear'", *Balkan Insight*, 14 May 2010.
[44] "EULEX did not agree with 'extradition' of Limaj", *Koha Ditore*, 3 May 2010, p. 2; Crisis Group interview, international official, Pristina, 5 May 2010.
[45] Lawrence Marzouk, "Fatmir Limaj, Kosovo's Road-Builder", *Balkan Insight*, 6 May 2010.
[46] In 2009, the transport ministry took the third largest portion of the state budget, €115,897,975. Kosovo 2009 Budget.
[47] The Partia Demokratike e Kosovës (PDK, Democratic Party of Kosovo) and the smaller LDK (Lidhja Demokratike e Kosovës, Democratic League of Kosovo) are formally coalition partners; their relations are tense and often bitter. Crisis Group

This investigation, by far the highest-profile inquiry launched by EULEX since its deployment in 2008, is one of several high-profile cases that together could involve €100 million or more.[48] Together, they have the potential to uncover serious problems in government procurement and could easily challenge not only the government's commitment to fight corruption, but also its very stability. The initial government reaction has been obstructive and defensive.[49] The likely complexity, requiring forensic accounting and analysis of computer hard drives, illustrates the weakness of the KP and its need for assistance – in the form of political support as much as technical expertise – from EULEX, the ICO, EU and U.S.[50]

II. THE POLICE

Despite the weaknesses outlined above, the police are the strongest of Kosovo's rule of law institutions[51] and in some respects function at or above the level of their colleagues in neighbouring Macedonia, Montenegro and Serbia. They have earned a reputation for honesty and are largely free from the petty bribery that tarnishes many services in the Western Balkans.[52] Alone of the rule of law institutions, the police are close to full strength in almost all regions and departments and have strong Serb and minority representation, making the KP "an exemplary police organisation, in the context of the Western Balkans and Europe as a whole".[53] Considering the chaotic and disputed circumstances of its recent birth, this is a remarkable achievement.

The KP managed the transition to independence successfully and largely prevented inter-ethnic incidents. It overcame the boycott of Serb officers after independence when, encouraged by Belgrade, more than 300 from central and east Kosovo walked off their jobs. In the North, Serbs did not leave the service but broke off communication with the chain of command. Pristina was patient for more than a year until, in a well-coordinated effort with EULEX, it set June 2009 as the deadline for return; after which it would recruit new officers. Most of the Serb officers obliged after realising that they would lose their jobs and that Serbia could not financially support them.[54] As explained in more detail below, however, the KP in the North has continued its practice of not reporting through the chain of command to Pristina.

interviews, PDK and LDK leaders, Pristina, December 2009. Press reports mention EULEX investigations of the education, trade and industry and economy and finance ministries, and that senior officials from the LDK and PDK, as well as the smaller Aleanca për Ardhmërinë e Kosovës (AAK, Alliance for the Future of Kosovo) were suspected. "EULEX-i do të hetojë edhe 6 ish-ministra të PDK-së, LDK-së e AAK-së" [EULEX will investigate the six former ministers of the PDK, LDK and AAK], *Koha Ditore*, 11 May 2010; Lawrence Marzouk, "EULEX: Limaj could face a long jail term", *Balkan Insight*, 7 May 2010.

[48] Crisis Group interview, international official, Pristina, 5 May 2010.

[49] Crisis Group interview, international official, Pristina, 5 May 2010; Collaku and Marzouk, "Praise and Anger Follow Raids on Kosovo Minister", op. cit.; "Kryetari I Kuvendit Krasniqi Sfidon EULEX-in" [Speaker of the Assembly Krasniqi challenges EULEX], *Express*, 5 May 2010; "Ligi, jo Linç" [Law, not lynching], *Express*, 6 May 2010.

[50] Crisis Group interview, senior police crime pillar official, Pristina, 31 March 2010. EULEX judged the KP's economic crime and corruption investigation section, within the major crimes directorate, as tiny and apparently ineffective; EULEX Program Report, pp. 41-42.

[51] Many Crisis Group interviews in Pristina between November 2009 and April 2010, with Kosovo and international officials, including diplomats, EULEX, UNMIK, and the Organisation for Security and Cooperation in Europe (OSCE), showed broad agreement on this point.

[52] Crisis Group interviews, UNMIK rule of law official, Pristina, 12 January 2010; Hasan Preteni, director, Anti-corruption Agency, Pristina, 12 January 2010; EULEX Program Report, p. 13. A 2009 survey found that very few residents were dissatisfied with the police and that among those dissatisfied, only 11 per cent cited corruption and bribery as the cause. "Early Warning Report Kosovo", UN Development Programme (UNDP), April-June 2009, pp. 28-29.

[53] EULEX Program Report, p. 13.

[54] Serbia pressured the Kosovo Serb members of the KPS to leave their jobs in the wake of Kosovo's declaration of independence, promising to care for them financially. After the May 2008 Serbian elections, the new government took a different approach. Serb KPS members were encouraged to return to work, and Belgrade played a constructive role in ensuring that the overwhelming number did so.

Serious problems are concentrated at the top levels.[55] While performance as a whole has improved relative to the UNMIK days, the organisation is still failing in important respects. The leadership lacks managerial skills and vision and is resistant to change. EULEX and other international bodies report that efforts to train officers in advanced crimefighting techniques are often rejected by the top police brass, who prefer to stick to familiar approaches. Younger officers end up frustrated by their inability to apply new lessons learned.[56] Management reacts negatively to criticism or investigations by media, civil society and the Police Inspectorate of Kosovo (PIK).[57] Senior officers hardly meet with PIK staff; station commanders cooperate with the Inspectorate only because they have no choice. Implementation of recommendations has improved, but is not yet satisfactory.[58] Some in EULEX believe their advice to top management is ignored by commanders who reserve decision-making to closed-door sessions.[59]

The police have only a limited ability to investigate complex crimes, such as financial fraud, terrorism, drug and human trafficking, high-level corruption and organised crime. There are two main reasons: the KP has little experience or training in these areas, and it remains subject to political interference and security problems.[60] On two occasions in 2007, Crisis Group witnessed department chiefs receive phone calls apparently from advisers to two separate ministers seeking information about specific investigations in which their family members or party associates were allegedly involved. EULEX believes that police supervisors sometimes also tip-off suspects.[61]

Police management's relationship with the government is in flux, with some observers seeing an improvement and others a deterioration since independence.[62] Observers agree the relationship is still problematic at best, and the police remain deferential to powerful government figures. Senior officials curry favour with the government, seeking jobs for relatives, promotions and other privileges like foreign travel for training. Political interference may well continue for some time.[63] Some in EULEX feel it will take the KP a generation to become a normal, fully functional service.[64]

The government has recently taken several steps to strengthen capacity, appointing a new internal affairs minister and general director of police. The minister, Bajram Rexhepi, is a former prime minister (2002-2004) and a strong political figure; he is credited with maintaining peace in his native divided city of Mitrovica after Kosovo's declaration of independence.[65] Behar Selimi, former director of the Border Police, a popular young commander who has good relations with the international community and a consensus choice, took over as general director in April 2010. His predecessor, Sheremet Ahmeti, had been in command positions for a decade but never established a firm grip and was widely blamed for several high-profile police failures.[66]

Apart from some specialised units, almost all police posts have been filled; but the structure is probably too small for the country's size, and personnel are poorly paid and equipped. Surprisingly, few if any international observers advocate expanding the force, and EULEX does not recommend higher pay.[67] The government likewise sees no

[55] Crisis Group interview, advisor to internal affairs minister, Pristina, 21 April 2010.
[56] Crisis Group interview, U.S. justice department officials, Pristina, 22 March 2010.
[57] Crisis Group interviews, PIK inspection official, Pristina, 12 April 2010; international consultant, Pristina, 31 March 2010. See below for the Police Inspectorate.
[58] Crisis Group interview, former training centre consultant, Pristina, 31 March 2010. The inspectorate has sent 156 recommendations to the Senior Police Appointments and Disciplinary Commission (SPADC) and has another 130 to forward soon. The general director of police has implemented 86 of 99 of the SPADC recommendations directed to him. Crisis Group interviews, PIK officals, OSCE consultants, internal affairs ministry official, Pristina, 31 March 2010. Data made available to Crisis Group.
[59] Crisis Group interview, senior EULEX investigations official, executive police department, Pristina, 16 March 2010.
[60] Crisis Group interviews, U.S. justice department officials, Pristina, 22 March 2010; OSCE officials, Pristina, 22 March 2010.
[61] For example, a major orders an investigator to go after a suspect; the order goes through a lieutenant who warns the suspect. Crisis Group interview, senior EULEX investigations official, executive police department, Pristina, 16 March 2010.
[62] Crisis Group interviews, U.S. justice department officials, Pristina, 22 March 2010; OSCE officials, Pristina, 22 March 2010.
[63] Crisis Group interview, government advisor, Pristina, 21 April 2010.
[64] Crisis Group interview, senior EULEX investigations official, executive police department, Pristina, 16 March 2010.
[65] Former Interior Minister Zenun Pajaziti came from the NGO sector, and was respected for integrity but seen as politically weak.
[66] The 2007 Vetevendosje protests, a major burglary from the evidence room of police headquarters, on 25 April 2009, and a strike by uniformed officers on 2 February 2010. According to police reports made available to Crisis Group, unknown persons broke into the evidence room and stole, among other things, about 47 kg of drugs, some €4,000 and around 6.5 million Turkish lira (€3.25 million). EULEX has taken over the investigation; the KP has never explained its view of the event or its response – or lack thereof. Ahmeti was associated with the UNMIK days, when Kosovars were kept out of positions of real authority. Crisis Group interview, KP officer, Pristina, 6 April 2010.
[67] EULEX's comment seems callous: "Whilst EULEX staff report that remuneration is a cause of concern among KP officers, it cannot be viewed as a major threat to the sustainability of the KP organisation in the current economic climate of Kosovo.

need to hire more officers and would prefer to shrink the police further.[68] The ratio of police officers to population is marginally smaller than in most of the region and much smaller than in several EU states.[69] Kosovo should consider a modest increase in size,[70] targeted at units that are weak or responsible for newly acquired tasks.

Yet the discontent over low salaries has security implications. For example, in February 2010, 400 members of the elite special operations units protested inadequate pay in uniform and on police premises, only backing down when, after fourteen hours of negotiations, the government provided a €3.5 million budget increase and the internal affairs minister promised they would not be disciplined.[71] In April 2010 the government allowed the KP to use another €3.5 million for salary hikes, taken from savings elsewhere in the police budget, so that together the two increases will add about €80 to the average policeman's monthly pay. Police salaries range from €320 per month for administrative staff, to €395 for investigators and €440 for close protection officers.[72] This remains low for the region – nearby Bosnia and Herzegovina pays about twice as much – but not out of line with Kosovo's lower per capita income.[73] The KP needs to retain at least this level of remuneration, without cutting into other critical budget areas.

The ability to fight crime is hamstrung by an inability to use crime data to target efforts: the police have only a rudimentary data-management capacity.[74] KP managers seem unwilling to use statistical data as a tool for objectively analysing performance.[75] Officers report crimes inconsistently, and the headquarters does not really compile data from regional commands.[76] The information system (KPIS) is so outdated and insecure that "the Directorates of Major Crime and Organised Crime refuse to provide inputs".[77]

The KP has no reliable homicide statistics and is unable to say how many of its cases have resulted in prosecution, or even how many have a named suspect. The homicide statistics it gives to EULEX are unclear, either because it does not have reliable information about the cases, or because EULEX was unable to understand the KP record-keeping system; both explanations are disturbing.[78]

EULEX identified this problem in July 2009 and set up three "action fiches" aimed at correcting it.[79] Worryingly, not only has the KP made no visible progress on this, but EULEX has since suspended efforts to establish a common system shared by police, prosecutors and courts, judging it unachievable prior to improvement in the KP's own data systems.[80] The problem has several roots. Police officers do not report crimes uniformly, and the force uses three different and incompatible databases to track crime.[81] Without a common system, it is impossible to follow what happens to specific cases, because a crime committed in one year (and recorded by police) may lead to an indictment in another year (recorded by prosecutors) and a trial in a third year (and show in court statistics). Police

Secure employment – whether in the public or private sector – remains insufficient for Kosovo's expanding workforce, and police officers have limited options for alternative employment if they feel unsatisfied with conditions in the police service". EULEX Program Report, p. 68.

