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KOSOVO: TIME FOR EULEX TO PRIORITIZE WAR CRIMES

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Cover photo: An international police officer handcuffs a former member of the Kosovo Liberation Army in a court in Pristina, Kosovo, 17 December 2002.
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GLOSSARY OF ACRONYMS

COE	Council of Europe
CPCC	Civilian Planning and Conduct Capability (EU)
CSDP	Common Security and Defence Policy (EU)
DFM	Department of Forensic Medicine
ECHR	European Convention on Human Rights and Fundamental Freedoms
EULEX	European Union Rule of Law Mission in Kosovo
EUPT	EU Planning Team in Kosovo
FRY	Federal Republic of Yugoslavia
HLC-K	Humanitarian Law Centre-Kosovo
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
KFOR	NATO-led Kosovo Force
KJC	Kosova Judicial Council
KLA	Kosova Liberation Army
KP	Kosova Police
KPA	Kosova Prosecutorial Council
LCP	Law on Criminal Proceedings of the FRY
MMA	Monitoring, Mentoring and Advising
OMPF	Office of Missing Persons and Forensics
OSCE	Organization for Security and Co-operation in Europe
OWCP	Serbian Office of the War Crimes Prosecutor
PACE	Parliamentary Assembly of the Council of Europe
PCCK	Provisional Criminal Code of Kosovo
PCPCK	Provisional Criminal Procedure Code of Kosovo
SFRY CC	Criminal Code of the Socialist Federal Republic of Yugoslavia
SPRK	Special Prosecution Office of the Republic of Kosovo
SRSG	Special Representative of the UN Secretary General
UNMIK	United Nations Interim Administration Mission in Kosovo
UNSC	UN Security Council
VJ	Vojska Jugoslavije (Yugoslav Army)
WCIU	War Crimes Investigation Unit
WPU	Witness Protection Unit

1. INTRODUCTION

In June 2012, the Council of the European Union will approve the extension of the mandate of the EU-led rule of law mission in Kosovo, (EULEX). In this report, Amnesty International advocates that the new mandate should include specific measures to ensure that EULEX, as a matter of urgency, prioritizes the investigation and prosecution of crimes under international law, including war crimes and crimes against humanity.

Amnesty International is aware that over the next two years the EULEX mission will be reconfigured, and that the mission will down-size, and withdraw personnel from the police and customs sectors, leaving the mission to focus on the justice system. Amnesty International considers that this is an ideal opportunity to strengthen both the international and local components of the justice sector, and in so doing, provide the resources and personnel needed to effectively address the persistent impunity which persists in Kosovo.

Across the Balkans, impunity for war crimes remains one of the most serious human rights concerns. In Kosovo impunity persists for war crimes committed by both sides of the 1999 armed conflict. Few of the Serb military, police and paramilitary forces responsible for war crimes against Kosovo Albanians have been brought to justice. However, even fewer members of the Kosovo Liberation Army (KLA), responsible for war crimes against Kosovo Serbs, Roma and members of other minority communities have been prosecuted and convicted.

Despite the presence in Kosovo since 1999 of international police, and (since 2000) of international prosecutors and judges, charged with the investigation, prosecution and adjudication of war crimes, little progress was made by EULEX's predecessor, the United Nations Interim Administration Mission in Kosovo (UNMIK).

In January 2008 Amnesty International published a report, *Kosovo (Serbia): The challenge to fix a failed UN justice mission*, which described the failures of UNMIK's international justice system in Kosovo. [1]This report demonstrated that UNMIK had failed to establish an effective and impartial justice system, with concrete reference to the investigation and prosecution of war crimes. That report made specific recommendations, *"to any future EU mission or any other international body mandated to assist the government of Kosovo in ensuring the development of a fully functional prosecutorial and judicial system in Kosovo (irrespective of the form of any agreement on the final status of Kosovo)"*. These recommendations sought to ensure that the then-planned EULEX mission did not make the same mistakes as UNMIK.

As this report illustrates, many of Amnesty International's recommendations were indeed taken on board and put into practice by EULEX, although over the ensuing years, in several areas EULEX either failed to identify solutions or gradually fell back into UNMIK's old ways.

In this report, and bearing in mind the organization's 2008 recommendations, Amnesty International analyses the progress made by EULEX in the investigation and prosecution of war crimes. In the light of those findings the organization makes a series of new recommendations which aim to inform decision-makers in EU member states and institutions, in advance of their extension of EULEX's mandate.

Amnesty International urges that the investigation and prosecution of war crimes has to be a priority for EULEX. It sets out a range of measures that have to be taken in order to do so, including with respect to personnel and financial resources. The organization also urges that EULEX, in conjunction with EU member states, ensures an effective and well-funded witness protection programme, without which prosecutions cannot take place.

Finally, the organization sets out the necessity for EULEX to ensure that when it eventually leaves Kosovo, it does not leave behind the weak domestic justice system it encountered in 2008, but an independent, impartial and effective justice system which maintains an international presence, and which includes the investigation and prosecution of war crimes by prosecutors and judges working within the Kosovo justice system.

The duty to investigate crimes under international law is set out in international law and standards, which are applicable in Kosovo, and in international human rights law and treaties to which all EU member states are party.

While this report is aimed at decision-makers within EU member states and institutions, and others with influence on those decision makers, it is also intended to provide information about EULEX's progress in the investigation and prosecution of war crimes to a wider public, including in Kosovo. It further seeks to influence the government of Kosovo with respect to matters under their jurisdiction.

The legacy of impunity for war crimes in Kosovo, and the impact of continuing impunity on the victims of war crimes and their relatives are highlighted through examples of cases, including in particular, cases of enforced disappearances and abductions.

Amnesty International has no position on Kosovo/Kosova's 2008 declaration of independence from Serbia.

METHODOLOGY

This report is based on information drawn from both desk research and field research in Kosovo and in Brussels. It draws on research conducted over the past decade into impunity for war crimes in Kosovo, but focuses on the period after December 2008, when EULEX became operational. It draws mainly on conversations with a wide range of interlocutors interviewed by Amnesty International in Kosovo in October 2011, and in Brussels between June 2011 and January 2012.

2. SUMMARY AND RECOMMENDATIONS

Amnesty International considers that the justice system in Kosovo is unable, in its present form, to adequately address the legacy of impunity for crimes under international law which prevails in Kosovo. The organization considers that this must be addressed in the context of the extension of the mandate of the European Rule of Law Mission in Kosovo (EULEX), and the strengthening of the rule of law building effort in Kosovo.

Almost 13 years after the end of the conflict, a culture of impunity – encouraged by members of the Kosovo government – prevails. The continued presence of international investigators, prosecutors and judges, especially where cases involve high-profile/government defendants, remains crucial in breaking this culture. Yet the number of EULEX personnel dedicated to the investigation, prosecution and adjudication of crimes under international law is inadequate to the task.

Significant progress has been made by EULEX in the investigation and prosecution of such crimes, yet the number of cases brought to prosecution – when compared to the number of outstanding cases – is small, and hundreds of crimes under international law remain to be investigated.

Cases of enforced disappearances and abductions have not yet been investigated, while the bodies of some 1,800 missing persons have still not been exhumed, identified, and returned to their relatives. Investigations into the unknown number of crimes of sexual violence have only just begun over the past year.

Witness protection, before, during and after proceedings in cases of crimes under international law, is woefully inadequate. With insufficient resources and in the absence of assistance from EU member states in providing long-term protection, few potential witnesses have sufficient confidence that they will be provided with adequate protection. Nor are there any provisions for the psycho-social support for witnesses, including in cases of crimes of sexual violence.

While there has been some progress by EULEX in their mandate to assist the Kosovo government and relevant institutions in building a sustainable, independent and impartial justice system, much remains to be done. Kosovo Police are only at the first stages of their training in the investigation crimes under international law; a local exhumations team has only recently started recovering mortal remains; and there are still no professional local forensic anthropologists or scientists with the skills for complex exhumations and the identification of bodies.

Further, while the legal framework enabling local prosecutors within the Special Prosecutors Office of the Republic of Kosovo (SPRK) to investigate and prosecute crimes under international law is in place, only two local prosecutors have as yet begun to work on such cases. In order to ensure the investigation and prosecution of such complex cases in the

future, local prosecutors - along with members of the judiciary – require intensive training and experience. They also need appropriate protection for themselves and their families, as well as further measures to ensure their independence and impartiality.

For the past 13 years, the international community – UNMIK and EULEX – have been responsible for the prosecution and adjudication of crimes against international law. This will ultimately become the responsibility of the Kosovo authorities, and prosecutorial and judicial bodies. EULEX's final duty is to assist them in developing a long term strategy for ending impunity for such crimes, including by ensuring that the justice system is free from political interference by the executive.

Amnesty International urges EU member states and other decision-makers, in their review of EULEX's 2012-2014 mandate, to ensure that EULEX:

1. Prioritizes the investigation and prosecution of the backlog of crimes against international law; including by:

- Increasing the number of international EULEX war crimes police, prosecutors and judges;

- Maintaining the role of international staff within the Department of Forensic Medicine, until such time as professionally trained local staff, including forensic scientists and forensic anthropologists, are in place;

- Ensuring the investigation and prosecution of the post-war abduction of Serbs, Roma and members of other minority communities;

- Ensuring the investigation and prosecution of war-time crimes of rape and other forms of sexual violence;

- Removing barriers to expeditious investigations and prosecutions;

2. Establishes an effective, international witness protection programme; including through:

- The support of member states in providing long-tern protection for key witnesses in war crimes cases;

3. Takes measures to ensure the long-term sustainability of the prosecutorial and judicial system in Kosovo; including through:

- Supporting the ongoing development of a competent, impartial, independent and effective body of local prosecutors and judges, with the capacity to prosecute and adjudicate on war crimes cases;

- Exploring the possibilities of establishing a long term mechanism or institution for the future investigation, prosecution and adjudication of war crimes when EULEX leaves Kosovo.

3. BACKGROUND: WAR IN KOSOVO

In 1999 Kosovo was a province of the Republic of Serbia, which was then a republic within the Federal Republic of Yugoslavia (FRY).[2] The majority of the population were Kosovo Albanians, while Kosovo Serbs made up only between 5-8 per cent; other smaller minority groups included Roma, Ashkali and Egyptians, Turks, Bosniaks and Gorani.

In 1989, the Serbian government had revoked Kosovo's autonomous status, but in 1991, following a referendum, boycotted by Kosovo Serbs and not recognized by the FRY authorities, Kosovo Albanians declared independence. There followed almost a decade of systematic human rights violations against Kosovo Albanians primarily by the Serbian police.[3]

By the mid-1990s the Kosovo Albanians' strategy of non-violent resistance and parallel institutions, under the leadership of Ibrahim Rugova, was increasingly challenged by some Kosovo Albanians who began to take up arms against Serbian forces. In 1998 the frequency and intensity of human rights violations perpetrated by FRY and Serbian security forces and paramilitaries primarily against Kosovo Albanians increased.

By March 1998 a non-international armed conflict had erupted in Kosovo, between members of the Kosovo Liberation Army (KLA) and other armed groups that had formed to fight for an independent Kosovo, and FRY forces, Serb police and paramilitary groups. During this period ethnic Albanian civilians were subjected to arbitrary arrests, torture and other ill-treatment, unlawful killings and other deliberate and indiscriminate attacks. By June 1998 an estimated 60,000 ethnic Albanians had fled or been forced from their homes and were either internally displaced in Kosovo or seeking international protection. Kosovo Serb civilians were also abducted, and subjected to torture and other ill-treatment and deliberate killings by armed ethnic Albanian groups including the KLA.