[68] Crisis Group interviews, internal affairs ministry advisers, Pristina, April 2010.

[69] Kosovo has between 327 and 398 policemen for each 100,000 inhabitants, compared to 427 in Croatia, 476 in Macedonia and 540 in Italy.

[70] There is a strong correlation between police force size and reported crime level; countries with the best-staffed police enjoy the lowest levels of violent crime. Crisis Group calculations based on data in EULEX Program Report, pp.21-23. The correlation is even stronger if more serious crimes such as murder are weighed more heavily. For example, England and Wales have few police relative to population (272 per 100,000) and one of the highest EU crime rates (10.4 serious crimes per 100,000). Italy has about twice as many police per capita and about half as much serious crime.

[71] Crisis Group interview, government advisor, Pristina, 21 April 2010.

[72] Crisis Group telephone interview, KP finance department, 11 May 2010.

[73] Police with basic education receive €503 monthly, rising to €888 with additional training, in Republika Srpska, one of Bosnia's two entities. E-mail communication from its internal affairs ministry, 10 March 2010.

[74] Officers find it difficult to produce data and reports based on the information the system provides. Crisis Group interview, KPIS data complier, Pristina, 6 April 2010. Either the officers are not sufficiently trained or the system is not workable.

[75] EULEX Program Report, p. 37.

[76] Crisis Group interview, KP officer, Pristina, 6 April 2010.

[77] EULEX Program Report, p. 37; Crisis Group interview, EU official, Pristina, 24 March 2010.

[78] EULEX Program Report, pp. 27-28.

[79] Ibid, recommendations PSD/2/2009, PSD/7/2009 ("design, implementation and evaluation of a common system of collecting and collating crime, crime investigation and prosecution statistics.... ensur[ing] agreement regarding the overall number of recorded crimes, the number of serious crimes (of concern to the public), as well as clear and unambiguous categorising 'solved' and 'unsolved' crimes by category") and PSD/8/2009, pp. 25, 33-34.

[80] Crisis Group interviews, senior EULEX police adviser, Pristina, 30 March 2010; Kosovo state prosecutor, Pristina, 31 March 2010.

[81] The border police use the U.S.-supplied PISCES system, the operations pillar KPIS, a poor system, and the crime pillar its own database. Crisis Group interviews, former senior KP operations pillar official, Pristina, 27 April 2010; crime pillar data-processing officer, Pristina, 23 April 2010.

tend to report numbers of crimes, whereas prosecutors focus on numbers of suspects. Police submit case files to prosecutors without an identified suspect; in the Pristina municipal prosecutor's office, there were about 5,000 such cases in 2009.[82]

This is not an insoluble problem. Willingness to cooperate on a simple database capable of tracking basic information on suspects, cases, crimes and dispositions is needed. The absence of this information limits the effectiveness of police management, which cannot know, for example, which stations or units produce cases that lead to convictions and which do not. This is partly a police problem and partly a consequence of the bad relationship between police and prosecutors, discussed below. It will require high-level government attention to break through entrenched habits and institutional rivalries and force cooperation.

Training has slipped badly since the KP took responsibility for it from UNMIK in 2007. Programs are seen as a reward or time off, when held in a desirable location, and otherwise avoided,[83] since officers see no benefit: "I get nothing out of it, no promotion, no salary increase".[84] Many regional and station commanders refuse to attend three-week senior management training and are reluctant to send their officers, as they complain constantly about a lack of manpower. An international observer noted: "The higher people go, the less willing they are to be trained".[85] Other officers complain about under-qualified trainers: "Many officers feel offended at being trained by local instructors; apparently many with [only] a secondary school education".[86]

A. INVESTIGATIONS

The 520-officer KP crime pillar is responsible for investigating and analysing serious crimes, such as homicide, robbery, rape, burglary, terrorism, organized crime and drug and human trafficking, for which it has limited capacity.[87] UNMIK retained control over these tasks until summer 2008. The transfer was poorly planned and chaotic, and UNMIK failed to train Kosovar officers in the skills needed for serious criminal investigation. The KP reorganised the pillar in 2009, setting up new departments, putting in standards and identifying the training gaps. Additional new departments are planned for 2010, with witness protection and financial units a priority.[88]

There have been some successes. EULEX war crimes prosecutors are satisfied with the KP investigation team assigned to assist them. EULEX prosecutors work very closely with the police in the vast majority of cases on which EULEX prosecutors have primary jurisdiction.[89] Detectives at the station level perform well and are starting to go after criminal groups proactively instead of waiting for crimes to happen. Some specialised units, such as the human-trafficking unit, are improving.[90]

But the crime pillar has only limited capacity to get beyond low-level crimes, because of political interference, security problems and limited training.[91] The police sometimes do not know how to conduct interrogations. Anecdotal evidence suggests some officers enjoy the fearsome reputation that is a legacy of Serbian rule; an officer said, "I arrest the perpetrator, and my colleagues beat them. They do the job".[92] At times, prosecutors suspect police of deliberately suppressing evidence and sabotaging prosecution. A prosecutor who had been investigating an official, a close acquaintance of the internal affairs minister, told Crisis Group that after amassing enough evidence for a solid case, he asked the police to investigate for confirmation. They did not reply for several months, then reported that there was no evidence implicating the individual.[93] Likewise, since January 2009, prosecutors report having asked police to investigate 160 cases referred to them by the anti-corruption agency and receiving only three or four replies.[94]

[82] Crisis Group interview, Alexander Lumnezi, chief prosecutor, Pristina municipal prosecutor's office, Pristina, 13 January 2010.
[83] Crisis Group interviews, Pristina central police station officer, 24 March 2010; former police education consultant, Pristina, 31 March 2010.
[84] Crisis Group interview, police officer, Pristina station, 22 February 2010.
[85] Crisis Group interview, OSCE officials, Pristina, 22 March 2010.
[86] Crisis Group interview, former training centre consultant, Pristina, 31 March 2010.
[87] Crisis Group interviews, senior police crime pillar official, 31 March 2010; OSCE official, Pristina, 22 March 2010; EU official, Pristina, 24 March 2010, who said, "UNMIK did not want the word 'intelligence' mentioned in the police".
[88] Crisis Group interview, senior police crime pillar official, Pristina, 31 March 2010.
[89] Crisis Group interview, EULEX prosecutor, Pristina, January 2010. The "Law on the Jurisdiction, case selection and case allocation of EULEX judges and prosecutors in Kosovo", no. 03/L053, assigns primary jurisdiction over war crimes and certain other crimes to EULEX.
[90] EULEX Program Report, pp. 38, 43-44.
[91] Crisis Group interview, U.S. justice department officals, Pristina, 22 March 2010.
[92] Crisis Group interview, Pristina central police station officer, 22 February 2010.
[93] Crisis Group interview, prosecutor, state prosecutor's office, Pristina, 5 February 2010.
[94] Crisis Group interview, Ismet Kabashi, chief prosecutor of Kosovo, Pristina, 31 March 2010.

Kosovo has no effective criminal intelligence capacity. Although KP senior management claims the intelligence unit is among its best, EULEX calls for a fundamental "change of culture among KP officers, allowing them to adopt an attitude of intelligence gathering as part of their basic duty"; crime pillar management concurs.[95] Additionally, the EULEX program report noted a markedly parochial attitude to intelligence and information: "each unit, team, and station guards its own corpus of intelligence and views its role as in competition with other parts of the organisation". Among criminal investigators at the station level, "intelligence tends to be shared verbally and lacks structure and methodology", and no one seems to have a grasp of the basics of handling criminal intelligence.[96]

Crime pillar management is aware of major shortcomings and is seeking to improve,[97] but attempts to promote intelligence-led policing since 2007 have failed. Pressured by the European Commission Liaison Office (ECLO) and relevant donors, the police officially launched a new project in late 2009, appointing the head of the crime pillar to lead it, as well as the restructuring process. It is financed by the EU Commission Instrument for Pre-accession assistance (IPA) program.[98]

B. OPERATIONS

The operations pillar, by far the largest component of the KP, is the public face of the police. Its uniformed officers are responsible for day-to-day issues that bring them into frequent contact with citizens, like traffic control and enforcement, patrols and other tasks. While their work is less newsworthy than that of colleagues who handle major crime, it is arguably more important for Kosovo's future. Popular confidence in the police depends more on relatively minor issues, because they directly and immediately affect far more people. And without popular trust, the KP's ability to investigate serious and organised crime will be severely constrained.[99]

EULEX found that "the noted pockets of good practice among patrol supervisors is outweighed by considerable patterns of weakness". Management is especially weak, leaving patrol officers "with little or no direction from supervisors". Disturbingly, "individual discretion was also found to shape the policy behind road traffic law enforcement, with many patrol officers imposing their own policy – based on perceptions of the relative wealth of motorists – to guide the imposition of penalty tickets". EULEX also reported that the operations directorate was "poor" in many areas, including planning and multiple aspects of management.[100]

As in many countries, traffic fatalities claim more lives than homicides; 41 people died in vehicle accidents in the first three months of 2010. The operations pillar has appropriately made traffic safety a high priority for 2010, and its officers are well trained and capable. However, poor coordination with the judicary, in this case the courts that handle minor offences, limits what the police can achieve. In theory, drivers who commit three serious infractions lose their licenses, but the police lack a system that keeps track of repeat traffic offenders. That is left to the court of minor offences, which fails to keep records of serious traffic violations and, moreover, does not report them to the police.

Suspicion between police and the court has prompted the Pristina regional commander to order his traffic officers to issue fines on the spot, rather than the summons to appear in court that citizens usally request, as this allows them to negotiate with judges and get a smaller fine or avoid one altogether.[101] Police officers also disregard the courts; one told Crisis Group that he had "more than twenty summons in my pocket" for minor traffic offences. Without the police, the judge is forced to dismiss a case.[102]

Traffic patrols often take advantage of inadequate supervision. A stint on the traffic unit is, for many officers, a relaxing day out.[103] In general, the traffic unit is known for not taking bribes, though some officers behave capriciously, and one police commander believes solicitation is increasing, especially of foreigners.[104] Police in the Mitrovica region complain that significant portions of the local traffic unit, along with many from special units, are involved in smuggling.[105]

[95] EULEX Program Report, p. 63. The same report noted (p. 36) that the "ability of the KP organisation to create plans based on intelligence has been assessed by EULEX to be very poor".
[96] Ibid, pp. 36, 39.
[97] Crisis Group interview, Kadri Arifi, assistant director of police for crime investigation, Pristina, 31 March 2010.
[98] Crisis Group interview, EU official, 24 March 2010.
[99] Crisis Group interview, senior EULEX police official, 15 March 2010.
[100] EULEX Program Report, pp. 45-46.
[101] Crisis group interview, Emin Beqiri, director, Pristina region directorate, Pristina, 17 March 2010.
[102] "They send two or three summonses, and after the judge realises the police will not come, he just abandons the case". Crisis Group interview, Pristina central police station officer, 25 February 2010.
[103] Crisis Group interview, Pristina station police officer, 22 February 2010.
[104] Crisis Group interview, senior police crime pillar official, Pristina, 31 March 2010.
[105] Crisis Group interview, KP officer, Mitrovica, 20 January 2010.

Serious shortcomings have been noticed in the management of police assets, equipment and vehicles. The PIK observed that police are at fault in more than half of all traffic accidents in which their vehicles are involved, and rarely because of hot pursuit of a suspect. Procurement is chaotic: the police lack important categories of equipment but waste money on unnecessary extravagances; an international expert complained that Kosovo buys Volkswagen Golf vehicles, while the German police has to make do with Škodas.[106]

C. INTERNAL MISCONDUCT AND CRIMES

Allegations of police misconduct are handled by two units: the PIK works on serious cases; the KP's own Internal Investigations Unit (IIU) deals with minor offences. The PIK is an independent body, answering to the internal affairs minister and charged with investigating serious complaints of police misconduct, such as excessive force,[107] inspecting and analyzing police performance and suggesting improvements. It is understaffed, largely unsupported and unsure about its future mandate and form. A senior officer in the IIU told Crisis Group that "without any doubt" senior management did not support or understand his department.[108] Police management classifies the IIU as administrative staff, a category largely excluded from recent pay raises – a sign of neglect and an obstacle to retaining good investigators.[109] This inequality is unjustifiable and should be eliminated. A new law would, as drafted, increase the powers of the PIK by giving it authority to investigate crimes (and not mere misconduct) committed by police, while providing station commanders greater authority to enforce discipline.

The PIK has been without a director for a year, because the body charged with naming the director – the Government Council for Senior Appointments, chaired by the prime minister – has not met since independence. Nor is there an acting director; the most senior official is the chief of investigations, Valdet Hoxha, but the internal affairs ministry has authorised him to act as a director only in respect to investigations, not the PIK's other tasks, notably monitoring police performance.[110] Whatever the reason for the delay, it has created an impression the government does not stand behind the PIK or its mandate. Likewise, the internal affairs ministry took several months to establish the Senior Police Appointments and Disciplinary Commission (SPADC), and selected the panel for hearing disciplinary cases only in January 2009.

The PIK's investigation section has fifteen investigators, only one of whom is a former police officer; for the rest, entry requirements were modest: a university diploma and further training on law and management.[111] The Organisation for Security and Cooperation in Europe (OSCE) believes the staff is professional, well trained and produces very good reports.[112] But while police management claims a "zero tolerance" policy on crime within the organisation,[113] the system does not really work effectively, and very few officers face discipline. The PIK had about 1,700 cases in 2009 and 2,024 in 2008 (some 300 of which involved the Serbs who walked off the job after independence); its existing capacity allows it to investigate only about 400 complaints thoroughly per year.[114]

Of the 866 less-serious cases investigated by the IIU in 2009, 773 have been concluded, with the unit recommending 593 disciplinary penalties, including four disqualifications.[115] Almost none of the citizen complaints that led to 218 of those cases, however, resulted in disciplinary measures against officers, and more than half were dismissed as "unsupported".[116] Usually, there are no witnesses to police misconduct other than the police themselves and the complaining citizen, and officers tend to back one another. There have also been cases of witnesses withdrawing their statements and completely changing their story, apparently because of police intimidation.[117] Nevertheless, the head of the IIU said that the process of investigation itself sends a clear message to police who break the rules, even if it does not always produce a formal result.[118]

[106] Crisis Group interview, OSCE officials, 22 March 2010.
[107] Crisis Group interviews, Zenun Pajaziti, internal affairs minister, Pristina, 12 March 2010; Valdet Hoxha, head of investigations department, police inspectorate, Pristina, 15 March 2010.
[108] Crisis Group interview, Pristina, 16 March 2010.
[109] Internal investigators earn the lowest police salary, about €320; all other investigators earn €395; Crisis Group telephone interviews, KP finance department, 11 May 2010; and senior official of KP IIU, Pristina, 15 March 2010.
[110] Crisis Group interview, senior police inspectorate offical, Pristina, 15 March 2010.
[111] Crisis Group interview, Valdet Hoxha, head of investigations department, police inspectorate, Pristina, 15 March 2010
[112] Crisis Group interview, international consultant, Pristina, 31 March 2010.
[113] Crisis Group interview, KP officials, Pristina, 5 March 2010.
[114] Crisis Group interview, Valdet Hoxha, head of investigations department, police inspectorate (PIK), Pristina, 15 March 2010.
[115] Crisis Group interview, senior official, internal investigations department, KP, Pristina, 16 March 2010. The actions included twelve serious notifications; 43 paid suspensions; nine disciplinary transfers; 102 written notifications; sixteen pay penalties; and 408 verbal notifications; 127 cases were returned to the PIK for further investigation; no action was taken on five cases.
[116] Ibid. Most citizen complaints dealt with being treated without dignity and shouted at; 648 of the 866 cases came from management.
[117] Crisis Group interview, senior PIK investigation official, Pristina, 15 March 2010.
[118] Crisis Group interview, senior official, KP IIU, Pristina, 16 March 2010.

The police have taken steps against some corrupt officers. A Pejë region investigator was arrested in January 2010 for soliciting a €10,000 bribe from the family of a murder victim – ostensibly to be used to further bribe witnesses he claimed were needed for the case.[119] In late March 2010, police arrested two officers for leaking information about a wiretap of a suspect's phone.[120] In October 2009, they arrested twelve border police for taking bribes, and EULEX has suggested that border police be barred from carrying mobile phones at work, to prevent them from coordinating with smugglers.[121] While such strong measures may signal that management has started taking police corruption seriously, to date they seem to be exceptions to the rule.

There are credible allegations that individual officers are involved in serious crimes which require further investigation and eventual prosecution. The police are non-cooperative, however, on cases in which their members are involved. The prosecutor does not know when he calls for assistance whether he is dealing with co-perpetrators or honest officers.[122] Ties of officers to human trafficking and prostitution are suspected to be a serious problem: some cases linking them to the activity have been uncovered, and more are suspected.[123] International consultants raised suspicions of police involvement in protecting criminals.[124] Police officers who talked to Crisis Group suggested that groups within the force may protect drug distribution in Pristina, though this may be changing with police arrests of dealers who previously enjoyed protection.[125]

The envisaged expansion of the PIK's authority is controversial, partly because unlike the police itself, the PIK is under the authority of the internal affairs ministry and thus of the government. Some, including the OSCE, fear this would be a step toward creating a "special police", with full powers, including the right to carry firearms, but under political control.[126] While the OSCE supports assigning investigation of police criminal offences to the PIK, provided proper training takes place, it strongly opposes returning investigations of serious disciplinary violations to the IIU.[127] The PIK's investigations unit is expected to add between 60 and 80 new staff.[128] Giving station commanders the power to resolve minor cases is less controversial, and can increase their responsibility and stature.[129] But more is needed to convince senior management of the real value of internal investigations.[130]

Though both badly need technical help and political encouragement, EULEX does not provide support to the PIK or the internal investigations unit.[131] Apart from passing on information from the North and the occasional protocol visit, there is little contact. EULEX should make assisting the PIK to become a well-integrated part of Kosovo's police system a high priority.

[119] Crisis Group interview, prosecutor, Kosovo special prosecutor's office, Pristina, 4 February 2010.
[120] Crisis Group interview, KP public information officer, Pristina, 6 April 2010.
[121] Crisis Group interviews, senior KP officials, Pristina, 5 March 2010; senior official, EULEX, police strengthening department, Pristina, 16 March 2010.
[122] Crisis Group interview, prosecutor, special prosecutor's office, Pristina, 4 February 2010.
[123] Crisis group interviews, EU official, Pristina, 24 March 2010; prosecutor, Pristina, April 2010.
[124] Crisis Group interview, U.S. justice department officials, Pristina, 22 March 2010.
[125] Crisis Group interviews, current and former KP officers, Pristina, April and May 2010.
[126] Crisis Group interviews, senior officals, OSCE human rights and security and public safety departments, Pristina, 15 and 22 March 2010.
[127] Crisis Group email correspondence, senior officals, OSCE security and public safety department, Pristina, 15 May 2010.
[128] Crisis Group interview, Valdet Hoxha, head of investigations department, police inspectorate, Pristina, 15 March 2010.
[129] Crisis Group interviews, Emin Beqiri, KP Pristina regional commander, 17 March 2010; senior officals, OSCE security and public safety department, Pristina, 22 March 2010.
[130] Crisis Group interviews, senior official, internal investigations department, KPS, Pristina, 16 March 2010; senior officials, OSCE security and public safety department, Pristina, 22 March 2010.
[131] Crisis Group interview, senior police inspectorate official, Pristina, 15 March 2010.

III. THE JUDICIARY

Kosovo's judiciary has deteriorated to the point that many, perhaps most citizens lack genuine access to justice. Problems accumulated under the UNMIK mandate, and there has been little change after independence and the EULEX deployment. Kosovo has far too few judges and prosecutors; the ones it has tend to be underpaid and without social prestige or authority, demoralised and poorly trained. The legal framework is a confusing stew of old Yugoslav and UNMIK and new Kosovo legislation. There is no effective management or oversight; judges and prosecutors are largely left alone to work as they can, in inadequate facilities and without recourse should help or protection be required.[132] Anti-corruption mechanisms are in place and operational but ineffective, blocked by a lack of political support and leadership. Finally, there are security challenges, especially in serious criminal cases, where witnesses face intimidation or worse and often are unwilling to testify.

Violent crime is relatively rare, and the judiciary, weak as it is, can handle criminal cases. But the ineffective civil law system, which involves mainly property and privatisation disputes, leaves society, the economy and the government itself unregulated and open to abuse.[133] Occasionally, these disputes – in the absence of effective legal remedy – turn violent; international prosecutors believe that many murders are rooted in conflict over property.[134]

The legal framework desperately needs updating. Four key laws – on the courts, the Judicial Council, the prosecution service and the Prosecutorial Council – have been delayed; one, the law on courts, has gone through almost 50 drafts since 2004. The government blames the delay on disagreement between internationals, especially ECLO and USAID.[135] While USAID officials deny this, they acknowledge that discussions have been "extensive and exhausting" and described a process in which the government has been more a client to approve a final package than an active participant shaping that package.[136] A senior ECLO official described the drafting process as a collaboration between it, USAID and the International Civilian Office (ICO), with occasional EULEX input, and stressed the need to harmonise international positions.[137]

The law on courts passed its first reading in the Assembly on 15 April 2010; adoption of all four laws must be a high priority. Likewise, the UNMIK-drafted Code of Criminal Procedure, which an experienced judge described as "written by people who have never seen a trial in court", and the civil Code of Contested Procedure urgently need amendment.[138] The government should take the leading role in amending legislation, coordinating and guiding international input rather than merely approving a final product.

A. COURTS

For a small country, Kosovo has a multitude of courts: constitutional, supreme and commercial, all with country-wide jurisdiction and seated in Pristina; five district courts (Pristina, Gjilan, Mitrovica, Pejë and Prizren); and 24 municipal courts, plus courts for minor offences (misdemeanours).[139] A court reform law should reduce and simplify this structure, but as presently drafted, will not take effect until 2013.[140] All courts hear civil and criminal cases; municipal courts hear criminal cases with penalties of up to three years in prison, while district courts hear more serious criminal cases, as well as appeals from municipal court judgments.

[132] "Intimidation of the Judiciary: Security of Judges and Prosecutors", OSCE human rights and communities department, issue 3, April 2010.
[133] Crisis Group interview, KJC member, Pristina, 25 January 2010.
[134] Crisis Group interview, EULEX prosecutor, Pristina, 29 January 2010.
[135] Crisis Group interview, Hajreddin Kuçi, deputy prime minister, Pristina, 7 December 2009.
[136] Recently the dispute has focused on how to maintain the Ahtisaari plan's protection of non-majority interests in the new court system. (The Ahtisaari plan, a UN-mandated proposal for Kosovo's final status, foresaw a period of supervised independence. See Crisis Group Europe Report N°182, *Kosovo: No Good Alternative to the Ahtisaari Plan*, 14 May 2007.) Crisis Group interview, USAID official, Pristina, 17 March 2010. USAID notes there is "no disagreement" between the U.S. and EU on the current draft Law on Courts, and that it is now supported by "all [international and local] stakeholders"; Crisis Group email correspondence, USAID Pristina, 11 May 2010. A senior U.S. official said there was some truth to the government's complaint about U.S.-ECLO disagreement contributing to the delay; Crisis Group interview, Pristina, 12 March 2010.
[137] Crisis Group interview and email correspondence, ECLO official, Pristina, 8 December 2009 and 17 May 2010.
[138] Crisis Group interview, EULEX judge, Pristina District Court, 3 February 2010. Several other interlocutors agreed with the need to amend these codes. Crisis Group interviews, EULEX Supreme Court judge, and EULEX prosecutor, Pristina, 29 January 2010; senior KP officials, Pristina, 5 March 2010; Kosovo state prosecutor, Pristina, 31 March 2010.
[139] The 24 municipal courts, two of which (Pristina and Ferizaj) have branches in the nearby Serb enclaves of Gračanica and Štrpce, hear most civil disputes, and cases involving crimes and misdemeanors with penalties of three years or less; three municipal courts in the Serb-held north of Kosovo (Mitrovica, Leposavić and Zubin Potok) do not function, and Serbs use Serbian municipal "courts" that hold hearings in judges' apartments.
[140] Crisis Group interview, international consultant, Kosovo Judicial Council, Pristina, 4 February 2010.