In early 1999, the international community, including the US authorities, facilitated a series of meetings that aimed to broker an agreement on resolving the conflict. Following the failure of talks in early 1999 at Rambouillet in France, which sought agreement between the FRY and representatives of Kosovo's ethnic Albanians, NATO commenced a bombing campaign against FRY forces, Serb police and paramilitaries with the declared aim of preventing a humanitarian catastrophe in Kosovo. From 24 March to 10 June 1999 the NATO air campaign against the FRY, codenamed Operation Allied Force, conducted over 38,000 combat sorties, including 10,484 strike sorties, against targets in Serbia proper, the provinces of Kosovo and Vojvodina and the Republic of Montenegro, then part of the FRY.[4] The military intervention of NATO meant there was an international armed conflict between NATO members and FRY forces, alongside the non-international armed conflict between FRY forces and the KLA.

Human rights violations and violations of international humanitarian law by FRY military forces, Serb police and paramilitary groups increased during the NATO bombing campaign, and hundreds of thousands of ethnic Albanians and members of minority communities fled Kosovo into Albania and Macedonia, or were displaced inside Kosovo.

The campaign of armed violence against the Kosovo Albanian civilian population, between March and June 1999, aimed to drive people from their homes, either by directly ordering or forcing them to leave or by creating an atmosphere of terror to effect their departure. More than 9,000 men, women and children, the majority of them ethnic Albanian civilians, were killed by Serb forces. Others were taken from their homes and never seen again. Women and girls were raped or subjected to other forms of sexual violence. Villages were shelled and houses were burned. By 4 May 1999 the UN Office of the High Commissioner for Refugees (UNHCR) estimated the number of displaced persons and refugees at more than 677,000 including 396,000 in Albania, 204,000 in Macedonia and 62,000 in Montenegro; the estimated ethnic Albanian population in 1999 was around 1.9 million.[5]

In June 1999, NATO ceased its bombing campaign after concluding a Military Technical Agreement (Kumanovo Agreement) with the governments of the Republic of Serbia and the FRY.[6] This marked the end of the international armed conflict.[7] Under the agreement NATO ground forces entered Kosovo as the Yugoslav Army (Vojska Jugoslavije, VJ), Serbian police and paramilitary forces withdrew from Kosovo before the end of July 1999.

In the same month, the United Nations Interim Administration Mission in Kosovo (UNMIK) was established by UN Security Council Resolution 1244/99 (UNSCR 1244/99) and mandated to administer Kosovo. Under Article 11(j) of this resolution UNMIK, was charged with the responsibility for "protecting and promoting human rights."[8] UNSCR 1244/99 also charged the NATO-led Kosovo Force (KFOR) to: "Establish a safe and secure environment in which refugees and displaced persons can return home in safety…"; with "Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo"; and with "… [securing] conditions for a peaceful and normal life for all inhabitants of Kosovo."[9] UNMIK and KFOR were also charged with re-establishing the rule of law in Kosovo.[10]

Despite the responsibilities placed by the UN Security Council (SC) on UNMIK and KFOR to protect and promote human rights, they failed to prevent attacks by the KLA or other ethnic Albanians against Serbs, Roma and other members of minority communities which took place on a daily basis after June 1999. Amnesty International reported in October 1999 on "an atmosphere of intolerance in Kosovo, characterized by intimidation, harassment and discrimination."[11]

Although the incidence of abductions and killings decreased as minority populations left Kosovo or moved to Serbian enclaves, abductions continued to be reported until at least 2000. The International Committee of the Red Cross (ICRC) estimates that 800 Serbs, Roma, Ashkalia, Bosniaks and members of other minority communities were abducted in Kosovo.[12]

4. WAR CRIMES PROSECUTIONS RELATING TO KOSOVO IN OTHER JURISDICTIONS

AT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (TRIBUNAL)

The Tribunal has jurisdiction to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia, including Kosovo, since 1991. The Tribunal has the power to prosecute persons responsible for committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, violations of the laws or customs of war, genocide, and crimes against humanity. The Tribunal has 'concurrent' jurisdiction over these crimes – though it has primacy over national courts.[13]

Only three indictments were raised by the Tribunal in connection with war crimes and crimes against humanity in Kosovo. By the time the Tribunal completes pending cases, it will have tried only 11 defendants accused of crimes committed in Kosovo.

In February 2009 the Tribunal convicted five Serbian political, police and military leaders of violations of the laws and customs of war (war crimes) and crimes against humanity in Kosovo. Former Yugoslav Deputy Prime Minister Nikola Šainović, Yugoslav Army (VJ) General Nebojša Pavković and Serbian police General Sreten Lukić were convicted of the deportation, forcible transfer, murder and persecution (including rape) of thousands of ethnic Albanians during the 1999 Kosovo conflict, and each sentenced to 22 years' imprisonment. Former VJ Colonel General Vladimir Lazarević and General Chief of Staff Dragoljub Odjanić were convicted of aiding and abetting deportations, forcible transfer of population and other inhumane acts, and each sentenced to 15 years' imprisonment. Former President Milan Milutinović was acquitted. An appeal is ongoing. The case against Slobodan Milošević was discontinued due to his death whilst in the custody of the Tribunal.. [14]

In February 2011 former Assistant Interior Minister Vlastimir Đorđević was convicted of crimes against humanity and war crimes in Kosovo in 1999, and sentenced to 27 years' imprisonment for persecutions on political, racial or religious grounds, murder, deportation and forcible transfer of population. He was found responsible for police crimes leading to the deportation of 800,000 Albanian civilians, the enforced disappearance of more than 800 ethnic Albanians, and for leading a conspiracy to conceal their bodies which were transported to Serbia for reburial. The Trial Chamber found that Vlastimir Đorđević was "instrumental" in efforts to "conceal the murders of Kosovo Albanians", and "gave instructions for the clandestine transportation of bodies".[15] An appeal is ongoing.

On 27 September 2007 Fatmir Limaj, Haradin Bala and Isak Musliu, former members of the KLA, were convicted for crimes against humanity and war crimes. They were charged in

connection with the abduction, detention and murder of at least 35 civilians, including Serbs, Roma and ethnic Albanians, during the 1998 non international armed conflict. Twelve of the victims were killed between 24 June 1998 and 26 July 1998 at the Lapušnik/Llapushnik Prison Camp, and 10 were killed in or around the Beriša/Berisha mountains near the camp. Haradin Bala was convicted of torture, cruel treatment and murder and sentenced to 13 years' imprisonment. Fatmir Limaj and Isak Musliu were acquitted. These verdicts were confirmed on appeal. [16]

In April 2008 the Trial Chamber acquitted Ramush Haradinaj, former KLA commander and subsequently prime minister of Kosovo, and Idriz Balaj, a former unit commander, of crimes against humanity and war crimes. Lahi Brahimaj, a member of the KLA general staff, was acquitted of crimes against humanity but convicted for war crimes for the cruel treatment and torture of two witnesses and sentenced to six years' imprisonment.[17] The indictment had alleged that the three men were part of a joint criminal enterprise, responsible for the unlawful removal and cruel treatment, torture, rape and murder of up to 60 Albanians, Serbs, Roma and Egyptian civilians abducted by the KLA and imprisoned at the KLA's Jablanica compound in 1998. The Trial Chamber found insufficient evidence to conclude there was an attack on the civilian population. Following an appeal by the prosecution, in July 2010 the Appeals Chamber ordered a partial retrial, on the grounds of "the threat [that] witness intimidation posed to the trial's integrity". [18] Proceedings opened in August 2011.

PROSECUTIONS IN SERBIA

At the Special War Crimes Chamber at Belgrade District Court, as of 10 February 2012, seven final judgements had been issued in relation to Kosovo, three retrials were ongoing and two cases were at the initial stage of prosecution.[19]

Final judgments had been issued in the following cases, in which 12 Serbian defendants and one ethnic Albanian have been convicted, and four Serbs acquitted. Prosecutions were conducted under Article 142 of the 1976 Serbian Penal Code in force in 1999[20], as war crimes against the civilian population, in the following cases:: Đakovica (Lekaj); Scorpions 1 (S.Medić and others); Scorpions 2 (A.Medić); Suva Reka (Mitrović and others); Suva Reka (Repanović); Podujevo 2 (Đukić and others); and Podujevo 2 (Đukić).

Retrials were in progress, following appeals against first instance judgements: against the Kosovo Albanian "Gnjilane group", (Ajdari and others, KTRZ 16/08, see below, p.33); and against Sinan Morina, another Kosovo Albanian, previously acquitted of war crimes against eight Serbian civilians in Orahovac/Rahovec. In another retrial, under Article 144 of the Basic Penal Code, two Serbian Special Unit (PJP, Posebne Jedinice Policije) police officers, are being prosecuted for the enforced disappearance of the American-Albanian Bytici brothers, as a war crimes against prisoners of war.

In current proceedings related to Ćuška/Qyshk, the Office of the War Crimes Prosecutor (OWCP) has been assisted in investigations by EULEX investigators and prosecutors. Co-operation with the OWCP has greatly increased under EULEX, with information being exchanged in 19 cases, as of February 2012. An agreement on judicial cooperation between EULEX and the Serbian judiciary has yet to be signed.

Continuing obstacles to the investigation and prosecution in Serbia of war crimes and crimes against humanity related to Kosovo will be addressed in a separate report, to be published in 2013.

UNDER UNIVERSAL JURISDICTION

Proceedings have also taken place, under universal jurisdiction, outside Kosovo. Following his arrest in Sweden in April 2010, on 20 January 2012 Milić Martinović, a former member of the Serbian special PJP police, was convicted and sentenced to life imprisonment by a Stockholm district court for his role in the Ćuška/Qyshk massacre, in which 40 Kosovo Albanians were killed on 14 May 1999 by Serbian forces. He was found guilty of aggravated crimes against humanity, including murder, attempted murder and aggravated arson.

5. LEGAL FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF CRIMES UNDER INTERNATIONAL LAW IN KOSOVO

"There are, however, elements of uncertainty regarding the applicable law in Kosovo, which resulted not only from the EU position on the independence of Kosovo, but on the overall uncertainty on Kosovo status. In terms of applicable law, in many cases the old Yugoslav code was active when the criminal offence was committed. In many areas, for example in civil matters, there is still nothing but the Yugoslav code. We also have to consider the series of UNMIK regulations on the judiciary. Then, after the proclamation of independence of Kosovo, the Pristina National Assembly started adopting its own legislation. Therefore, we face the question of which legal order, which legislation to apply, especially when they differ. This dilemma emerged primarily from the uncertainty of the Kosovo status, and the lack of an internationally shared solution to the question".[21] Dragomir Yordanov, former EULEX judge.