While there are many courts, there are relatively few judges and too little effective access to justice. No new judges have been named since the early UNMIK days, when appointment to the bench was limited to jurists who had practised before the Serbian crackdown of 1990.[141] The judiciary's average age is 54, and only a handful are under 40.[142] Since an estimated 57 per cent of citizens are under the age of 25 – giving Kosovo one of Europe's youngest populations – there is a big gap between this generation and the Serbia-educated elders who judge them.[143] The judiciary's association with the time of Serbian rule weakens its moral authority.

Since 2008, all judges (and prosecutors) have in effect, had to reapply for their jobs to an international body, the Independent Judicial and Prosecutorial Commission (IJPC). Vetting has been slow.[144] The IJPC only finished approving members of the Supreme Court and the state prosecutor's office in early 2010; action on most courts and prosecutors' offices at district level and on the municipal courts has been deferred to the summer and autumn.[145] An early decision to begin the process with a written ethics examination, which many failed, means about one quarter of the bench is still in place but knows it will not be re-appointed. These judges are understandably unmotivated.[146]

Officially, Kosovo has 269 judges – between 12.2 and 14.9 judges for each 100,000 inhabitants.[147] But only 176 actually heard cases in 2009; the rest remain on the books but are inactive.[148] In practice, there between eight and 9.8 working judges for each 100,000. By comparison, Bosnia and Herzegovina has 22.1, Croatia 40.1 and Montenegro 51 judges per 100,000, and most other European countries are likewise far better-staffed. Even the planned increase to 392 would leave Kosovo below its neighbours, at between 17.8 and 21.8 judges per 100,000.[149]

Judicial salaries are far lower than in neighbouring countries and than those of comparable officials in the legislative and executive branches of government: senior judges and prosecutors make about €600 a month. The low pay is interpreted by many as an expression of the government's and society's view of the value of judges' work and their status and is driving good jurists into private practise.[150] It also leaves judges vulnerable to corruption, which can take many forms: offers of employment to relatives and assistance in obtaining a bank loan, resolving property issues or passing tests, as well as outright bribes.[151]

Raising salaries to matching those of comparable state officials would be cheap: doubling the pay of 400 judges would only add about €3 million a year to the budget.[152] According to the new draft law on the court, the president of the Supreme Court would receive the same salary as the prime minister (currently €1,443 monthly), a judge on the new Court of Appeals would make 90 per cent of a minister's salary (€1,143) and a judge on a basic court (replacing district and municipal courts) would earn about €800.[153] However the draft defers implementation of new benefits and salaries until after the new court structure is in place, which is supposed to be 2013.[154] This delay is unfair and damaging; the higher salaries should apply immediately to all vetted judges and prosecutors.

An overwhelming and growing backlog of cases, some of which date to 1999, is evidence of the judicial failure. The size of the backlog is disputed, even within the Kosovo Judicial Council (KJC), which cites between 213,967

[141] From 1990 to 1999 Kosovo Albanians were excluded from the Pristina law faculty and instead attended an unofficial, parallel law faculty whose degrees UNMIK did not recognise; since 2000, UNMIK, the PISG and the Kosovo government have failed to organise bar exams; see below on the justice ministry; also "Monitoring the Courts", Balkan Investigative Reporting Network, p. 11.
[142] EULEX Program Report, p. 85.
[143] "Crime and its Impact on the Balkans", op. cit., p. 24.
[144] The IJPC's recommendations go first to the full Kosovo Judicial Council (KJC), which may add or remove candidates or simply delay approval; from there, to President Fatmir Sejdiu, who may choose whether, and when, to appoint them. He took almost two months to appoint the first-round judges; European officials believe this was deliberately to delay the vetting process. Crisis Group interview, European offical, Pristina, 24 March 2010.
[145] Crisis Group interview, Peter Bach, secretariat director, Independent Judicial and Prosecutorial Commission, Pristina, 26 January 2010. The IJPC forwarded its recommendations for the Pristina and Mitrovica district courts and prosecutors, the Higher Minor Offences Court and the Commercial Court to the KJC in April; as of 11 May 2010, the recommendations were with President Sejdiu; Crisis Group email corresponence, Peter Bach, director of the IJPC Secretariat, Pristina, 11 May 2010.
[146] Crisis Group interviews, judges, prosecutors, and KJC, December 2009-April 2010; the KJC Statistical office has noted a decline in the performance of judges who failed the ethics exam. In June 2009 a judge in southern Kosovo offered Crisis Group unhindered access to court archives in return for "help" in getting past the ethics exam, which he had failed.

[147] EULEX Program Report, p. 88.
[148] "Report for 2009: Statistics on Regular Courts", KJC, p. 2.
[149] EULEX Program Report, p. 88.
[150] Crisis Group interview, Nuhi Uka, president, Pristina Municipal Court, 27 January 2010.
[151] Crisis Group interview, senior official, office of disciplinary counsel, KJC, Pristina, 19 January 2010.
[152] Crisis Group interview, Halit Muharremi, director, judicial council secretariat, Pristina, 19 January 2010.
[153] Draft Law on Courts; email communication from prime minister's office, 20 April 2010.
[154] Crisis Group interview, KJC legal department official, Pristina, 29 March 2010.

and 300,000 unresolved cases.[155] Most are at the municipal court level, especially so-called execution cases, in which a decision has been pronounced, but the parties seek an additional order, for example to evict a tenant or recover property. Execution orders are required to give judgments real-world effect. Many are trivial – unpaid utility bills by the thousands clog the system – but others are serious,[156] and the cases are stacking up faster than the courts can hear them. Even if no new cases were filed, it would take more than eight years to clear the backlog at the present rate. Other civil cases are almost as bad, with a five-year and growing backlog. Criminal cases have about a 30-month backlog.[157] Most judges serve in municipal courts, where the workload is unrelenting: the average jurist completes over 280 cases each month, roughly fourteen a business day.[158]

District courts are under less pressure. The largest backlog there involves serious criminal cases, which would take about 30 months to clear if no new cases were filed; pending criminal appeals would take about eighteen months to work down. Civil cases and civil appeals could both be cleared in about a year. All except criminal cases, however, are still stacking up faster than the courts can hear them.[159]

The delay in hearing cases is not the only problem. More than a quarter of municipal civil cases are appealed, often resulting in the original judgment being overturned and the case being remanded to the same court and judge for a new adjudication. This can happen repeatedly, with cases bouncing through the courts for years at a time.[160] The presiding judge of the Pristina district court defends this practice, arguing higher courts have no capacity to re-hear cases themselves, while municipal judges learn from having their errors pointed out.[161] The Office of Disciplinary Counsel (ODC), which is charged with investigating allegations of judicial misconduct, believes, however, that many of these cases involve deliberately faulty judgments. As a favour to a defendant with a weak case, a judge can simply issue a defective judgment, knowing the practical result will be years of delay during which the injured party is deprived of rights. By doing this, judges in effect "impose their own decision on a case" without regard to the law.[162]

Other kinds of misconduct also sap confidence in the judiciary. Most municipal judges conduct hearings in their offices rather than in a courtroom. This is partly due to a lack of available courtrooms, but it fosters an impression of secrecy and dealmaking behind closed doors. Almost none of Kosovo's courts make an audio recording of trials, despite a legal requirement; the equipment is available but not used. A computerised case management system funded by European donors remains unused because judges refuse to work with it.[163] Judges and others in the courtroom often make and receive mobile telephone calls during trials, an illegal practice with obvious potential for misuse.[164] Disturbing anecdotes abound: for example, a municipal judge was sued by a resident seeking to recover a parcel of land with which he claimed to have bribed the judge, allegedly after the judge accepted the bribe but did not rule as agreed.[165]

A plaintiff who manages to get a case heard before an impartial judge and wins; avoids or prevails on one or more appeals; and obtains a court order to execute the decision can still be defeated by gaps in the law. For example, a corporation that loses a case and owes money can simply dissolve and re-form, with no carryover liability.[166]

International efforts to repair this system concentrate on two fronts: reducing the caseload by taking unnecessary tasks off the courts' dockets; and strengthening judicial

[155] "Report for 2009: Statistics on Regular Courts", KJC, p. 2 for the lower number; and Crisis Group interview, KJC statistical department official, Pristina, 29 March 2010 for the higher number.
[156] Crisis Group interview, USAID official, Pristina, 17 March 2010.
[157] "Report for 2009", KJC, op. cit., p. 17. There were 95,306 execution cases and 53,739 civil cases unresolved as of 31 December 2009. Over the course of that year, citizens filed 31,673 new execution requests, of which the courts heard 11,467; they filed 12,162 other civil cases, of which courts heard 10,426. The criminal case backlog is 31,434; in 2009, 13,583 new cases were filed and 12,723 heard.
[158] "Report for 2009", KJC, op. cit., p. 2.
[159] Ibid, p. 6. There were 2,686 first instance and 1,571 appellate criminal cases at the end of 2009; district courts registered 1,425 new first instance cases and resolved 1,582 cases, cutting slightly into the backlog, while registering 1,231 new appellate cases of which they resolved 1,078. There were also 1,037 first instance and 2,228 appellate civil cases, with 2,589 fresh civil cases registered and 2,523 resolved, and 2,973 appeals registered and 2,629 resolved.
[160] Crisis Group interview, Supreme Court EULEX judge, Pristina, 29 January 2010. A EULEX study found that "43.6 % of all finished civil cases were cases in which the first instance decision was revoked and remitted back to the first instance"; the statistic probably refers to the percentage of all cases, not just civil cases, that were appealed. EULEX Program Report, p. 86.
[161] Crisis Group interview, Anton Nokaj, President of the district court, Pristina, 8 April 2010.
[162] Crisis Group interview, senior official, office of disciplinary counsel, KJC, Pristina, 19 January 2010.
[163] Crisis Group interview, Anton Nokaj, president, Pristina district court, Pristina, 8 April 2010.
[164] EULEX Program Report, p. 90; "Monitoring the Courts", Balkan Investigative Reporting Network, May 2009, pp. 25-26, 28.
[165] Crisis Group interview, Pejë, March 2008.
[166] Crisis Group interview, USAID official, Pristina, 17 March 2010.

capacity by adding judges and improving their training.[167] The government has been participating in this effort but will have to do much more.

Over 80 per cent of municipal judges' time is spent on non-judicial acts such as verifying signatures, registering contracts and the like.[168] The Council of Europe recommends that such tasks be assigned to other officials.[169] Yet, there are only 29 legal officers in all Kosovo's courts combined, together with 1,263 non-legal staff (secretaries, drivers, etc.).[170] In Pristina's municipal court, the country's largest, with 24 judges and a workload that could occupy twice that many, there are but four legal officers.[171] The Pristina district court, with twelve judges, also has only four legal officers; its presiding judge considers them very useful and would prefer a ratio of one officer per judge.[172] This deprives the courts of a resource that could quickly and significantly increase their effectiveness and deprives young lawyers of valuable experience working alongside experienced judges. Hiring one legal officer for every two judges, at a salary half the judicial average, would cost Kosovo less than €600,000. This would be all the more important, since delays in the vetting process have left parts of the system denuded of judges.

A proposal is being developed to set up a bailiff system to take over execution of civil judgments, based on the Dutch model, which gives creditors the option of transferring their claims to a private (licensed) bailiff with a financial incentive to collect.[173] USAID is developing programs on alternative dispute resolution, which would offer parties the options of mediation and binding arbitration for disputes.[174]

EULEX's 40 international judges seek to strengthen the justice system, while serving throughout Kosovo on an equal basis with local judges, often hearing cases on panels with their counterparts.[175] They tend to handle the more challenging cases, including politically-charged crimes and ethnically divisive disputes. Translation requirements slow them down by as much as a factor of three;[176] therefore, they deal with relatively few cases. The numbers, however, understate the corps' impact. EULEX judges raise the quality and integrity of the judiciary. They are widely respected by local colleagues with whom they collaborate closely.[177] Likewise, they are a resource that can mentor Kosovo's next generation of jurists.

But EULEX is also suffering from a dearth of judges, and was about 40 per cent short of its quota in April 2010, because there have been too few applicants.[178] The likely reason is its decision to require at least three years of full-time experience as a trial judge, thus limiting the applicant pool to more settled and especially retired judges, a group apparently reluctant to uproot and move to Kosovo. The likely reasons include decisions to require at least three years of full-time experience as a trial judge, thus limiting the applicant pool to more settled and especially retired judges, a group apparently reluctant to uproot and move to Kosovo; and to require citizenship in an EU member state or one of a few other states.[179] Three full-time years as a judge is a reasonable requirement. The EU should do what it can to deepen the pool of qualified applicants and encourage states to send the full complement of jurists. Member states should create national structures to facilitate secondment to missions like EULEX and agree to the creation of an EU roster of available judges and prosecutors.

B. KOSOVO JUDICIAL COUNCIL

The Kosovo Judicial Council (KJC) is an independent body with broad oversight powers. It nominates, disciplines and removes judges, adjudicates complaints and promulgates standards and practises. So extensive are its powers that neither the justice ministry nor any other government body has a managerial or administrative role vis-à-vis judges; even salary requests bypass the justice ministry and go, via the finance ministry, directly to the Assembly.

[167] Ibid.
[168] "Report for 2009", KJC, op. cit., p. 17.
[169] "Recommendation No. R (86) 12 of the Committee of Ministers to Member States Concerning Measures to Prevent and Reduce the Excessive Workload in the Courts", Council of Europe, 13 September 1986. The EULEX Program Report refers to this recommendation in passing (p. 90) but in the context of district courts, which are not clogged with extraneous tasks.
[170] EULEX Program Report, p. 89.
[171] Crisis Group interview, Nuhi Uka, president, Pristina municipal court, 27 January 2010.
[172] Crisis Group interview, Anton Nokaj, president, Pristina district court, Pristina, 8 April 2010.
[173] Crisis Group interviews, USAID official, Pristina, 17 March 2010; international consultant, KJC, Pristina, 4 February 2010.
[174] Crisis Group interview, USAID official, Pristina, 17 March 2010.
[175] "On the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo", law no. 03/L-053.
[176] The acting EULEX chief prosecutor estimated that his international staff could do about one third the caseload it handled in their home countries because of translation requirements; the same is likely true for judges; Crisis Group interview, Johannes Pieter Van Vresswijk, Pristina, 31 March 2010.
[177] Crisis Group interviews, USAID official, Pristina, 17 March 2010; local prosecutors and judges, Pristina, January to April 2010.
[178] Crisis Group interview, EULEX official, Pristina, 30 March 2010.
[179] Citizens of Canada, Croatia, Norway, Switzerland, Turkey and the U.S. may apply for international posts with EULEX.

This arrangement, part of a movement to insulate judges from politics and the executive, started in 1994 when the Council of Europe recommended that the "authority taking the decision on the selection and career of judges should be independent of the government and the administration".[180] In response, many European states set up councils through which the judiciary could administer itself, although the exact competencies vary by state.[181] Kosovo's version is an UNMIK legacy, and adopts an approach of absolute judicial independence, as opposed to the continental European tradition, which assigns justice ministries a certain role. This may have been a mistake. Under this model, the judiciary is supposed to be self-policing, and because the government has no role, it cannot be criticised if the judiciary fails. As a result, there is no barrier to judicial cronyism and nepotism, or to relatively mild forms of favouritism and corruption that do not cross clear legal lines. Nor does the judiciary have a voice or advocate in the government, or indeed any institutional way to affect policy.[182]

Given its central role in running the judiciary, it is vital that the KJC be fully staffed and functional, but it has been caught in a vicious circle: most of its posts are reserved for judges and cannot be filled until the vetting process advances, but the KJC itself plays an unavoidable role in vetting. Up to March 2010, it consisted of three members who are not judges and two EULEX officials. Three judges were seated in March, after the first round of IJPC vetting, but were immediately seconded full-time to the IJPC and will not be active in the KJC until vetting finishes in late 2010.[183]

In the meantime, Kosovo lacks effective judicial management. Allegedly corrupt judges remain on the bench: public complaints to the ODC have risen, from 73 in 2001 to a high of 400 in 2008 and 293 in 2009.[184] Since 2001 the ODC has submitted 120 of these, 76 against judges, to the KJC for adjudication; another 118 cases remain under investigation. The pre-independence KJC processed these cases very slowly, but the pace has increased since independence.[185] Nevertheless, the KJC, with its incomplete composition, has been very reluctant to issue final and binding decisions, leaving the process largely without effect.[186] Indeed out of the hundreds of complaints and cases, only ten judges – three post-independence – have been suspended.[187]

The Judicial Audit is blocked by the KJC's paralysis. It is charged with investigating judicial and prosecutorial performance, identifying both local and systemic shortcomings and recommending solutions to the KJC. In 2007, for example, it recommended that "the KJC and the [justice ministry] should put in place cooperation mechanisms to deliver decisions [lifting] detention to the detainee in time".[188] The audit issued 232 recommendations between 2006 and 2008, some uncontroversial, but none implemented, because the KJC has not taken them up. It has now suspended work on new issues, focusing instead on getting its earlier recommendations implemented.[189]

C. PROSECUTORS

Most of the problems afflicting the courts are common to public prosecutors as well. Only one prosecutor is under 40. There are many fewer than in other former Yugoslav countries with a common legal heritage: between four and five per 100,000 inhabitants, compared to 7.3 in Bosnia and Herzegovina, nine in Slovenia, thirteen in Croatia and 13.4 in Montenegro.[190] The same IJPC vetting procedure applies, with the same consequences: prosecutors who have failed the ethics exam remain temporarily at work, and the best at the municipal and district levels have been poached for jobs in the state and special (organised crime

[180] EULEX Program Report, p. 87; citation to principle I (2) (c) [given incorrectly as 1 (c)], Council of Europe, "Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges".
[181] EULEX criticises Kosovo's law on the Judicial Council because four of the nine judges on it are to be named by the Assembly; EULEX Program Report, p. 88. This seems to misread the Council of Europe's recommendation, which allows that some "traditions allow judges to be appointed by the government" and suggests that in those systems, "procedures to appoint judges are transparent and independent in practice". If judges can be subject to government appointment, presumably appointment by an independent council itself partly government-appointed is also acceptable, subject to the same condition of transparency and independence.
[182] Crisis Group interview, UNMIK rule of law official, 12 January 2010.
[183] Crisis Group interview, USAID official, Pristina, 17 March 2010.
[184] Crisis Group interview, Kadri Begolli, director, office of disciplinary counsel, Pristina, 19 January 2010. Begolli believes the decline in complaints since 2008 reflects a public loss of faith in the system more than an actual decline in corruption.
[185] The KJC adjudicated only 50 complaints between 2001 and 2008; the new, post-independence KJC completed 50 cases in 2009, with another 20 in process; ibid.
[186] Crisis Group interviews, KJC member, Pristina, 25 January 2010; EULEX judge and EULEX prosecutor, Pristina, 29 January 2010.
[187] Crisis Group interview, KJC legal department official, Pristina, 29 March 2010.
[188] "Recommendations of judicial audits", KJC judicial audit unit, NJAGJ/09/hh/023, 19 July 2009.
[189] Crisis Group interview, Hydajet Hyseni, coordinator, judicial audit, Pristina, 25 January 2010.
[190] EULEX Program Report, pp. 85, 89.

and corruption) prosecution offices, leaving huge gaps.[191] A local study found prosecutors to be overworked, running between courtrooms, trying to handle two cases being heard at the same time.[192] Salaries are low.

Prosecutors also have time-consuming duties outside the courtroom, which they are unable to fulfil.[193] They supervise the police – in theory, each police investigation must be directed by a prosecutor, who must attend the crime scene, issue orders and undertake other tasks.[194] The Pristina District prosecutor's office, covering a large area with up to a million inhabitants, until recently had only three prosecutors for a case-load that could fully occupy twenty or more.[195]

Incumbents have a reputation for probity, with only thirteen corruption complaints issued by the ODC since 2001, three of which led to suspension.[196] But their productivity is extremely variable: municipal prosecutors are supposed to clear 60 cases each month, and district prosecutors 25. Most meet or exceed these expectations, but some clear as many as 40 cases per week, while others do only two or three.[197] Prosecutors often appear in court unprepared and address the court by rote, asking for the maximum sentence without regard (or at times even awareness) of the case's facts.[198] EULEX observed that prosecutors call relatives of victims "to appear before courts despite the fact that their testimonies were clearly not relevant … [and] even though the family representative has not witnessed the alleged crime and their testimony was hearsay", because of "cultural obligations towards the families of the injured parties".[199]

There is no effective management of prosecutors. The chief state prosecutor has limited authority and until recently provided little or no direction, other than instructions to "follow the law".[200] His office is essentially an appellate litigation service with a small staff and no real contact with colleagues in the field. There is no visible strategy for prioritising investigations and cases and targeting the most damaging types of crime and most dangerous criminals. Instead, these decisions are often left to the police. Each prosecutor's office is left to itself, with nowhere to go for guidance, and case selection and management are often a "mish-mash".[201]

Kosovo recently established a national special department for organised crime, war crimes and corruption jointly with EULEX that has ten Kosovar and six (rising to eleven in May) international prosecutors.[202] Recruitment has proven difficult, despite a substantial salary bonus. Even within this office, some believe, there are cases, especially involving high-level government corruption, that are too politically sensitive to handle. Local prosecutors have taken on exceptionally challenging cases, however, including a multiple homicide in Pristina where the suspects are policemen, believed to have been working with several other never-identified and thus still on-duty officers.[203] The brunt of the high-profile corruption investigations launched by EULEX in April 2010 will fall on this department, which will need strong international support.

EULEX's overall contribution consists of eighteen international prosecutors, out of a planned 25.[204] Kosovo prosecutors interviewed by Crisis Group expressed respect and appreciation for their international colleagues, whom they uniformly compared favourably with UNMIK prosecutors.

D. PROSECUTOR-POLICE RELATIONS

Virtually everyone Crisis Group spoke to agreed that relations between police and prosecutors are poor. Prosecutors complained that the police keep information from them; refuse to follow orders; pursue secret, politically-motivated investigations; and burden them with unnecessary work. Police charged that "80 per cent of the time", prosecutors fail to show up at crime scenes; neglect to study the case file before court, try to shift as much work

[191] Crisis Group interview, Hilmi Zhitija, former chief prosecutor of Kosovo, Pristina, 7 December 2009.
[192] "Monitoring the Courts", op. cit., p. 25.
[193] The prosecution service has also not fully adjusted to its new role since 2004, when the investigating magistrate post was abolished and most of its duties transferred to prosecutors. Crisis Group interview, senior police crime pillar official, Pristina, 31 March 2010.
[194] Provisional Criminal Procedure Code of Kosovo, Articles 221, 229 ff.
[195] Crisis Group interviews, Ismet Kabashi, chief prosecutor, Pristina, 31 March 2010; Osman Kryeziu, chief prosecutor, Pristina district, Pristina, 8 April 2010.
[196] Crisis Group interviews, Kadri Begolli, director, office of disciplinary counsel, Pristina, 19 January 2010; Hasime Osmani, KJC legal department, Pristina, 29 March 2010.
[197] Crisis Group interviews, senior EULEX police adviser, Pristina, 30 March 2010; Ismet Kabashi, chief prosecutor, Pristina, 31 March 2010.
[198] Crisis Group interview, EULEX prosecutor, Pristina, 31 March 2010.
[199] EULEX Program Report, p. 96.
[200] Crisis Group interview, Hilmi Zhitija, former chief prosecutor of Kosovo, Pristina, 7 December 2009.
[201] Crisis Group interview, Alexander Lumnezi, chief prosecutor, Pristina municipality, Pristina, 13 January 2010.
[202] Crisis Group interview, senior official, special prosecutor's office, Pristina, 9 April 2010.
[203] Crisis Group interview, prosecutor, special prosecutor's office, Pristina, 4 February 2010.
[204] Crisis Group interview, Johannes Pieter Van Vresswijk, chief EULEX prosecutor, Pristina, 31 March 2010.

onto police as possible; and fail to keep them informed about cases.[205] EULEX described "two entities operating largely in separate orbits: contact between Public Prosecutors and KP investigators is minimal".[206]

In theory, prosecutors can issue orders to the entire KP, but in practice they feel officers will always be primarily loyal to their police superiors, who assign and promote them. Prosecutors believe Kosovo needs a separate judicial police, under their direct control.[207] Police point out that there is no legal need for a separate organisation and that prosecutors already have all necessary legal authority.[208] A separate, judicial police would also cause awkward jurisdictional problems. The demand is more a reflection of the depth of prosecutorial frustration and mistrust than a serious proposal.