In Kosovo, under both UNMIK and EULEX, all crimes under international law have been, and continue to be prosecuted under Article 142 of the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia (SFRY CC). The SFRY CC provides for only a limited number of crimes under international law, covering genocide and a limited list of war crimes, including at Article 142 -"War Crimes against the civilian population".[22]

Applicable law was initially defined by the Special Representative of the UN Secretary General (SRSG) in UNMIK Regulation 1999/1 (25 July 1999), as the law in force prior to the NATO intervention on 24 March 1999.[23] Following resistance by the Albanian legal community to applying this code – the law in force during the period of Serbian repression - in December 1999, the SRSG promulgated Regulation 1999/24, which instead provided that : '[T]he law applicable in Kosovo shall be: (a) The regulations promulgated by the SRSG .... and (b) The law in force in Kosovo on 22 March 1989".[24]

All investigations and prosecutions in Kosovo of crimes under international law committed in the context of the Kosovo conflict between 1998-1999 are conducted under the 1976 SFRY CC.[25]

Similarly, the criminal procedural code in force in Kosovo, until 6 April 2004, when the Provisional Criminal Procedural Code of Kosovo (PCPCK) , introduced under UNMIK Regulation No. 2003/26, was adopted, was the Law on Criminal Proceedings of the SFRY (LCP). The PCPCK makes it clear that the applicable law for proceedings whose indictments had been filed before the entry into force of the PCPCK - until the final judgment - is the LCP. Once a final decision has been delivered, extraordinary remedies are ruled by the PCPCK.[26]

On 6 April 2004, the Provisional Criminal Code of Kosovo (PCCK), introduced under UNMIK Regulation No. 2003/25 in July 2003, entered into force.[27] The PCCK contains a number of provisions regarding crimes under international law inspired by the Rome Statute of the International Criminal Code.[28] Both the PCCK and PCPCK were adopted by the Kosovo Assembly in November 2008.[29]

The SFRY CC and the PCCK contain some important differences for the purposes of investigating and prosecuting crimes under international law. Amnesty International considers that the PCCK represents – despite some flaws - a substantial improvement on the SFRY CC.

DEFINITION OF CRIMES UNDER INTERNATIONAL LAW

In addition to provisions for genocide (Article 116) and war crimes (Articles 118 - 121), the PCCK allows for the prosecution of crimes against humanity (Article 117), when they are "part of a widespread or systematic attack directed against any civilian population:" In addition to murder and the deportation or forcible transfer of population, Article 117 makes provision for the prosecution of "imprisonment or other severe deprivation of physical liberty"; torture; "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity"; the "enforced disappearance of persons" and the catchall provision, "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health".

The application of the SRY CC and not the PCCK, which is more in compliance with international law, is problematic with respect to the prosecution of some crimes which took place during the armed conflict. The SFRY CC, for example, fails to adequately define the offence of rape or include – as does the PCCK - other crimes of sexual violence. Thus any prosecutions are unlikely to be consistent with human rights law and standards.[30]

The lack of criminalization of crimes against humanity in the SFRY CC has practical consequences: if a crime committed in the context of the war does not amount to a war crime, it would be investigated as an ordinary offence - and therefore subject to statute of limitations. It may not be investigated as a crime against humanity, which is not subject to such limitations.[31]

"COMMAND RESPONSIBILITY"

Under the SRFY CC prosecutions may only be brought on the grounds of individual criminal responsibility for ordering a war crime or performing or committing a war crime.[32] There are no other provisions for the prosecution of those who exercised command responsibility. This is, however, criminalized at Article 119 of the PCCK, where,"[a] military commander or person effectively acting as a military commander" may, under certain circumstances, be liable for acts of persons under his or her effective control."[33]

THE PRINCIPLE OF LEGALITY WITH REGARD TO CRIMES UNDER INTERNATIONAL LAW [34]

"The choice is given to every single judge, which legal norms to apply. In strict legal terms, this is the correct solution. The problem however, is that even if the mission has a "neutral status" regarding the independence of Kosovo, by choosing to apply one or the other legal

provisions, EULEX judges are de facto put in a position to implicitly or not recognize Kosovo's new institutions. If a EULEX judge decides to apply legislation voted by the Kosovo Parliament, that implicitly means the judge recognizes the legitimacy of the legal order originated by Kosovo's declaration of independence". [35]

In the prosecution of war crimes committed in Kosovo, the five district courts (sitting in mixed panels presided over by EULEX judges), the six municipal courts - convened for the purpose of confirming indictments - and the Supreme Court apply the SRFY CC.

The application of the SFRY CC is also problematic with respect to the prosecution of crimes which took place in the aftermath of the war, which the organization considers should be prosecuted as crimes against humanity. Instead, when the SRFY CC is applied, crimes committed in the aftermath of the war may only amount to ordinary offences and therefore, unlike crimes against humanity, subject to statute of limitations.[36]

During and after the armed conflicts widespread human rights abuses were perpetrated by armed groups of Kosovo Albanians against civilian Serbs, Roma, members of other minority ethnic groups and some Kosovo Albanians perceived as collaborators with the Serbian authorities. Between 11 June 1999 and 31 December 2000, after the withdrawal of the Yugoslav Army and Special Police forces from Kosovo, according to the Humanitarian Law Centre-Kosovo (HLC-K), some 1,108 persons were killed or abducted [37] in Kosovo in the aftermath of the armed conflict: 752 Serbs, 210 Roma, Montenegrins, Bosniaks and Gorani, and 146 Kosovo Albanians, of whom 45 are known to have been executed as collaborators with the Serbian authorities.[38]

Amnesty International is of the view that crimes under international law committed in Kosovo after the war should be investigated and prosecuted as crimes against humanity, under the basis of the PCCK – since it takes into account the extreme seriousness of these crimes under international law. The organization notes that the Special Prosecution Office of the Republic of Kosovo (SPRK) is invested with the competence to prosecute crimes against humanity (see p.23).

This view seems to be in full accordance with the Constitution of the Republic of Kosovo, which provides on the principle of legality as follows: "No one shall be charged or punished for any act which did not constitute a penal offence under law at the time it was committed, except acts that at the time they were committed constituted genocide, war crimes or crimes against humanity according to international law."[39]

The same view has been confirmed in decisions at the European Court of Human Rights, [40]and by other national and international authorities. [41]

6. EULEX : THE EUROPEAN UNION RULE OF LAW MISSION IN KOSOVO

EULEX was established on 4 February 2008 under joint action 2008/124/CFSP, mandated until14 June 2010.[42] Prior to EULEX's deployment, on 10 April 2006 the Council of the European Union had established an *EU Planning Team (EUPT Kosovo) for the establishment of a possible EU crisis management operation in Kosovo in the field of rule of law and possible other areas*. This was approved by the Council on 11 December 2006, and operated in Kosovo up until the EULEX mission took over.[43]

The joint action, at paragraph 7, invited the General Affairs and External Relations Council "to determine the modalities for the mission and when to launch it", and the Secretary-General/High Representative of the European Council was requested to prepare the mission in discussion with the authorities in Kosovo and the (UN).

The mission was authorized by the UN Security Council, including to "assume responsibilities in the areas of policing, justice and customs, under the overall authority of the United Nations, under a United Nations umbrella headed by [. . .] [the Special Representative of the Secretary-General], and in accordance with resolution 1244 (1999)."[44]

EULEX was deployed in December 2008, and reached full operational capability in April 2009. On 8 June 2010 the European Council adopted a decision extending EULEX's mandate for a period of two years until 14 June 2012.[45]

EULEX's main responsibilities were set out in Article 2 of the Mission statement:

"EULEX KOSOVO shall assist the Kosovo institutions, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability and in further developing and strengthening an independent multi-ethnic justice system and multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices",

EULEX's tasks, as stated in Article 3, included to: *"(d) ensure that cases of* ***war crimes*** [emphasis added], *terrorism, organised crime, corruption, inter-ethnic crimes, financial/economic crimes and other serious crimes are properly investigated, prosecuted, adjudicated and enforced, according to the applicable law, including, where appropriate, by international investigators, prosecutors and judges jointly with Kosovo investigators, prosecutors and judges or independently, and by measures including, as appropriate, the creation of cooperation and coordination structures between police and prosecution authorities".*[46]

To facilitate this process, EULEX retains some executive powers and also provides technical assistance through its Monitoring, Mentoring and Advising (MMA) Programme. Staffing is provided by EU member states, Norway, Switzerland, Turkey, and the USA.

7. THE SCALE OF THE WAR CRIMES CHALLENGE

There is no accurate estimate of the number of incidents involving crimes under international law which took place in Kosovo. However, it is acknowledged that more than 13,000 people were killed; more than 3,600 people were disappeared or abducted; an unknown number of women were raped. Hundreds of thousands of Kosovo Albanians were displaced or fled to Albania or Macedonia; after the war, the majority of the Kosovo Serbs fled to Serbia proper or were displaced in enclaves; other minority groups, particularly Roma also fled. In addition, villages and other civilian and religious buildings were destroyed.

When EULEX became operational in December 2008, it faced an enormous challenge in the investigation and prosecution of war crimes. As Amnesty International showed in its 2008 report, *Kosovo (Serbia): The challenge to fix a failed UN justice system*,[47] in the eight years following its formation in 2000, UNMIK's International Judges and Prosecutors Programme had failed to effectively address impunity for war crimes and crimes against humanity, to comply with international law and standards concerning the right to fair trial or leave a legacy of experienced and well trained prosecutors, judges and defence lawyers able to try such crimes.

By December 2008, just over 40 war crimes cases had been completed in the Kosovo courts; 21 of which were cases brought before 2000, when UNMIK introduced an international judges and prosecutors programme, known as "Regulation 64 panels". All these prosecutions were brought against Kosovo Serbs who had by November 1999 been arrested and detained by the Albanian authorities on charges of war crimes against the civilian population under Article 142 of the FRY Criminal Code. (Nineteen of these cases had already been completed by mid-2002; the majority of defendants were acquitted by the international panels established under Regulation 64. The majority of subsequent cases prosecuted by UNMIK were brought against ethnic Albanians for crimes against other ethnic Albanians, believed to be "traitors" to the KLA. Many UNMIK prosecutions remained pending appeal, and others had not been completed at the first instance court.

EULEX inherited 1,187 war crimes cases which had not been investigated by UNMIK. Although many of these cases involve multiple victims, given the scale and incidence of war crimes and crimes against humanity reported, and subsequently documented, this number can only represent a minimum number of the crimes under international law which took place in Kosovo. Amnesty International is not aware of any mapping exercise conducted by UNMIK, EULEX or the Kosovo authorities, which sets out the full extent of the crimes.

In this context, Amnesty International notes that the first volume of "The Kosova Memory Book", compiled by the Humanitarian Law Centre-Kosova, includes details of violations against 2,046 people in 1998 alone. Another three volumes covering 1999 are in preparation.

"EULEX [...] inherited a difficult and sensitive situation, particularly in the sphere of

combating serious crime: incomplete records, lost documents, uncollected witness testimony. Consequently, a large number of crimes may well continue to go unpunished. Little or no detailed investigation has been carried out [...] in respect of war crimes committed against Serbians and Albanian Kosovars regarded as collaborators or as rivals of the dominant factions. This last-named subject is still truly taboo in Kosovo today, although everybody talks about it in private, very cautiously. EULEX seems very recently to have made some progress in this field, and it is very much to be hoped that political considerations will not impede this commitment.", The Marty report, para.11.[48]

Matti Raatikainen, then Head of the EULEX War Crimes Investigation Unit (WCIU), interviewed in early 2009, told Amnesty International that UNMIK police had only a "simple" database. Paper files, amounting to more than 30,000 pages, had not been computerized, causing massive retrieval problems, as the sometimes contradictory information on the status of individual cases provided by UNMIK to Amnesty International in 2008 bears out. [49] Investigators have informed Amnesty International that some UNMIK case files related to enforced disappearances or abductions contained merely a single sheet of paper giving the name of the missing person.

Further information suggests that certain files were deliberately "lost", whilst in other cases, in the absence of proper control of documentation, information and evidence collected by UNMIK police merely disappeared.

Records left by UNMIK prosecutors showed a similar lack of case management, confirmed by an absence of records in local registries. Similarly, judicial decisions were not entered into the central registry, and verdicts were not made publicly available.

The absence of effective documentation systems not only hampered EULEX in investigating the legacy of crimes against international law, but has resulted in the denial of justice.