Some of the tension will persist until the prosecution service is adequately staffed and trained, but several steps can improve matters sooner. Police should be trusted to investigate simple cases themselves, and then go to the prosecutor with a more or less complete file. Police do this already; but the practice should be institutionalised, with some oversight, which is currently lacking. Indeed, the system offers weak control to prevent police from abusing their authority with impunity. Their investigations, including interrogations, should be video- and audio-recorded.

Serious cases call for teamwork between prosecutors and police investigators, and this must begin as early as possible. Teams should specialise in specific kinds of cases, such as financial and economic crime, human rights abuses and other categories that call for particular expertise.[209] As much as possible, the same prosecutors should work with the same police, so as to build up the currently lacking relationships and trust. The special prosecution department will join with 30 selected police investigators in a task force on corruption and organised crime, a model that should be applied, formally or informally, in other areas.[210]

[205] Crisis Group interviews, senior police officials and Kosovo state prosecutor, Pristina, March 2010.
[206] EULEX Program Report, p. 29.
[207] Crisis Group interview, prosecutor, state prosecutor's office, Pristina, 5 February 2010.
[208] Crisis Group interviews, senior police officials, Pristina, March 2010.
[209] Crisis Group interview, legal unit official, International Civilian Office, Pristina, 23 March 2010.
[210] Crisis Group interview, senior official, special prosecutor's office, Pristina, 9 April 2010. There is a dispute between the prosecutor and police on the staffing of the task force, with prosecutors asking for investigators to be assigned permanently to them and police management preferring to retain control of investigators by deploying then on a case-by-case basis.

IV. NORTH KOSOVO

The legal system in Kosovo north of the Ibar River operates by different rules and in many respects scarcely functions.[211] Crossing the river feels like traversing a border within the EU's Schengen zone: there are no signs or formalities, but suddenly everything is different: license plates, street and shop signs, currency and the language heard on the street. The North is part of Kosovo but feels like part of Serbia, to its residents (mostly Serbs) and visitors alike. Pristina's authority is barely present, and civil administration runs locally on Serbian law, answering to Belgrade, though UN Security Council Resolution 1244 (1999) expelled all Serbian police and security personnel.[212] Neither municipal officials nor Serbia's courts in the North use the KP; they rely instead on the goodwill of the population, and nothing can be enforced, because, as institutions of the Republic of Serbia, they cannot liaise with an organ of the Republic of Kosovo.[213] This lack of policing makes the parallel system less efficient than it should be, despite Belgrade's money, and helps maintain the image of the North as lawless.

North Mitrovica is urbane and bustling, and even the smaller towns and villages are prosperous relative to the Kosovo average. This is because most of Belgrade's financing of Kosovo Serbs goes to the North.[214] Investment is very visible – the relatively small and rural area is littered with new buildings, sports halls, apartment blocks and a university campus on par with the best in Belgrade. Municipalities operate at full capacity and boast some of the most modern garbage collection and snow-ploughing vehicles in Kosovo. The hospital is large, well-staffed and equipped and attracts patients from all over Kosovo.

[211] The north of Kosovo consists of the municipalities of Leposavić, Zvečan and Zubin Potok, as well as the northern part of the city and municipality of Mitrovica. See Crisis Group Europe Report N°165, *Bridging Kosovo's Mitrovica Divide*, 13 September 2005.
[212] For years, Serbia has maintained police officers covertly in Kosovo; about 400 of these remain, largely in the North, who now function as intelligence operatives rather than police. Crisis Group Europe Report N°200, *Serb Integration in Kosovo: Taking the Plunge*, 12 May 2009.
[213] Crisis Group interview, Kosovo Serb official, North Mitrovica, 20 January 2010.
[214] At its peak in 2006-2007, Serbian aid to Kosovo reached about €500 million per year, most of which went to salaries, pensions and social schemes, along with capital expenses. This has since declined; Crisis Group estimates that Serbia now sends between €200 and €230 million annually, and that €110-€130 million goes to the North, which accounts for the overwhelming majority of capital investments. See Crisis Group Europe Report N°200, *Serb Integration in Kosovo: Taking the Plunge*, 12 May 2009.

A. CRIME

The reputation for lawlessness is only partly deserved. The Serb-held North is about half the territory of the Mitrovica Regional Police Directorate but contains only about a fifth of its population.[215] It accounts for more than a quarter of theft arrests and more than a third of assault arrests,[216] almost all due to North Mitrovica, whose 22,000 inhabitants account for less than 6 per cent of the population but 18 per cent of property crime and 25 per cent of violent crime.[217] With a considerable Albanian and Bosniak minority, there is sporadic interethnic crime.[218] But even North Mitrovica is quite safe relative to many urban areas in the developed world: its nine arrests for serious bodily harm in 2009, for example, are only high relative to Kosovo's generally low crime rate. The other three northern municipalities are largely at or below the regional average

A main source of crime and insecurity has long between the border between Serbia and Kosovo, especially at Gates 1 and 31. Serbia cracked down on smuggling starting in May 2008, setting up what amounts to a border crossing at its side of Gates 1 and 31, with heavy police presence supported by customs officials who perform regular checks. This has drastically reduced smuggling of fuel and other goods, which used to cost Serbia dearly in lost revenue. A crackdown which saw over 90 people, including some Serbian police officers, arrested since the beginning of 2009 in relation to smuggling to and from Kosovo, has nearly ended this activity, which in the past happened in broad daylight, with at least tacit support from local and national political figures.[219]

On the Kosovo side, the situation at the two gates is improving slowly. The facilities burned in February 2008 have been repaired and replaced. Crisis Group observed a visible EULEX presence, but the KP stayed inside the offices and were in the minority. There was no customs authority apart from EULEX members who took down information about trucks entering Kosovo. Unable to do much itself, KP management complained that "EULEX needs to be pushed on everything before they act". In February 2010 EULEX began checking documents of people entering Kosovo through the Northern gates. Crisis Group observed that not all vehicles were checked, and even when that happened, it was not very thorough. EULEX operates a dual system, merely inspecting Serbian documents but entering all others into the computer, in effect making Gates 1 and 31 police check points for Serbs and border crossings for everyone else.[220] EULEX says that it is prepared to exercise full custom control but cannot until there is full political agreement.[221]

EU and UN officials concur that other criminal activities, notably drug trafficking, persist in the area and pose a significant regional problem.[222]

B. COURTS

There are no Kosovo municipal courts in the North; instead, Kosovo Serbian judges hear civil cases involving divorce, inheritance and the like clandestinely, in their offices or apartments.[223] Serbia, to much public scrutiny in Kosovo, re-appointed the judges under its justice system.[224] Prosecutors in the North are also part of that Serbian system. But the judges cannot hear criminal cases, and the Kosovo police cannot cooperate with them.

The problem extends beyond Serb-held areas to the Mitrovica District court, located in the Serb-held North but technically covering both Kosovo Serb areas and the large, mostly Albanian-populated municipalities of Skenderaj and Vushtrri and the southern half of Mitrovica itself. It

[215] The Mitrovica Regional Police Directorate covers the municipalities north of the Ibar, plus the larger and more heavily populated southern part of Mitrovica town and the municipalities of Skenderaj and Vushtrri. The Serb-held municipalities officially have about 72,000 residents, 19 per cent of the Mitrovica region total.

[216] Mitrovica Regional Police Directorate annual report for 2009, made available to Crisis Group; thefts are broken down into simple "theft" and "grand theft", assault into "infliction of light bodily injury", "infliction of serious bodily injury" and "domestic violence". The North accounted for over 27 per cent of the former and 34 per cent of the latter. There were only four murders in the whole region in 2009, two in southern Mitrovica, one each in Skenderaj and Zubin Potok.

[217] North Mitrovica has many young people and a large population of internally displaced persons (IDPs), many of whom live in precarious circumstances, are prone to petty crime and operate illegal kiosks and shops

[218] Some 2,200 Albanians and 1,320 Bosniaks live in North Mitrovica, where the police annual report recorded 40 incidents of "ethnically motivated" crime in 2009, almost certainly an underestimate.

[219] Crisis Group interview, Serb official, Belgrade, March 26 2010.

[220] Crisis Group interview, senior Kosovo police border pillar official, Pristina, 10 February 2010.

[221] Crisis Group email communication, EU General Council Secretariat official, May 2010.

[222] Crisis Group interviews, UNMIK police regional commander, Mitrovica, August 2007; UNMIK police intelligence officer, Mitrovica, September 2007 and March 2008; KP officer, Mitrovica, August 2008; and EU officials, Brussels, March 2010.

[223] Crisis Group interview, Serb official, Mitrovica, 24 February 2010.

[224] 35 judges were re-appointed throughout Kosovo, about one third of whom work in the North, the rest in southern enclaves. While the news caused uproar, these judges have been on the Serbian payroll since 1999; the re-appointment was part of the Serbian judicial reform, which saw up to 40 per cent of staff in Kosovo removed from their positions.

ceased to function after independence in February 2008; its Albanian judges and its registry are "in exile" in nearby Vushtrri, not hearing cases. Efforts to reintegrate the court into the Kosovo system ended in lethal street violence on 17 March 2008, when UNMIK police stormed the Mitrovica courthouse complex in an attempt to dislodge Serb demonstrators who refused to vacate the premises.[225] Since April 2009, a single district court panel of three EULEX judges has heard some twelve cases; otherwise, for more than two years, there has in effect been no criminal justice in the Mitrovica District.[226]

The district court in Mitrovica has by far the largest case backlog in Kosovo: about 10,000 cases.[227] Even if most of these are very simple affairs, it requires years of work.[228] The most serious are criminal cases with a suspect in custody. There were 50 such cases when EULEX arrived, including that of a murder suspect who had spent two years in pre-trial detention and had never seen his 21-month old daughter. Some of these suspects have since been moved to house arrest, but 27 Albanians and three Serbs remain in custody awaiting trial.[229] The same ratio holds for the backlog: Serb cases are less than their one-fifth share of the district's population. The large majority of the caseload consists of Albanian cases.[230]

Criminal justice in the North is blocked by political decisions in Belgrade, Brussels and Pristina. The court's Albanian judges refuse to hear these cases anywhere but in the Mitrovica courthouse, because the Kosovo government wants to use the backlog to generate pressure to re-integrate the North. Northern Serbs refuse to go to a Republic of Kosovo court and threaten to riot if Albanian judges return to the Mitrovica court. Belgrade will not agree to the seating of any judges appointed under Kosovo law and will only accept its own judges. All agree to appear before international judges, but EULEX has not deployed enough to compensate for the absence of locals.

Too focused on a deal with Belgrade at the expense of alienating all other stakeholders, EULEX tried to find local judges acceptable to both communities but inexplicably failed to consult the Kosovo government, the International Civilian Representative or the Quint embassies before approaching Belgrade with a proposal.[231] EULEX suggested naming two judges recently re-appointed by Serbia who previously worked for UNMIK, hoping their position in the Serbian system would make them acceptable to Belgrade and the local Kosovo Serbs, while their status as UNMIK judges would mean they did not have to be appointed by President Sejdiu. His signature on the appointments would, in the Serbian view, signify acceptance of Kosovo's independence.

Belgrade hailed the proposal as a breakthrough.[232] But in the Kosovo Judicial Council on 30 March 2010, it was rejected by the local and EULEX members alike. A senior EULEX official argued that by accepting appointment in the Serbian system, the judges had implicitly given up their UNMIK mandate. A senior EULEX official commented scathingly: "EULEX is not made in Serbia, but made for Kosovo".[233] On 15 May 2010, President Sejdiu appointed judges, including one Serb, to the Mitrovica court.