"Immediately after the war we gave a declaration to the UNMIK police, but we have had no contact up until now. I doubt that the prosecutor has opened this case or that he has made an indictment. We have not been informed of any kind of actions being taken. Unless the police or prosecution contact us and give us detailed information about the case we do not believe that either police or prosecution is doing anything to resolve this case. They should contact us", Avni Dana, interviewed by Amnesty International in 2009.

More than six members of the Dana family were the victims of an enforced disappearance by Serbian police which took place on 10 May 1999. In 1999 surviving family members provided information to UNMIK police, who confirmed in 2008 to Amnesty International that an investigation had been opened, but in 2011 EULEX WCIU informed Amnesty International that they had no information on the enforced disappearance of the Dana family in their files. An investigation has subsequently opened.

Further, where evidence was collected by UNMIK police, much of it, according to a local SPRK prosecutor, is insufficient to initiate a criminal case: "I can't talk about all cases, but most interviews are not valuable, people were only asked to tell their stories".

In addition, EULEX was hampered by the lack of evidence collected by other bodies. Documentation relating to exhumations, missing persons and possible grave sites gathered in 1999-2000 by investigators working for the Tribunal, was not made available to the Office

for Missing Persons and Forensics (OMPF) until 2008, (negotiated by the ICRC in its capacity as chair of the Working Group on Missing Persons). Information collected by KFOR, including criminal complaints made in the immediate aftermath of the war, photographs of the locations of grave sites and other information relating to bodies found (and in some cases buried) by KFOR, had not been made available to UNMIK; some KFOR member states have subsequently provided this information, but others still have not.

According to the SPRK Activity Report for the period December 2008 to 15 June 2009, EULEX prosecutors inherited:

"178 cases transferred from UNMIK (45 new cases); total 223.[para.4]; Plus 1049 UNMIK war crimes police report that had never been reported to UNMIK for prosecution. EULEX Special Prosecutor dealt with 852 files as of 15 June 2009. [para 5]; 70 UNMIK files not checked in run up period [July 2008-9 Dec 2009] SPRK prosecutor proposed to transfer 28 cases to district prosecutors, based on the lack of SPRK's jurisdiction; 24 cases suggested to remain with SPRK [para 6.]"

"(a) SPRK War Crimes Section: 63 cases (51 UNMIK; six new and 6 exhumations) and 1049 backlog [Breakdown, para 7.]. Four cases delegated to EULEX prosecutors and one to a Kosovo Prosecutor in a district [para.5]".

By 15 June 2011, according to the SPRK, of the UNMIK legacy cases, "111 investigations [had been] concluded out of 179 open investigations". Of 68 ongoing legacy cases, 39 were war crimes cases. Some 38 cases had been "handed over" - although it is not clear to which court -, seven "delegated"; 13 terminated and 10 dismissed.

If the figures given by these different authorities are correct, then EULEX appears to have closed around 300 cases: according to Matti Raatikainen, interviewed in 2011, "There were 1187 legacy cases [received from UNMIK]; there are now 700-750 cases. There were mistakes in the UNMIK cases - legal mistakes – as a result 158 case files were closed in 2008-9, due to lack of evidence". Some case-files were closed due to "legal mistakes", while others were incorporated into one case (for example, one recorded incident in Ferizaj was recorded in 72 separate case-files, because 72 individuals were killed).

However, while "case-files" can be closed in the absence of admissible evidence, investigations into crimes under international law are never "closed". Unlike ordinary crimes where time limits for prosecution are established, dependant on the gravity of the offence, there is no statute of limitations for crimes against international law. This includes cases of enforced disappearances, which have been recognised as an ongoing violation, until the fate and whereabouts of the missing person is determined.

Given the scale of the backlog of cases, yet to be investigated, and the continuing absence of evidence, including complaints gathered by KFOR, sources - Amnesty International does not consider that EULEX currently has sufficient resources at its disposal to adequately and effectively address this legacy.

INVESTIGATIONS AND PROSECUTIONS UNDER EULEX

"We have good news. Two weeks ago two Kosovo Police – they are cooperating with EULEX – came and

informed me that they want to come and collect information about Krushe ë Vogël, and I was surprised. I said. "What am I hearing for the first time in 12 years?" They said they wanted to meet with the representatives of the village; they said they would take brief information about every case to send to the prosecutor, and then the prosecutor will come and interview everyone. The greatest thing has happened". [50] Amnesty International interview with Agron Limani, October 2011.

The impact of war crimes investigations on the victims cannot be underestimated. Agron Limani was one of the few adult males who survived a massacre by Serbian forces in the village of Krushe ë Vogël (Mali Kruša) in western Kosovo, where on 26 March 1999, more than 100 civilians were taken to a Serb-owned house and shot with automatic weapons by Serbian police and army units; their bodies were then covered with hay and the house set on fire. Despite the scale and notoriety of the massacre at a Krushe ë Vogël no previous investigation had been opened.

As of March 2012, the SPRK had prosecuted 20 cases of war crimes, including in first instance trials, and in appeals at the Supreme Court of Kosovo. According to EULEX, in March 2012, out of 76 war crime cases, 51 were under preliminary investigation and 25 under "official investigation".[51]

Idriz Gashi, a member of the KLA was indicted for war crimes against the civilian population, and found guilty of murdering on 12 August 1998, a Kosovo Albanian woman, Sanija Balaj, on suspicion that she had collaborated with the Serbian authorities. Following the initiation of an investigation in 2005, Idriz Gashi was extradited from Sweden in October 2006; he was found guilty by an international panel at Pejé/Peč District Court of in June 2007 and sentenced to 15 years' imprisonment. On appeal to the Supreme Court of Kosovo the verdict was overturned in June 2009, and in a retrial Idriz Gashi was again convicted in November 2009, and sentenced to 14 years' imprisonment. The Supreme Court of Kosovo, in a mixed panel, confirmed the decision of the second first instance retrial on 25 November 2010. [52]

Amnesty International considers that this represents a significant improvement on the UNMIK's record. However, the majority of cases during 2009 and into 2010, were first instance retrials in proceedings which had commenced under UNMIK. Most proceedings before the Supreme Court in 2010 were concerned with the further adjudication of UNMIK's legacy cases, including appeals in war crimes cases on the basis of requests for protection of legality, all of which were dismissed.

FURTHER CHALLENGES

Under UNMIK few investigations were conducted into allegations against Kosovo Albanians, where the victims were Serbs, or members of other minority communities, or where the alleged perpetrators were high ranking members of the KLA. Subsequently, while EULEX was focussed on prosecuting cases of corruption in high places, many Kosovo Albanians applauded EULEX, but on opening proceedings against the same suspects for war crimes, for example, in the case of former Minister of Telecommunications and Transport, Fatmir Limaj, the public's attitude to EULEX significantly changed.

EULEX, to their credit, persisted with cases against leading Albanians, and on 30 January 2012, the trial opened in the case of Arben Krasniqi et al (also known as 'Klečka/Kleçkë' or the 'Limaj case') for crimes against Serbian prisoners of war and war crimes against the civilian population, including Kosovo Serbs.[53] Six of the defendants were acquitted in March

2012, but EULEX announced that the main trial against Fatmir Limaj, Nexhmi Krasniqi, Naser Krasniqi and Naser Shala was to reopen.[54]

However, EULEX is also engaged in investigations into violations of international law by Serbian police, military and paramilitary forces against ethnic Albanians, including cases of enforced disappearance and large scale killings, which took place in 1999. However, because the resulting prosecutions cannot, at the present time, be heard in Kosovo, public awareness of these trials, except amongst the victims, is low.

These prosecutions have instead been brought at the Belgrade Special War Crimes Court, despite the political challenges, as a result of vastly improved cooperation between EULEX prosecutors and the Serbian Office of the War Crimes Prosecutor.

8. MEASURES TO PRIORITIZE THE INVESTIGATION AND PROSECUTION OF WAR CRIMES CASES

Amnesty International calls on the Council of the European Union, in their consideration of EULEX's mandate for 2012-14, to ensure that the investigation and prosecution of war crimes is established as a priority for EULEX. In the preceding chapters Amnesty International summarised the progress made by EULEX in the investigation of war crimes cases, but identified how this fell far short of that required to address not only the backlog of UNMIK legacy cases, but the full extent of crimes under international law which took place in Kosovo.

In this section of the report Amnesty International makes a series of recommendations which the organization considers will ensure that EULEX is provided with the personnel, and resources needed to properly investigate and prosecute at least all outstanding war crimes cases. Later in the report, the organization makes recommendations for the continued prosecution of such crimes, so that impunity is no longer allowed to persist.

In October 2011, Bernard Rabatel, Deputy Head of the Justice component told Amnesty International that EULEX's objective was to try most of the war crimes cases: "Although war crimes have been de-prioritized to some extent, they are still a priority for us … we [just] also prioritized organized crime and corruption". However, in interviews conducted in 2010 and in July 2011, EULEX officials in Brussels informed Amnesty International that the prosecution of war crimes was not one of EULEX's priorities.

Calls for the prioritization of war crime prosecutions have previously been made by Amnesty International, the UN Human Rights Committee, the Organization for Security and Co-operation (OSCE) Mission in Kosovo and the Humanitarian Law Centre – Kosovo.[55] Amnesty International also understands that that some prosecutors and others within EULEX would also have preferred to see a stronger emphasis on the prosecution of war crimes.

8.1 INCREASE THE NUMBER OF INTERNATIONAL EULEX WAR CRIMES POLICE, PROSECUTORS AND JUDICIARY

Amnesty International considers that the number of EULEX personnel dedicated to the investigation and prosecution of war crimes is inadequate to the number of outstanding cases. Investigations and trials have continued to be delayed in the absence of sufficient international police, judges and prosecutors.

EULEX War Crimes Investigation Unit has the capacity to conclude, on average, two or three cases per year. Only two of the 10 EULEX prosecutors within the SPRK are dedicated to the investigation and prosecution of war crimes. Further, out of 51 international judges, only four adjudicate in war crimes trials.

The organization calls for an increase in the number of international police, prosecutors and judiciary, dedicated to the investigation, prosecution and adjudication of war crimes cases, including the establishment of a dedicated unit within the SPRK, as has been established for the investigation and prosecution of organized crimes and corruption.

Further, new investigators, prosecutors and judiciary, with experience in war crimes investigations, should preferably be recruited, rather than seconded, by member states. All should be contracted and/or seconded for a minimum period of two years to ensure continuity of investigation and a lack of delay in proceedings in complex war crimes cases, which have been caused by short-term contracts and constant changes in international personnel.

EULEX POLICE WAR CRIMES INVESTIGATION UNIT

"*From June 1999 UNMIK completed one case a year on average; we have done three per year. Currently we have 28 international staff and nine local staff, and only two prosecutors. With 60 and five prosecutors, we could have done more*", Amnesty International interview with War Crimes Unit Investigator.

The War Crimes Investigation Unit has an establishment of 29 staff, reduced from 35 following a review of the police component. As already noted, the WCIU has only been able to conclude six investigations to trial by October 2011, an average of three cases per year. Priority is afforded to war crimes involving mass or multiple victims.

The scale of the backlog of war crimes which remain to be investigated should not be underestimated: in April 2010, the UN Secretary General (UNSG) reported that the EULEX War Crimes Investigation Unit had completed a comprehensive review of 888 war crimes cases, as requested in 2009 by the Chief Prosecutor of the SPRK. At that time, 21 of these cases were under active investigation, with two minor cases delegated for investigation to the Kosovo Police War Crimes Unit.[56]

As noted above, the WCIU have struggled with a legacy of incomplete documentation and an absence of evidence in cases apparently investigated by UNMIK. Amnesty International considers that despite the obstacles to investigation inherited by the mission, the WCIU has made significant progress towards the investigation of war crimes. However, with 700-750 case files still to be investigated, as of 2011, the WCIU needs increased staffing and resources to build on this progress.

Amnesty International recommends that in addition to increasing the number of investigators, and on the basis of interviews with the relatives of the disappeared and missing, that an officer in the WCIU should be designated to liaise with victims and their families, so that they may be kept fully informed of developments in investigations into their criminal complaints. This would help to guarantee, "*the right to know the fate of his or her family member*", enshrined in Article 5 (1) of the 2011 Law on Missing Persons.[57]

The WCIU has assisted in establishing a Kosovo Police war crime unit, with nine personnel, currently being trained by EULEX. Working under the supervision of the WCIU police, they have taken part in exhumations, one of which led to a trial, and in conducting preliminary interviews. However, there are concerns that they will be unable to assist in cases where the victims are Kosovo Serbs, "Nothing will happen in those cases; the KP are not eager to touch those cases for €300 a month". According to EULEX personnel in Brussels, the trained KP

officers do not have the capacity or readiness to take on war crimes cases, but they may have the technical capability within a couple of years.

The WCIU has also contributed to the cooperation developed with the Serbian Office of the War Crimes Prosecutor, providing evidence and enabling witnesses to be heard in proceedings at the Special War Crimes Chamber in Belgrade against members of Serbian military, paramilitary and police (see above, p. 10). Investigations are currently ongoing including in the case of Meje/Meja village, where more than 300 Kosovo Albanian men were killed by Serbian forces in April 1999, and the killing of at least 70 Kosovo Albanian detainees by Serbian forces in Dubrava prison on 22 May 1999.

Amnesty International also notes that progress made to date by the WCIU is in no small measure due to the leadership from 2008 of Matti Raatikainen as Chief of War Crimes Investigations. The organization considers this to be one of the most persuasive arguments for long-term appointments of mission personnel.

THE SPECIAL PROSECUTION OFFICE OF THE REPUBLIC OF KOSOVO (SPRK)

Responsibility for the investigation of war crimes, in conjunction with the WCIU, and for the prosecution of war crimes, and other serious crimes lies with the SPRK. The SPRK was established by the Law on the Special Prosecution Office of the Republic of Kosovo (Law No. 03/L-052), which was adopted in March 2008, as one of the laws in the Atishaari package, which aimed to provide Kosovo with the institutions it required for "supervised independence".[58]

The SPRK became operational from 9 December 2008 as a "permanent and specialized prosecutorial office operating within the Office of the State Prosecutor in Kosovo". [59] The SPRK is administered by both the Kosovo authorities (Ministry of Justice) and by EULEX, and headed by an EULEX prosecutor.

The SPRK is invested with exclusive competence to investigate and prosecute a range of crimes set out in the Provisional Criminal Code of Kosovo (PCCK), which entered into force on 6 April 2004. These include the following "Criminal Offences against International Law": Article 116 – Genocide; Article 117 - Crimes against humanity; and Articles 118-121 - war crimes in grave breach of the Geneva Conventions and other crimes against international law. The SPRK also has competency over other serious crimes including serious inter-ethnic crime, Terrorism and Organized Crime, and a range of subsidiary competences over other offences. [60]

STAFFING

Until February 2010, the SPRK operated with "an average" of six EULEX special prosecutors and six Kosovo special prosecutors; after February 2010, another 10 local special prosecutors were appointed, one as deputy head, in accordance with the Law on the SPRK. By June 2011, the SPRK consisted of 11 international prosecutors, 10 Kosovo prosecutors and support staff (including five financial experts in the Anti-Corruption Task Force).

Throughout this period, only two international prosecutors were specifically dedicated to the investigation and prosecution of war crimes.[61] In 2011, an additional two local prosecutors had begun to work on war crimes cases.

By contrast, the Special Anti-Corruption Department or Task Force (ACTF), established in within the SPRK in February 2010, includes eight prosecutors, five local and three international prosecutors.[62]

With only two international prosecutors dedicated to the investigation and prosecution of war crimes, and two local prosecutors who have taken on three such cases, EULEX will never be able to adequately address more than a small number of cases.

"*With respect to the large number of pending war crimes cases, the quality of the indictment presented to the court will depend on the quality of the investigation conducted in each case, In other words, the quality of the prosecution of the perpetrators of the most serious criminal offences will be directly proportional to the number of prosecutors working in Kosovo*". Humanitarian Law Centre - Kosovo, *Trials for Ethnically and Politically Motivated Crimes and War Crimes in Kosovo in 2010*, p, 117.

EULEX JUDGES

Under the "Law on the jurisdiction, case selection and case allocation of EULEX judges and prosecutors in Kosovo" (the Law on Jurisdiction), EULEX judges are provided with primary/exclusive competence over any criminal case investigated or prosecuted by the SPRK. These crimes include: crimes against humanity; war crimes; organized crime; murder and aggravated murder; economic and financial crimes. In some "exceptional circumstances" EULEX judges exercise a secondary/ or subsidiary competences over criminal cases investigated or prosecuted by municipal and district prosecution offices.[63]

In 2011, some 39 EULEX judges and 27 legal officers were in post, operating in courts across Kosovo. Under the Law on Jurisdiction, EULEX judges exercise their jurisdiction in mixed panels, with a majority of EULEX judges and presided over by a EULEX judge.[64]

However, only four international judges regularly adjudicate on crimes under international law, limiting the number of trials that can be heard at any one time.

According to EULEX figures, international judges (sitting in mixed panels) in first instance trials and at appeal issued 10 judgements in war crimes cases in 2009, and four in 2010, at the District and Supreme Courts. [65] No data is yet publicly available for 2011, but from information published by EULEX, only three first instance trials and two Supreme Court proceedings were completed in war crimes cases; however, in June 2011, the SPRK reported, "27 concluded trials; four ongoing trials; five on appeal". [66]

On 26 January 2011, the Supreme Court, in the "Llapi" case, confirmed elements of the previous verdict and ordered a partial retrial on other charges; the prosecution was initiated by UNMIK in 2002.

On 14 June, the Supreme Court confirmed the April 2009 verdict of Pejë/Peć district court against Gjelosh Krasniqi, charged with hostage taking, unlawful property confiscation and pillaging. He was sentenced to seven years of imprisonment,

On 22 July Kosovo Serbs Slobodan Martinović, Sreko Martinović and Svetlana Stojanović were acquitted because of insufficient evidence at Pristina District Court.

Also in July Sabit Geçi and three other defendants were convicted of war crimes against the civilian population, including the torture and murder of Kosovo Albanian prisoners in a prison camp in Kukës in Albania. Charges were not brought in relation to Kosovo Serb prisoners.

Finally on 23 November, Fahredin Gashi was convicted of war crimes for the killing, along with Nazim Bllaca, of a Kosovo Albanian, Sali Gashi; he was sentenced to 18 years' imprisonment by Pristina District Court.[67]

In this context Amnesty International notes that while decisions in cases adjudicated by EULEX are publicly available on its website, as recommended by Amnesty International in 2008, indictments are still not made public. Amnesty International has sought copies of indictments from EULEX, but they have not been made available.

RECRUITMENT OF ADDITIONAL STAFF

"*To have effective investigations and prosecutions, you need to have political will, appropriate legal tools and good professionals. You also need a passable procedural law – Kosovo's is full of gaps and problems. We can live with that and make it work*", EULEX Prosecutor interviewed by Amnesty International, October 2011.

In advocating for additional police, prosecutors and judges to tackle the backlog of war crimes cases, Amnesty International recalls the recommendations made to EULEX in 2008:

- Appointed judges and prosecutors should be of the highest calibre, with extensive experience in criminal prosecutions (particularly in civil law jurisdictions), dealing with crimes of sexual violence and international human rights and humanitarian law.

- Steps must be taken to implement the recommendation of the Parliamentary Assembly of the Council of Europe in Resolution 1417(2004), para. 4(iii)(f) and ensure that all international judges, as well as prosecutors, have a proper command of at least one of the official languages, along with sufficient experience of a relevant legal system and of the applicable international human rights instruments.

Amnesty International appreciates the professionalism and expertise of the international judges and prosecutors interviewed in October 2011, and notes that most of them had occupied their posts, or posts within UNMIK, for several years, and had knowledge and experience of the Kosovo justice system.

However, this is not universal. As Bernard Rabatel, Deputy Head of the Justice Component told Amnesty International in October 2011, "EULEX judges from different systems may be unclear about the local law, but it works rather well – even though there are many foreign languages."

According to an independent court monitoring project, not all EULEX judges are familiar with the judicial system: "*In the court case P.nr.164/10 regarding "aggravated murder in collaboration" in the District Court in Prizren, numerous violations of procedures were noted. The judging panel was composed of two EULEX judges and one Kosovo judge. The EULEX judges constantly consulted the public prosecutor and Kosovo judge about procedures, as, they declared, they did not know Kosovo's justice system*". [68] The same monitors have also documented violations of the Criminal Procedure Code by EULEX Judges and prosecutors.[69]

In March 2012, in proceedings in the Klečka/Kleçkë case, evidence of a key witness was dismissed on the basis of procedural violations on the part of an experienced EULEX prosecutor.[70]

"The weakness of this approach [secondment] is that success depends on the seriousness with which the contributing member states look upon the prosecutorial unit within the […] mission".[71]

In 2008, Amnesty International advocated that investigators, prosecutors and judiciary should be recruited, rather than seconded, in order to ensure recruitment of professionals of the highest standard with the capacity and experience to work on complex cases.

However, according to Bernard Rabatel, "*Prosecutors are seconded by member states, and contributing countries; there are some contractors, but there are fewer applications than from those seconded. The selection process is the same. It is better to have seconded staff as they are paid by their own countries. We ask for a minimum commitment of one year. We provide training for judges and prosecutors in local law, culture and human rights – Strasbourg is no secret for judges*".

At least one international prosecutor agreed that there should be a commitment from states to release good professionals, and – noting the inexperience and lack of legal understanding of some international judges – the need for some incentives to ensure the secondment of experienced judiciary.

Local prosecutors within the SPRK and District Courts were unanimous in the view that international prosecutors were needed in Kosovo, but suggested the need for a number of improvements. These included that fixed-term contracts or secondment should be for longer periods. The Deputy Head of the SPRK told Amnesty International on October 2011, "The contracts and training are the same as under UNMIK – short contracts, prosecutors leave cases half-way, but I would emphasize that we need internationals as they are a huge support".

8.2 RETAIN INTERNATIONAL STAFF WITHIN THE DEPARTMENT OF FORENSIC MEDICINE

"We need the internationals to stay for at least two or three years, to deal with the missing persons. We still do not have [local] forensic anthropologists. New staff can learn from the internationals, and we need to send them for training outside the Balkans", Amnesty International interview with Head of the DFM.

Amnesty International considers that the full transfer of the Department of Forensic Medicine (DFM) from EULEX to the Ministry of Justice should be delayed until sufficient trained and experienced local staff can be appointed, including, in particular, forensic scientists with the requisite skills for complex exhumations and the identification of mortal remains.

The responsibilities of the DFM, are set under the Law on Forensic Medicine. [72] The DFM is staffed and equipped to discharge its responsibilities as a medical examiner, including in autopsies in present-day murder cases, and in other forensic and clinical examinations. However, without continued international staff and support, the institution lacks the capacity to work on the recovery of mortal remains associated with the conflict and its aftermath.