Positively, everyone agrees the applicable law will be decided by the judges in each case heard in Mitrovica District Court.[234] In most respects, the codes are similar, and Serb defendants have been willing to accept Kosovo law, especially where it is more lenient than older UNMIK

[225] In what was widely seen as a Belgrade ploy to establish further control in the North, Kosovo Serbs who worked in the judiciary before independence barricaded themselves in the Mitrovica District Court on 14 March 2008, seeking to prevent a takeover of the court by the Pristina authorities and insisting on being allowed to return to work under the Serbian legal framework. UNMIK believed intelligence that without a reaction, other institutions would also be taken over. During the early morning of 17 March, its special police stormed the courthouse, handcuffed the occupiers and started transporting them to Pristina. The local population, alarmed by ambulances in the streets, gathered, and clashes broke out. One special police, a Ukranian, was killed; two Kosovo Serbs also died. The day ended with UNMIK withdrawing and the courthouse ransacked.

[226] Crisis Group interview, international official, Mitrovica, 24 February 2010.

[227] Ibid.

[228] EULEX estimates it would take a fully staffed court a year and a half to clear the backlog of urgent cases; Crisis Group interview, Dominique Orsini, EULEX, head of policy unit, Pristina, 30 March 2010. The Pristina District court, with sixteen judges, cleared 5,343 cases in 2009; if the Mitrovica court with fewer judges worked at the same pace, it would probably take three or more years to clear the whole backlog.

[229] Crisis Group interview, international official, Mitrovica, 24 February 2010.

[230] Crisis Group interviews, Serb officials, Belgrade, 26 March 2010; Crisis Group interview, international official, Mitrovica, 23 February 2010.

[231] Crisis Group interviews, Hashim Thaçi, prime minister, senior Western diplomats, Pristina, 12 March 2010; an EU Council Secretariat official strongly denies this, stating that Thaçi was briefed on the arrangement before Belgrade was approached. Crisis Group interview, Brussels, 30-31 March 2010.

[232] Crisis Group interviews, Goran Bogdanović, Kosovo and Metohija minister (Serbia), Belgrade, 11 March 2010; Serb official, Belgrade, 26 March 2010.

[233] Crisis Group interview, Johannes Pieter Van Vresswijk, chief prosecutor, EULEX, Pristina, 31 March 2010.

[234] Crisis Group interview, Dominique Orsini, EULEX, head of policy unit, Pristina, 30 March 2010.

law.[235] But the priority must be to put sufficient judges in place as soon as possible. EULEX should propose a compromise: Pristina would agree to seat the two Serbia-appointed judges, perhaps formally re-appointing them itself, while Belgrade would agree to at least three Serbs named by the Kosovo government, together with five Albanian judges and an additional two internationals. With fifteen judges, the Mitrovica court could try all the defendants in pre-trial custody within six months or so and then start on the backlog.

Failing that, EULEX must shoulder more of the burden, deploying a second trial panel of three international judges as an interim measure. The EULEX judges should use their local Serb and Albanian legal staff creatively to speed up the work. Since legal officers do not require appointment by the Kosovo president, there is no controversy about them; in fact, Serb and Albanian lawyers are working together at the Mitrovica court without trouble. EULEX could hire more experienced lawyers – candidates for future judgeships – as local staff to do much of the work of judges.[236] At the same time, the Kosovo government should return the Albanian judges from their exile in Vushtrri.

It is important to do this as soon as possible. Today, Serbs in the North can appear before an international judge in Mitrovica, and an appeal (for minor cases) will also be heard in Mitrovica. Judicial reform will integrate the country's courts, however, and make it harder for them to participate without fully accepting Kosovo's jurisdiction. Once the reform takes effect, all appeals will be heard in Pristina, at a single Court of Appeals.

C. POLICE

The police are the only major Kosovo institution in the North. The four northern police stations are largely Serb-staffed, but all have some Albanian officers who mostly work in the Albanian neighbourhoods and villages.[237] The Serb police chiefs lack the faith of locals, the international community and Pristina alike; one, the subject of four separate PIK complaints, has been seen in the company of notorious criminals.[238] Locals tend to see the police as inefficient, inexperienced and corrupt, while Serb politicians in Mitrovica openly ask for former Serbian officers to be vetted and appointed to the KP in order to improve the force.[239]

Although formally part of the same organisation, Serb police in the North have only limited contact with colleagues south of the Ibar. Station commanders attend meetings only sporadically and sometimes prefer to report privately; orders from Albanian superiors can be ignored.[240] In theory, northern commanders deal only with EULEX, which passes their reports to Pristina. Many officers in the North draw two salaries, from Kosovo and Serbia, although there is no evidence they accept instructions from Serbia.[241] The regional headquarters in south Mitrovica is struggling to establish good links with the local Kosovo Serb officers – EULEX monitors describe the relationship as "generally poor".[242] This is an area where EULEX could be of great assistance. The EU rule-of-law mission in Bosnia has worked hard to improve communications between police,[243] but this does not seem a priority for EULEX, whose otherwise comprehensive 2009 program report had only a single footnote for North Mitrovica.[244]

EULEX police have been the North's invisible men. Twelve have appeared as monitors in the northern KP stations. EULEX security visibly guards the Mitrovica district court. Some 30 EULEX border police and 20 custom staff work primarily at the two border crossings (Gates 1 and 31). Even though its numbers on these crossings are higher than on others towards Serbia, Macedonia, Albania and Montenegro, their role is more limited. EULEX

[235] Crisis Group interview, international official, Mitrovica, 24 February 2010.
[236] At least one judge later appointed by Serbia has approached EULEX for a job as a "EULEX judge". Serbia pays judges about €1,500 monthly, more than double what Kosovo offers; many believe this is an obstacle to recruitment of Serb judges in Mitrovica. Crisis Group interviews, Serb official, Belgrade, 11 February 2010; international official, Mitrovica, 24 February 2010.
[237] The four northern stations have 189 Serb officers, 21 Albanians and eight Bosniaks; Mitrovica Regional Police Directorate annual report for 2009, made available to Crisis Group.
[238] Crisis Group interviews, Kosovo serb politician, Mitrovica, 18 January 2010; serb officials, Belgrade, 11 February 2010; senior police inspectorate official, Pristina, 15 March 2010; senior EULEX investigations official, executive police department, Pristina, 16 March 2010; and senior police border pillar official, Pristina, 10 February 2010.
[239] Crisis Group interview, Kosovo Serb official, North Mitrovica, 20 January 2010.
[240] A station commander is under PIK investigation for refusing orders during Serb protests against the return of Albanian IDPs in Kroi I Vitakut/Brdjani. The KP, under Mitrovica North commander Milija Milošević, refused to allow the IDPs to rebuild their houses and permitted demonstrators to gather. The situation had to be resolved by special EULEX units who used teargas. Crisis Group interview, senior police inspectorate official, Pristina, 15 March 2010.
[241] Crisis Group interview, senior Kosovo Serb KP official, Pristina, 17 March 2010.
[242] EULEX Program Report, p. 57
[243] Crisis Group interview, Stefan Feller, head of mission, EU police mission (EUPM), Sarajevo, 23 January 2009.
[244] Its first footnote noted only that "MMA activities in the north of Kosovo have been patchy due to political circumstances beyond the scope of this report".

was also visible during the Brdjani/Kroi I Vitakut crisis which flared up intermittently from May 2009 onwards, as Albanians sought to rebuild destroyed houses in a North Mitrovica neighbourhood. However, while the special units acted robustly, using tear gas and preventing clashes between Serbs and Albanians, they acted more to contain than resolve a crisis.[245] The dominant tactical consideration has been to avoid provoking local unrest.

This has led EULEX and its international backers to forego even actions that would be popular among northern Serbs, who resent the impunity with which organised crime operates. Steps against local drug lords and other notorious gangsters would win sympathy. A prohibition on staff living in the North and onerous restrictions on visits make each trip noteworthy. EULEX officers cannot do serious investigations, their sudden increased presence makes the locals nervous, and they are followed overtly whenever they cross the Ibar.[246] EU member states have recently recognised that having members live in the area would familiarise them with the population and its problems and provide an appreciated spike to the local economy, and reviewed EULEX's mandate to be more visible in the North.[247]

V. CONCLUSION

Kosovo has some of the basic components of a justice system, but the whole does not work: each part operates on its own and largely without real-world effect. What is missing is high-level political will and coordination, which can only come from the Thaçi government, EU, U.S., ICO and EULEX working together. Otherwise, Kosovo will be left with the appearance of justice but without the substance, and its people will be poorer for it.

The newly independent country is losing out on important benefits that would be offered by the rule of law, in which important decisions are made on the basis of formal rules and in the context of public institutions, and the results are impersonal and predictable. Foreign investors will not risk significant capital in Kosovo without the assurance that their rights will be protected. Nor will Kosovar entrepreneurs thrive in an economy dominated by well-connected local magnates.[248]

The performance of the judicial system also affects the country's international status. As long as its reputation for lawlessness persists – fairly or not – non-recognising countries will be reluctant to change their stance. Serbia will have a potent rhetorical weapon, all the more as it pursues its own campaign against corruption and organised crime, with which it seeks to establish itself as a regional leader in the rule of law.[249]

The state of Kosovo's legal institutions, nonetheless, represents a vindication of the decision to declare independence in February 2008. While the police, courts and prosecutors are in important respects failing, they are, as the playwright Samuel Beckett once said, failing better.[250] The government has managed, with the modest resources available to it, to build on the shaky foundation laid by UNMIK. Kosovo's political elite still cherishes the freedom to act without legal oversight. Too often, this means simply going through the motions, without genuine political commitments. But this is a necessary first step, one that likely would not have been taken had the status process dragged for several more years.

[245] The Serbs were unhappy at EULEX not being more UNMIK-like in determining construction licences and managing IDP returns, while the Albanians could not understand why it did not support their right to return, as everything was done through existing Kosovo laws. Crisis Group interview, Kosovo Serb official, North Mitrovica, 20 January 2010.
[246] Crisis Group interview, senior EULEX investigations official, executive police department, Pristina, 16 March 2010.
[247] Crisis Group email communication, EU General Council Secretariat official, May 2010.

[248] The World Bank notes that "the capacity of national institutions to protect property rights, reduce transaction costs, and prevent coercion may be decisive in determining whether economic development takes place". "Economic Development and the Quality of Legal Institutions", World Bank topic brief, p. 1.
[249] Crisis Group interview, Božidar Djelić, deputy prime minister (Serbia), Belgrade, 11 March 2010.
[250] "Try again. Fail again. Fail better", Samuel Beckett, *Worstwaard Ho* (1983).

Much of the improvement has been driven by international pressure, notably from the EC and the U.S.[251] EULEX's raids on the transportation ministry have raised anti-corruption investigations to a higher level and should exert a positive effect in deterring corruption. But high-level prosecutions are neither a panacea nor a litmus test for the rule of law. Prevention is as important as prosecution; international pressure should also focus on restricting the opportunities for corruption by strengthening the legal framework – in one observer's words, changing "the system that allows for corruption" instead of attacking corruption as a sort of abstract, endemic problem.[252]

The best way to do this is to complete the legislative and regulatory framework and to strengthen the capacity of the police, the prosecutors and the courts as quickly as possible. Both tasks require Kosovo's government to work closely with international representatives, especially EULEX. Together, they will have to bridge the gap between today's dysfunctional police and judiciary and the reformed institutions that will take shape two to three years hence. Kosovo cannot afford to wait longer for the rule of law and cannot prosper with half-hearted reforms.

Pristina/Istanbul/Brussels, 19 May 2010

[251] This is not to say that outsiders, and particularly EULEX, have not made mistakes, as will be detailed in a forthcoming report.
[252] "Do te bashkepunojme me secilin ne veri" [We will cooperate with everyone in the North], Arben Ahmeti, *Koha Ditore*, 29 March 2010.