Around 1,790 persons were recorded as still unaccounted for by the ICRC at the end of 2011. For more than 1,000 Kosovo Albanian families the failure of the authorities, including EULEX, to find the bodies of their loved ones is one of the most pressing concerns in relation to the role of the international community in Kosovo. In Serbia too, the families of hundreds of Kosovo Serbs still await the return of the body of their relatives. The DFM plays a crucial role in finding those bodies, and in guaranteeing to the relatives of the missing, their "right to know", as set out in the 2011 Law on Missing Persons (see below).

THE DEPARTMENT OF FORENSIC MEDICINE

"A strong judiciary needs a strong and sustainable forensic medicine service. We are striving to achieve this together".[73] DFM Activity Report 2011, February 2012.

In December 2008, EULEX took over responsibility for the UNMIK Office of Missing Persons and Forensics (OMPF), crucial to the investigation of both enforced disappearances and abductions. The OMPF responsibilities include the identification and exhumation of burial sites, and the subsequent identification of mortal remains, in conjunction with the International Commission for Missing Persons, which provides identifications through the comparison of DNA from the bones of excavated bodies with blood samples taken from the relatives. EULEX OMPF, in conjunction with the Kosovo and Serbia Commissions for Missing Persons, was also responsible for the return of mortal remains to the families for burial. The DFM also plays a crucial role in providing evidence in war crimes prosecutions.

Pursuant to the Law on the Department of Forensic Medicine, in August 2010 the OMPF became the Department of Forensic Medicine, within the Ministry of Justice. In addition to its competence in forensic medicine and in forensic examinations related to ongoing criminal investigations, the DFM also assumed the OMPF's responsibilities for the search, location, exhumation, autopsy and identification of human remains related to the armed conflict in Kosovo and its aftermath and the return of human remains to their families.[74]

Some progress has been made in developing local capacity. A Kosovo Police exhumations team, has been trained and has some experience in the exhumation of single graves and other simple burials. Local staff now undertake liaison with the relatives of the missing, including in the process of returning identified bodies to the families for reburial. Equipment and infrastructure at the DFM has vastly improved, following €3.5 million donor funding. However, with the exception of the DFM's director, the DFM lacks qualified local forensic anthropologists and scientists with experience in this specialized field.

The full transfer of responsibility for the DFM from EULEX to the Ministry of Justice was envisaged for 2012. As of February 2012, according to the DFM 2011 Annual Report, "…there is still no fully operational local capacity to deal with case investigation, exhumations and forensic anthropological work".[75]

THE SCALE OF THE CHALLENGE

As of December 2011, according to the DFM, of the 1,790 persons who remain missing after the armed conflict: 1,299 are Kosovo Albanians (1134 males and 165 females); and 499 are non-Albanians – Serbs, Roma and other minorities (393 males and 106 females).

The DFM estimates that more than 300 bodies of Albanians may never be found, as they are

believed to have been burned; another 413 are believed to be buried in Serbia, including possibly at Raška in southern Serbia, or otherwise outside Kosovo. Another 200 bodies are believed to be in Kosovo, including around 70 mis-identified bodies, which were incorrectly identified following exhumations by the Tribunal, and handed over to families who believed that they were burying the body of their relative. More than 428 bodies of Albanians remain completely unaccounted for.

"If I could know where Albion my son is, and if I could bury him and put a flower on his grave, I would be in a better place", Nesrete Kumnova, mother of Albion Kumnova from Gjakovë/ Đakova. His body was believed to be amongst those which were transported to Serbia in 1999, but – unlike the five other men he was taken with – his body has never been found.

A much larger percentage of missing Serbs, Roma and other minorities remain unaccounted for: the whereabouts of some 450 out of 499 are still to be established.[76] Many of these are buried in Kosovo, although it is also likely that some will finally be exhumed in Albania, should EULEX's Special Investigative Task Force (see below), successfully conclude their investigation into allegations in the report by Swiss Senator Dick Marty, adopted by the Parliamentary Assembly of the Council of Europe (PACE) in January 2011, that Serbs were transferred across the border to Albania, where they were held in prison camps, and subsequently tortured and murdered.[77]

Meanwhile, further sites remain to be investigated in Kosovo. In December 2011, DFM announced their intention to investigate 30 burial sites in 2012, assisted by the local exhumations team.[78]

Noting the continued failure of the Ministry of Justice to resolve concerns expressed since 2009 by EULEX on its capacity; the "signs of political interference and poor management" reported in EULEX's 2010 Programme report, and continued concerns expressed in EULEX's 2011 Stocktaking Report, Amnesty International considers that plans to fully transfer the DFM from EULEX to the Ministry of Justice, should not yet be concluded.[79]

In their Annual Report for 2011, published in February 2012, the DFM makes a series of strong recommendations to the Ministry of Justice, which illustrate these continued concerns:

"1. Support the Department of Forensic Medicine. The Department has urgent logistical, administrative and human resources needs. It cannot be expected to deliver results if it is not in a position to work for them.

2. Contribute to the development of local forensic capacity: Kosovo needs local forensic anthropologists and forensic archaeologists. EULEX cannot do this training in isolation".

The DFM also called on the Ministry of Justice/Department of Forensic Medicine, to:

1. Increase support to the Identification Team and the Outreach Unit. They are understaffed and cannot fulfil their duties in a timely fashion.

2. Formally establish and support the Exhumations Team. This team will be crucial once EULEX hands over all responsibilities.

3. Improve communication between units through regular coordination meetings and evaluation of action plans.

Amnesty International considers that the handover process should be prolonged until sufficient trained and experienced local staff can be appointed, including, in particular, forensic scientists with the requisite skills for complex exhumations and the identification of mortal remains.

POLITICAL WILL

Amnesty International is also concerned that there is insufficient political and budgetary support from the government of Kosovo for the work of the DFM in the recovery of mortal remains.

Whilst the Kosovo government should, as in other countries in the region, assume responsibility for missing persons, the families of missing ethnic Albanians continue to assert that prior to the recently adopted Law on Missing Persons, the previous government Commission for Missing Persons had failed to respect the rights of the relatives, or prioritize their needs. Further, with the exception of Hajredin Kuçi, Minister of Justice and Deputy Prime Minister, who had supported the provision on new equipment and laboratories at the DFM, the organization does not consider that the government has shown sufficient political support for either the relatives or the process of recovering the bodies of the missing. It is to be hoped that the new Commission, created under the Law on Missing Persons, receives more political support.

Members of the government also have a role to play in encouraging witnesses to come forward to help with the identification of burial sites, irrespective of the ethnic identity of the victims. However, in an interview with the Deputy Minister of Justice in October 2011, it was made clear to Amnesty International that he was only concerned with the recovery of the bodies of ethnic Albanians still believed to be buried in Serbia.

As already noted, the whereabouts of some 450 out of 499 missing Serbs, Roma and members of other minority groups, as well as ethnic Albanians, believed to have been abducted by the KLA, are still to be established.

The lack of criminal investigations into these abductions has (see section 4) is due in part to the failure of witness to come forward with information relating to the whereabouts of their relatives' mortal remains. Their whereabouts will not be established until conditions are created that will enable witnesses to alleged crimes by the KLA are safely, and without fear of retribution, able to come forward to provide information on potential locations of grave sites. A demonstration of political will by members of the government is needed to ensure that all mortal remains, including those of Serbs and other minorities, are recovered and returned to their families.

To this end, the DFM, in their Annual Report for 2011 calls on the Office of the Prime Minister to strengthen the Government Commission on Missing Persons, who should collect information regarding burial site locations of non-Albanian missing, and to make this information available to the ICRC.

EU member states also need to demonstrate their political support for families of the missing through exerting pressure on both the Kosovo and Serbian authorities. Amnesty International concurs with the DFM's recommendation that EU member states should: "Actively encourage Belgrade and Pristina to increase their efforts to determine the fate of the Missing. The EU, through its forensic experts at the DFM, is fully engaged and committed to this issue. These efforts should be reciprocated".

Under international law, including Article 24(2) of the International Convention for the Protection of All Persons from Enforced Disappearance, the relatives of the missing have the right to know the fate and whereabouts of their family members. While Kosovo is not a state party to the Convention, Article 5 of 2011 Law on Missing Persons, enshrines this right.[80] This right is also set out in, for example, Principle 4 of the Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Principles to Combat Impunity), which provides that the right to know the truth about the circumstances in which violations took place and the right to know the fate of the disappeared person are imprescriptible (no statutes of limitation apply).

LAW ON MISSING PERSONS

The Law on Missing Persons (No.04/L-023) was promulgated by Decree No.DL-023-2011, signed by President Atifete Jahjaga on 31 August 2011 and entered into force at the end of the year.[81] The Law 'aims to provide protection to the rights and interests of missing persons and their family members, in particular the right of family members to know about the fate of missing persons, who were reported missing during the period 1 January 1998 – 31 December 2000, as a consequence of the war in Kosovo during 1998-1999'. The Law also establishes the powers and responsibilities of the Governmental Commission on Missing Persons – which is mandated to establish a central register of missing persons[82] - and provides for the civil status of the spouse of the missing person, the custody of children and the administration of property and assets belonging to the missing person.

One positive aspect of the Law is that it encompasses abductions committed in the aftermath of the international armed conflict – mainly as part of the KLA retaliation against Serbs, Roma and other minorities as well as ethnic Albanians perceived as collaborators with Serbs.

The Law also importantly recognizes the right of family members to know about the fate of his or her missing family member, including the circumstances of their death and location of their burial.

On the other hand, the Law falls short of international law, since it does not contain any provision on effective reparation for relatives of the disappeared or abducted, which should include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. [83]

The legal framework on reparation is set out in "The draft law on the status and the rights of the heroes, invalids, veterans, members of Kosova Liberation Army, civilian victims of war and their families", which updates the "Law on the Status and Rights of the Families of Martyrs, KLA War Invalids and Veterans, and the Families of the Civilian Victims of War", adopted by the Kosovo assembly in February 2006. Amnesty International's concerns about the failure of the original and draft law to provide all forms of effective reparation were addressed in the organization's 2009 report on enforced disappearances and abductions. [84] These included that the law discriminates against the families of civilian victims of war and their families, in that it provides them with a lower level of compensation, in the form of a monthly pension, than military

victims of war and their families. The Law also fails to provide any of the other five forms of reparation, identified above, and set out in the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

The Law also discriminates catastrophically against women and girls who were raped or suffered other forms of sexual violence as a result of the armed conflicts, despite continued lobbying by the Kosova Women's Network. It fails to make any provision to afford the status of civilian victim of war to these women, or provide for benefits for a person suffering mental harm, or even physical harm caused by rape or other forms of sexual violence. In this respect, Amnesty International calls for a transformative reparations process which seeks to address the gender discrimination which contributed to these crimes being committed. Such measures were set out by the Special Rapporteur on violence against women, in her 2010 report.[85]

8.3 ENSURE THE INVESTIGATION AND PROSECUTION OF THE POST-WAR ABDUCTION OF SERBS, ROMA AND MEMBERS OF OTHER MINORITY COMMUNITIES

Hundreds of members of minority communities were abducted, allegedly by members of the KLA during the 1998-1999 conflict, and in the aftermath of the armed conflict. As was noted in the previous section, most of their bodies have not been found. Few witnesses have come forward to help identify burial sites, and only a tiny number of cases have been properly investigated.

While progress has also been slow in the investigation of the enforced disappearances of Kosovo Albanians by Serb forces, almost no investigations have been conducted into the fate of Serbs and others abducted by the KLA. Amnesty International considers that this has been due to the lack of political will, by both the Kosovo government and by the international community, to bring former members of the KLA to justice. The organisation urges that EULEX WCIU and SPRK be specifically mandated to investigate all outstanding UNMIK legacy cases of abduction, and any new cases that are brought to light through the work of the DFM.

EULEX has, to its credit, investigated and prosecuted cases in which ethnic Albanians, perceived to be associated with the Serbian authorities, or otherwise perceived to be "traitors" were abducted and killed by the KLA, but few have involved minority victims.

Amnesty International considers that all cases involving the alleged abduction by members of the KLA or other armed ethnic Albanians, including those which took place after the end of the armed conflict, should be investigated and prosecuted by the SPRK. They should be adjudicated by mixed panels, and with adequate witness protection.

INCORRECT CLASSIFICATION OF WAR-RELATED ABDUCTIONS BY THE SPRK

Amnesty International is concerned that EULEX does not consider the hundreds of unresolved abductions of Serbs, Roma and others which took place in the aftermath of the war as crimes against international law. Few of these cases have been investigated; many have been classified as ordinary crimes.

In 2009 some 62 abduction cases inherited from UNMIK were reviewed by the SPRK. The SPRK took no action to reopen these cases but instead, on the basis that they occurred after

the end of the armed conflict, they transferred these alleged abduction cases to EULEX prosecutors in the District Prosecutors' offices.

Amnesty International fundamentally disagrees with the decision. Amnesty International considers that both the enforced disappearances and the abductions carried out in the context of the armed conflict in Kosovo constituted crimes against international law.

Amnesty International considers that the abductions which took place after June 1999, in the aftermath of the war, were part of a widespread, as well as a systematic, attack on a civilian population and, as such, are crimes against humanity. Therefore the SPRK should investigate and prosecute all these abductions as crimes against humanity.

Alexander Lumezi, Prosecutor at the Pristina District Court Prosecutor told Amnesty International, "*The abandoned cases are a big problem. These are UNMIK police cases - and some Kosovo Police [cases], they were beginning investigative tasks. The content of these reports is not good; some are good – but the police applied the rules and standards of their own countries, and the different laws in force. In most of the abduction cases, where the perpetrator is unknown, there is a written request from the police to the prosecutor to take necessary steps. Most of the cases remain at that level – they do not have enough evidence. These cases and were moved form place to place: UNMIK police/prosecutors started one case, then they left, then the next police/prosecutor did not deal with them. Like a game of table tennis. Then they went to EULEX and then to the locals*".[86]

Amnesty International was also informed, by an official who wished to remain anonymous, that some whole case-files relating to abductions, and evidence from other case files, were discarded by UNMIK officials, prior to their being handed over to EULEX in 2008.

Are far as Amnesty International is aware, few cases involving the abduction of Serbs and other minorities are under active investigation, few prosecutions have been instigated, and the relatives of the victims continue to be denied access to justice.

The inappropriate classification of these cases has resulted in impunity in at least two cases.

In 2010, the Humanitarian Law Centre - Kosovo, the only domestic NGO which monitors war crimes trials in Kosovo's courts, monitored indictment confirmation sessions in the case of the *Prosecutor v. Albert Fazliu, Xhavit Ferizi and Burhan Fazliu,* at Pristina Municipal Court. The men were charged with the unlawful detention or imprisonment of Desanka Stanisić, a Kosovo Serb woman. She was allegedly kept on the third floor of her own house between 1 and 15 July 1999, after which the accused forcibly took her from the house and deposited her in the market-place.

The indictment confirmation session was postponed three times, due to the failure of the court to secure the presence of Xhavit Ferizi (at that time, a personal escort to the Prime Minister). In October 2010, the confirmation session was postponed indefinitely. Due to the qualification of the crime as an act of illegal detention, a complaint by the victims' son was rejected, on the basis of the statue of limitations. See also footnote 31.

RESOLVING THE FATE OF THE MISSING

Amnesty International urges the SPRK to take all the transferred cases of post-war abduction

of Serbs and other minorities back under its jurisdiction for immediate investigation. The organization notes that the recently initiated investigation by the EULEX Special Investigative Task Force (see, The "Marty Report", below) addresses the post-conflict transfer to Albania of abducted Serbs; there is no reason why the SPRK should investigate other post-conflict abduction cases.

Amnesty International notes that all persons reported missing up until the end of 2000 are included by the ICRC in their database, "For persons unaccounted for in connection with the crisis in Kosovo" and "Family Links" site.[87] Further, Article 1 of the Law on Missing Persons, adopted by the Kosovo Assembly in 2011, enshrines "the right of family members to know about the fate of missing persons, who were reported missing during the period 1 January 1998 – 31 December 2000, as a consequence of the war in Kosovo during 1998-1999".[88]

At the Special War Crimes Chamber in Belgrade, 17 former members of the KLA, known as the "Gnijlane Group", were indicted on 23 September 2009 for "grave breaches of international legal rules governing the conduct of war",[89] including the abduction of 267 Serbs, other non-Albanians and some Kosovo Albanians. At least 80 persons were tortured and killed; 34 remain missing; and 153 were unlawfully deprived of their liberty, subjected to ill-treatment and subsequently released. Nine members of the group were convicted of war crimes and sentenced to a total of 101 years' imprisonment on 21 January 2011. The verdict was quashed on appeal on 7 December 2011 on the basis that the decision was in violation of the CPC as the wording was unclear and contradictory, and as the reasoning of the Trial Judgement lacked decisive facts. The retrial opened on 13 February 2012.[90]

The indictment stated that, in violation of their obligations under the Military–Technical Agreement of June 1999 and UN SC Resolution 1244/99, between June and December 1999 the KLA unit "committed a number of criminal acts against Serb and other non-Albanian civilians, as well as against some ethnic Albanians, which included unlawful arrests, inhumane treatment, torture, rapes [discussed below, p. 38], murders, causing bodily injuries and great suffering, pillage of civilian property …".[91]

AN ONGOING VIOLATION

The failure of the relevant authorities to conduct prompt, impartial independent and thorough investigations into both complaints of enforced disappearance and abduction and to bring those responsible to justice violates the rights to liberty and security of the person, to life and to be free from torture and other ill-treatment, and to an effective remedy. These rights are guaranteed under the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights and Fundamental Freedoms (ECHR), (respectively under Articles 9,6,7 and 2 of the ICCPR and Articles 5,2,3 and 13 of the ECHR).

HUMAN RIGHTS ADVISORY PANEL

The failure of UNMIK, for over 10 ten years, to investigate post-conflict abductions has been challenged by Kosovo Serb families, the majority of them now living in Serbia.

On 28 June 1999, Petrija Piljević, a 57-year-old Kosovo Serb, was abducted from her flat in Pristina by men wearing Kosovo Liberation Army uniforms. A year later her body was exhumed from a cemetery in Pristina by a team of experts working for the Tribunal. Her son identified his mother's body from the clothes she was wearing.

Thirteen years since her abduction and murder, Petrija Piljević's killers have not been brought to justice. In 2010, her son's complaint that UNMIK had failed to conduct an effective investigation into her abduction was declared admissible by the Human Rights Advisory Panel, a body of independent leading international lawyers, charged with reviewing alleged human rights violations by UNMIK. His complaint is being considered in 2012. The HRAP does not have the powers to instigate a criminal investigation, but it has the power to call on UNMIK to reopen the investigation. Petrija Piljević's sons are still waiting for justice.

In 2011, the HRAP also declared admissible more than 60 complaints by families of the missing, now living in Serbia, on the basis that UNMIK had failed to properly investigate the abduction and subsequent death of their relative, in violation of Article 2 of the ECHR. In the majority of these cases, the HRAP has also recognised that the pain and suffering of the relatives caused by UNMIK's failure to investigate these abductions, is a violation of Article 3 of the ECHR, which prohibits torture and other ill-treatment or inhuman and degrading behaviour. These families are still waiting for justice.

THE "MARTY REPORT"

"My 17-year-old son Ivan is missing; I am still searching for him. Imagine how I felt when I heard about the 'Yellow House'. It is driving me crazy, the 'Yellow House'..."[92]

Perhaps the most significant development to date, with respect to establishing the fate and whereabouts of missing Serbs (as well as ethnic Albanians), abducted by the KLA, has been generated by the "Marty Report". While the press and media have focussed on one element of the report – allegations of organ trafficking – for the families of missing Serbs (and Albanians) and for human rights organizations, the report more significantly, has generated the first comprehensive inquiry in Kosovo into the case of missing Serbs.

In December 2010, a report for the Parliamentary Assembly of the Council of Europe (PACE) by Swiss Senator Dick Marty alleged that Prime Minister Hashim Thaçi and other members of the KLA were involved in 1999 in the abduction, torture, ill-treatment and murder of Serb and Albanian civilians transferred to prison camps in Albania. In one of the camps, detainees were allegedly murdered and their organs removed for trafficking. The report was approved in December 2010 by the Legal Affairs and Human Rights Committee of the PACE, and adopted by the PACE on 25 January 2011.[93]

Some of the allegations in the Marty report were first made public in 2008, when Carla Del Ponte, former chief prosecutor of the International Criminal Tribunal for the former Yugoslavia, published her autobiography.[94] Later the same year, Human Rights Watch sent an open *Letter to Kosovar Authorities Calling for an Investigation into Serbs Missing Since 1999*, calling for an immediate investigation to be opened. [95]

EULEX opened a preliminary investigation into the allegations in the Marty report on 27 January 2011. This was shortly followed in June by the announcement that a Brussels-based EULEX Task Force had been approved to conduct the investigation. On 29 August 2011 EULEX announced the appointment of a US citizen, John Clint Williamson, as Lead Prosecutor for the Special Investigative Task Force; Williamson – who assumed his duties in October - had been Head of the UNMIK Department of Justice from late 2001 to 2002, and more recently a UN adviser on war crimes. [96] However in August it was reported that the investigative team comprising 15-20 people - prosecutors, investigators and administrative staff - was not complete; three posts in the SITF, including a Deputy Lead Prosecutor, were

still being advertised up to 12 January 2012, and the team remained incomplete in mid-March. [97]

On 6 October 2011, the Head of the EULEX mission, Xavier Bout De Marnhac signed an agreement on police cooperation with the Albanian Minister of Interior Bujar Nishani, and in January 2012 Albanian Prime Minister Berisha agreed on the need to sign an agreement on cooperation between Albania and EULEX, "in order to create a clear legal framework that would help EULEX fulfil its mandate for the investigation".[98] No further developments had been made public by March 2012.

The failure in 2003 of the international community, including the Tribunal and UNMIK, to investigate these allegations is discussed further below (pp.56-7).

8.4 ENSURE THE INVESTIGATION AND PROSECUTION OF WAR CRIMES OF RAPE AND OTHER FORMS OF SEXUAL VIOLENCE

EULEX must ensure that crimes of sexual violence committed during the conflict are properly investigated and prosecuted, with adequate provisions for the support and protection of witnesses before, during and after proceedings.

In 2008, Amnesty International recommended to EULEX that, "The relevant police and judicial authorities, in close consultation with all sectors of civil society, especially women's human rights groups, should develop a long-term action plan to end impunity in Kosovo for all crimes under international law, including rape and other crimes of sexual violence".[99]

These recommendations still stand. The organization welcomes reports from the Kosova Women's Network (KWN), that EULEX in 2011 began to "meet with women's organizations to discuss the process and potential collaboration", and from the international NGO, Kvinna t Kvinna, that EULEX had five such cases.[100] Amnesty International was informed in October 2011 that two cases of rape were under investigation by the EULEX WCIU. However, in view of the scale of reported rapes, and almost complete impunity, Amnesty International urges EULEX without delay to fully implement the measures recommended in 2008 to ensure that these crimes are prosecuted.