APPENDIX A

MAP OF KOSOVO

APPENDIX B

GLOSSARY OF TERMS

EC	European Commission
ECLO	EC Liaison Office in Kosovo
EU	European Union
EULEX	EU rule of law mission in Kosovo
EUSR	EU Special Representative
IIU	Internal Investigations Unit of the KP
ICO	International Civilian Office
ICR	International Civilian Representative, the ICO chief
ICTY	International Criminal Tribunal for the former Yugoslavia
KAA	Kosovo Anti-Corruption Agency
KPIS	Kosovo Police Information System
KJC	Kosovo Judicial Council
KP	Kosovo Police
KPS	Kosovo Police Service (under UNMIK and in the North)
ODC	Office of Disciplinary Counsel of the KJC
PIK	Police Inspectorate of Kosovo
PISCES	Personal Identification Secure Comparison and Evaluation System
PISG	Provisional Institutions of Self-Government, Kosovo's government under UNMIK
OSCE	Organisation for Security and Cooperation in Europe
SPADC	Senior Police Appointments and Disciplinary Commission
UN	United Nations
UNSCR	UN Security Council Resolution
UNMIK	UN Interim Administration Mission in Kosovo
USAID	United States Agency for International Development

APPENDIX C

ABOUT THE INTERNATIONAL CRISIS GROUP

The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 130 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international decision-takers. Crisis Group also publishes *CrisisWatch*, a twelve-page monthly bulletin, providing a succinct regular update on the state of play in all the most significant situations of conflict or potential conflict around the world.

Crisis Group's reports and briefing papers are distributed widely by email and made available simultaneously on the website, www.crisisgroup.org. Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policy-makers around the world. Crisis Group is co-chaired by the former European Commissioner for External Relations Christopher Patten and former U.S. Ambassador Thomas Pickering. Its President and Chief Executive since July 2009 has been Louise Arbour, former UN High Commissioner for Human Rights and Chief Prosecutor for the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

Crisis Group's international headquarters are in Brussels, with major advocacy offices in Washington DC (where it is based as a legal entity) and New York, a smaller one in London and liaison presences in Moscow and Beijing. The organisation currently operates nine regional offices (in Bishkek, Bogotá, Dakar, Islamabad, Istanbul, Jakarta, Nairobi, Pristina and Tbilisi) and has local field representation in fourteen additional locations (Baku, Bangkok, Beirut, Bujumbura, Damascus, Dili, Jerusalem, Kabul, Kathmandu, Kinshasa, Port-au-Prince, Pretoria, Sarajevo and Seoul). Crisis Group currently covers some 60 areas of actual or potential conflict across four continents. In Africa, this includes Burundi, Cameroon, Central African Republic, Chad, Côte d'Ivoire, Democratic Republic of the Congo, Eritrea, Ethiopia, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Uganda and Zimbabwe; in Asia, Afghanistan, Bangladesh, Burma/Myanmar, Indonesia, Kashmir, Kazakhstan, Kyrgyzstan, Nepal, North Korea, Pakistan, Philippines, Sri Lanka, Taiwan Strait, Tajikistan, Thailand, Timor-Leste, Turkmenistan and Uzbekistan; in Europe, Armenia, Azerbaijan, Bosnia and Herzegovina, Cyprus, Georgia, Kosovo, Macedonia, Russia (North Caucasus), Serbia and Turkey; in the Middle East and North Africa, Algeria, Egypt, Gulf States, Iran, Iraq, Israel-Palestine, Lebanon, Morocco, Saudi Arabia, Syria and Yemen; and in Latin America and the Caribbean, Bolivia, Colombia, Ecuador, Guatemala, Haiti and Venezuela.

Crisis Group receives financial support from a wide range of governments, institutional foundations, and private sources. The following governmental departments and agencies have provided funding in recent years: Australian Agency for International Development, Australian Department of Foreign Affairs and Trade, Austrian Development Agency, Belgian Ministry of Foreign Affairs, Canadian International Development Agency, Canadian International Development and Research Centre, Foreign Affairs and International Trade Canada, Czech Ministry of Foreign Affairs, Royal Danish Ministry of Foreign Affairs, Dutch Ministry of Foreign Affairs, Finnish Ministry of Foreign Affairs, French Ministry of Foreign Affairs, German Federal Foreign Office, Irish Aid, Japan International Cooperation Agency, Principality of Liechtenstein, Luxembourg Ministry of Foreign Affairs, New Zealand Agency for International Development, Royal Norwegian Ministry of Foreign Affairs, Swedish Ministry for Foreign Affairs, Swiss Federal Department of Foreign Affairs, Turkish Ministry of Foreign Affairs, United Arab Emirates Ministry of Foreign Affairs, United Kingdom Department for International Development, United Kingdom Economic and Social Research Council, U.S. Agency for International Development.

The following institutional and private foundations have provided funding in recent years: Carnegie Corporation of New York, The Charitable Foundation, Clifford Chance Foundation, Connect U.S. Fund, The Elders Foundation, William & Flora Hewlett Foundation, Humanity United, Hunt Alternatives Fund, Jewish World Watch, Korea Foundation, John D. & Catherine T. MacArthur Foundation, Open Society Institute, Victor Pinchuk Foundation, Ploughshares Fund, Radcliffe Foundation, Sigrid Rausing Trust, Rockefeller Brothers Fund and VIVA Trust.

May 2010

APPENDIX D

CRISIS GROUP REPORTS AND BRIEFINGS ON EUROPE SINCE 2007

Islam and Identity in Germany, Europe Report N°181, 14 March 2007

BALKANS

Ensuring Bosnia's Future: A New International Engagement Strategy, Europe Report N°180, 15 February 2007 (also available in Russian)

Kosovo: No Good Alternatives to the Ahtisaari Plan, Europe Report N°182, 14 May 2007 (also available in Albanian, Russian and Serbian)

Serbia's New Government: Turning from Europe, Europe Briefing N°46, 31 May 2007

Breaking the Kosovo Stalemate: Europe's Responsibility, Europe Report N°185, 21 August 2007 (also available in Albanian, Russian and Serbian)

Serbia: Maintaining Peace in the Presevo Valley, Europe Report N°186, 16 October 2007 (also available in Russian)

Kosovo Countdown: A Blueprint for Transition, Europe Report N°188, 6 December 2007 (also available in Russian)

***Kosovo's First Month*,** Europe Briefing N°47, 18 March 2008 (also available in Russian)

Will the Real Serbia Please Stand Up?, Europe Briefing N°49, 23 April 2008 (also available in Russian)

Kosovo's Fragile Transition, Europe Report N°196, 25 September 2008 (also available in Albanian and Serbian)

Macedonia's Name: Breaking the Deadlock, Europe Briefing N°52, 12 January 2009 (also available in Albanian and Macedonian)

Bosnia's Incomplete Transition: Between Dayton and Europe, Europe Report N°198, 9 March 2009 (also available in Serbian)

Serb Integration in Kosovo: Taking the Plunge, Europe Report N°200, 12 May 2009

Bosnia: A Test of Political Maturity in Mostar, Europe Briefing N°54, 27 July 2009

Kosovo: Štrpce, a Model Serb Enclave?, Europe Briefing N°56, 15 October 2009 (also available in Albanian and Serbian)

Bosnia's Dual Crisis, Europe Briefing N°57, 12 November 2009

CAUCASUS

***Abkhazia: Ways Forward*,** Europe Report N°179, 18 January 2007 (also available in Russian)

Georgia's South Ossetia Conflict: Movement at Last?, Europe Report N°183, 7 June 2007 (also available in Russian)

Nagorno-Karabakh: Risking War, Europe Report N°187, 14 November 2007 (also available in Russian)

Georgia: Sliding towards Authoritarianism?, Europe Report N°189, 19 December 2007 (also available in Russian)

Azerbaijan: Independent Islam and the State, Europe Report N°191, 25 March 2008 (also available in Azeri and Russian)

Armenia: Picking up the Pieces, Europe Briefing N°48, 8 April 2008

Russia's Dagestan: Conflict Causes, Europe Report N°192, 3 June 2008

Georgia and Russia: Clashing over Abkhazia, Europe Report N°193, 5 June 2008

Russia vs Georgia: The Fallout, Europe Report N°195, 22 August 2008 (also available in Russian)

Azerbaijan: Defence Sector Management and Reform, Europe Briefing N°50, 29 October 2008 (also available in Russian)

Georgia: The Risks of Winter, Europe Briefing N°51, 26 November 2008

Georgia-Russia: Still Insecure and Dangerous, Europe Briefing N°53, 22 June 2009 (also available in Russian)

Nagorno-Karabakh: Getting to a Breakthrough, Europe Briefing N°55, 7 October 2009

Abkhazia: Deepening Dependence, Europe Report N°202, 26 February 2010

CYPRUS

Cyprus: Reversing the Drift to Partition, Europe Report N°190, 10 January 2008 (also available in Greek and in Turkish)

Reunifying Cyprus: The Best Chance Yet, Europe Report N°194, 23 June 2008 (also available in Greek and Turkish)

Cyprus: Reunification or Partition?, Europe Report N°201, 30 September 2009 (also available in Greek and Turkish)

TURKEY

Turkey and Europe: The Way Ahead, Europe Report N°184, 17 August 2007 (also available in Turkish)

Turkey and Europe: The Decisive Year Ahead, Europe Report N°197, 15 December 2008 (also available in Turkish)

Turkey and Armenia: Opening Minds, Openings Borders, Europe Report N°199, 14 April 2009 (also available in Turkish)

Turkey and the Middle East: Ambitions and Constraints, Europe Report N°203, 7 April 2010

OTHER REPORTS AND BRIEFINGS

For Crisis Group reports and briefing papers on:

- Africa
- Asia
- Europe
- Latin America and Caribbean
- Middle East and North Africa
- Thematic Issues
- *CrisisWatch*

please visit our website www.crisisgroup.org

APPENDIX E

INTERNATIONAL CRISIS GROUP BOARD OF TRUSTEES

PRESIDENT'S COUNCIL

Crisis Group's President's Council is a distinguished group of major individual and corporate donors providing essential support, time and expertise to Crisis Group in delivering its core mission.

Canaccord Adams Limited
Neil & Sandy DeFeo
Fares I. Fares
Mala Gaonkar
Alan Griffiths
Iara Lee & George Gund III Foundation
Frank Holmes
George Landegger
Ford Nicholson
Statoil ASA
Ian Telfer
Neil Woodyer

INTERNATIONAL ADVISORY COUNCIL

Crisis Group's International Advisory Council comprises significant individual and corporate donors who contribute their advice and experience to Crisis Group on a regular basis.

Rita E. Hauser *(Co-Chair)*
Elliott Kulick *(Co-Chair)*
Anglo American PLC
APCO Worldwide Inc.
Ed Bachrach
Stanley Bergman & Edward Bergman
Harry Bookey & Pamela Bass-Bookey
David Brown
John Chapman Chester
Chevron
John Ehara
Equinox Partners
Neemat Frem
Seth Ginns
Paul Hoag
Joseph Hotung
International Council of Swedish Industry
H.J. Keilman
George Kellner
Amed Khan
Zelmira Koch
Liquidnet
Jean Manas
McKinsey & Company
Najib Mikati
Harriet Mouchly-Weiss
Yves Oltramare
Anna Luisa Ponti & Geoffrey Hoguet
Michael Riordan
Belinda Stronach
Talisman Energy
Tilleke & Gibbins
Kevin Torudag
VIVATrust
Yapı Merkezi Construction and Industry Inc.

SENIOR ADVISERS

Crisis Group's Senior Advisers are former Board Members who maintain an association with Crisis Group, and whose advice and support are called on from time to time (to the extent consistent with any other office they may be holding at the time).

Martti Ahtisaari *(Chairman Emeritus)*
George Mitchell *(Chairman Emeritus)*
Hushang Ansary
Ersin Arıoğlu
Óscar Arias
Diego Arria
Zainab Bangura
Christoph Bertram
Alan Blinken
Jorge Castañeda
Eugene Chien
Victor Chu
Mong Joon Chung
Gianfranco Dell'Alba
Jacques Delors
Alain Destexhe
Mou-Shih Ding
Gernot Erler
Marika Fahlén
Stanley Fischer
Malcolm Fraser
I.K. Gujral
Max Jakobson
Todung Mulya Lubis
Allan J. MacEachen
Graça Machel
Barbara McDougall
Matthew McHugh
Nobuo Matsunaga
Miklós Németh
Timothy Ong
Olara Otunnu
Shimon Peres
Surin Pitsuwan
Cyril Ramaphosa
George Robertson
Michel Rocard
Volker Rühe
Mohamed Sahnoun
Salim A. Salim
Douglas Schoen
Christian Schwarz-Schilling
Michael Sohlman
William O. Taylor
Leo Tindemans
Ed van Thijn
Simone Veil
Shirley Williams
Grigory Yavlinski
Uta Zapf