RAPE AND OTHER FORMS OF SEXUAL VIOLENCE

There is no accurate estimate of the number of women and girls who were raped or suffered other forms of sexual violence during the Kosovo war. Some estimates number in the thousands, whilst hundreds of credible accounts of rape and other crimes of sexual violence were documented by local and international NGOs, including Amnesty International.[101]

Many were reported to the authorities, yet UNMIK made little progress in investigations, and no prosecutions were opened. In April 2006, the head of the UNMIK Victims Advocacy and Assistance Unit confirmed that although there was a large file of statements taken by NATO forces in 1999 documenting rapes committed during the war, there had been no prosecutions involving charges of sexual violence. However, there were no immediate investigations. According to the UNMIK official, when UNMIK police officers had – after two years' delay - attempted to interview women who had given statements, the women repudiated the statement or said they were unwilling to testify. She blamed this on the social pressure on women in Kosovo and the shame associated with rape. She did not explain why

UNMIK had failed to investigate any of these reports for two years. The failure to do so appears to be the result of the absence of any qualified expert on crimes of sexual violence among the UNMIK police and international prosecutors.[102]

In the vast majority of reported cases, Kosova Albanian women were raped or otherwise sexually assaulted by Serbian paramilitary, police or military forces. According to Human Rights Watch,[103] during the period of non-international armed conflict before March 1999, the Kosovar NGO, the Centre for the Protection of Women and Children had documented 36 incidents of rape of Kosovo Albanian women by Serbian police and Yugoslav Army soldiers. The Humanitarian Law Centre also received reports of two rapes in Decani/Dečan committed by Serbian police. Human rights officers, deployed by the Organization for Security and Cooperation in Europe (OSCE) in Kosovo from November 1998 to March 1999, also reported 23 rapes allegedly committed by Serbian forces prior to March 1999. In December 1998, HRW documented a further six cases.

HRW also reported 96 alleged incidents of rape which took place after March 1999, during the period of international armed conflict. Numerous other incidents were reported and documented by international and local NGOs during this period. According to HRW, the majority of these crimes were allegedly conducted by Serbian paramilitaries and by more than one individual.[104]

However, the KLA also committed crimes of sexual violence, including after the end of the international armed conflict in June 1999. In interviews conducted between 2000 and 2007, Amnesty International received reports of the post-war rape by members of the KLA of Romani women in two separate incidents in Pristina and in Gjakove/Đakova; the organization was also informed of the alleged rape of Serbian women in Gnjilane/Gjilan. Prosecutions have subsequently taken place in relation to these allegations in the Gjakove/Đakova (Limaj) and Gnjilane/Gjilan (Ajdari et al) cases at the Special War Crimes Chamber in Belgrade. The two victims in the Pristina case remain elsewhere in the region; their application for refugee status on the basis of their alleged rape is currently being considered, including on the basis of continued impunity for the perpetrators.

PRESSURE FROM WOMEN'S NGOS

In June 2011, the Kosova Women's Network (comprising 68 women's NGOs) wrote to Prof. Dr. Zejnullah Gruda, Director of the Institute for War Crimes, founded in the same month, on the initiative of the Minister of Justice, to highlighting impunity for war crimes of sexual violence which took place in Kosovo in 1999.

The Kosova Women's Network (KWN) congratulates you for opening the Institute for War Crimes. We believe that the Institute can play a crucial role in bringing about justice by uncovering the truth about crimes committed during the war. At the same time, we would like to bring [to] your attention to the special circumstances and needs of women affected by war, particularly war [time] rape.

More than a decade after the war, the estimated more than 10,000 women and girls who suffered war rape have yet to see justice. Investigation and prosecution of war rape and other crimes committed against women remains low. Few charges of war-time rape and other crimes against women have been brought against perpetrators; it has rarely been included in indictments at the International Criminal Tribunal for the former Yugoslavia.

Neglecting instances of sexual violence in post-conflict areas negatively affects and slows the restoration of peace and feeling of security in the community. Further, United Nations Security Council Resolution (UNSCR) 1325 on Women, Peace and Security (2000) calls for the protection of women and girls from gender-based violence, particularly rape and other types of sexual abuse.

War-time violence has affected women's physical health and reproductive health. It also has had serious consequences for the mental health of people in Kosova. Research has suggested that approximately one-fourth (and some activists believe that as much as half) the population suffers from Post-Traumatic Stress Disorder (PTSD). Women and men whose family members disappeared during the war continue to suffer trauma. Women who have missing family members face additional challenges of accessing property and assets towards securing a living independently. Their losses during the war of both loved ones and property have yet to be compensated.

We would like to strongly encourage your public acknowledgement of war-time rape as a crime, and urge you to include these crimes in your investigation of crimes that took place in Kosova during the war. We would like to offer our full cooperation and assistance. As a network of 68 women's organizations throughout Kosova, we have access to women who have suffered crimes as well as trained experts who have a sensitive approach in working with women still dealing with trauma. We look forward to hopefully cooperating with you in the future".[105]

As of October 2011, KWN had not received a reply. However, following a demonstration entitled, "Forget Flowers: We want justice for women raped in the war", held in Pristina on 8 March 2012, KWN reported that they had received positive responses from the Kosovo authorities and EULEX.[106]

PROSECUTIONS FOR CRIMES OF SEXUAL VIOLENCE

Despite the many credible reports of rape and other forms of sexual violence, to date, only four prosecutions for such crimes under international law have been conducted and only one of them in the Kosovo courts.

At the Tribunal, the Trial Chamber found in *Milutinović et al* that there was "a broad campaign of violence directed against the Kosovo Albanian civilian population during the course of the NATO airstrikes, conducted by forces under the control of the FRY and Serbian authorities, during which there were incidents of killing, sexual assault….." including the rape of women in the municipalities of Decani/Dečan, Srbica, in Beleg village (Peć), Ćirez (Kline) and Pristina. The Trial Chamber classified sexual assault as a form of persecution, as a crime against humanity. [107] The Trial Chamber considered that two of the accused, former VJ General Pavković and Police General, and Assistant Minister of Internal Affairs, Sreten Lukić,, in occupying position of command responsibility, had reason to forsee, and therefore prevent, such sexual assaults.[108]

In the Kosovo courts, in September 2000, a Montenegrin, Miloš Jokić, was convicted at Gnjilane/Gjilan District Court of war crimes, including a crime of sexual violence, Proceedings had been brought by a local prosecutor. The conviction was reversed on appeal by an international panel of UNMIK judges at the Supreme Court on grounds that the District Court had failed to consider the evidence carefully and failed to call defence witnesses. The retrial, prosecuted by an international UNMIK prosecutor led to an acquittal on the ground that the eye-witness identification was not credible.[109]

In Serbia, former KLA member Anton Lekaj was sentenced by the Special War Crimes Chamber in Belgrade to 13 years' imprisonment for war crimes against the civilian population. Charges against him included the rape of a Romani girl on 12 June 1999, and on the night of 13-14 June 1999 crimes of sexual violence, including the rape, of a Romani man; both incidents followed the abduction of a group of Roma and took place at the Hotel Pashtrik in Gakove/Đakovica. [110]

Charges against members of the "Gjilane group" convicted, in the first instance trial, of war crimes against the civilian population in January 2011, included the repeated rape, inhumane treatment and violations of bodily integrity of Serbian women. The women had been unlawfully deprived of their liberty and held in a cellar with others between June and September 1999. Two of the women appeared as protected witnesses in proceedings.[111]

It is not too late to start addressing war crimes of sexual violence. According to local women's NGOs, some women are willing come forward to testify. The passage of time should not affect the ability to prosecute. There are challenges: physical evidence would have been lost quickly, whilst DNA samples cannot be promptly collected in a war. However, with good witness evidence, competent prosecutors should be able to do a good job, irrespective of the crime. Prosecutions for rape and other crimes of sexual violence have been conducted at the State Court of Bosnia and Herzegovina - not established until 2005, 10 years after the end of the armed conflict in BiH. By September 2010 the court had delivered final judgments in 18 cases related to war crimes of sexual violence and seven additional cases were pending at the trial stage or on appeal.[112]

Amnesty International welcome signs of progress in addressing war crimes of sexual violence, including discussions between EULEX police and women's NGOs. Further action needs to be promptly taken to ensure that impunity for such crimes is now addressed.

To this end, Amnesty International urges that designated investigators and prosecutors, with experience in cases of war crimes of sexual violence, are recruited. They should not only conduct investigations into existing cases, but – in consultation with women's organizations supporting victims – should conduct a mapping exercise to establish the scale of the violations which took place in 1998-9, and draw up a strategy for their investigation and prosecution. Local investigators and prosecutors should also be mentored and trained, to conduct investigations and prosecutions in the future. Women's organizations experienced in the provision of support for victims of war crimes should be consulted on, and involved in, the establishment of a unit to provide support for women who are prepared to testify in proceedings.

THE PROTECTION OF VICTIM-WITNESSES

Measures available to the courts in relation to witness protection are discussed in further detail below. However, particular measures need to be in place before women, or men, can be asked to testify in proceedings related to war crimes of sexual violence. Amnesty International notes that while the vast majority of survivors of sexual violence are women and girls, a number of cases (including the prosecution of Anton Lekaj, noted above) show that men have been targeted in this way. Both women and girls, and men and boys, need specific professional and competent services in terms of medical and psych-social services, and specific treatment by investigators and prosecutors.

Protection and support measures should also include in-court protection, out-of-court protection, and appropriate psycho-social support for victim-witnesses during proceedings. These should include video-link technology, separate court entrances and interview rooms for witnesses and accused persons, safe and discreet transportation to and from the court, psycho-social support in the lead up to, during and after the proceedings, and one-way glass to protect the identity of the witness from the public gallery in the court room.

All protection and support measures must be devised and implemented in full consultation with the witnesses themselves so that they are effective. Moreover, the legal framework and rules of courtroom procedure must make special provision for the protection of the rights of victims of sexual violence through adequate safeguards during witness examination and cross-examination, including the exclusion of previous sexual history evidence.

The 2011 Law on Witness Protection makes no explicit reference or provisions for measures to ensure the protection of witnesses in trials relating to war crimes of sexual violence. Nor are there any explicit provisions for witness support in war crimes trials. The only existing provisions are set out in Articles 168-174 of the PCCK, which include relating to protected witness status and anonymous witness procedures, and which allow for a prosecutor to request or a judge to order such protective measures as he or she considers necessary. Such measures are described more fully below in the section on witness protection. Specific provisions for the victims-witnesses of crimes of sexual violence are not made in the PCCK.

Local prosecutors told Amnesty International that such measures were rarely invoked, "*except by internationals [judges and prosecutors]*". One local SPRK prosecutor, who had conducted proceedings in a war crimes trial in which the Albanian victims were clearly re-traumatized by the court process, told the organization that there was no witness protection or support available in the court system for victims of war crimes.[113]

Amnesty International urges the Kosovo authorities to ensure that such measures are introduced into the Kosovo courts without delay. The organization also urges EULEX to recruit international judges or prosecutors with specific expertise in gender-based violence, so that proceedings may be conducted in accordance with the highest standards of international law, consistent with the jurisprudence of the Tribunal, and with respect for potential witnesses, including their protection from further re-traumatization.

8.5 REMOVE BARRIERS TO EXPEDITIOUS INVESTIGATIONS AND PROSECUTIONS

"In each case there is a monitoring prosecutor, and [thus] problems with translation. I prepare the indictment, and then I have to wait for a month for all the documents, witness statements etc to be translated. The [international prosecutor] reviews the indictment, initiate and assigns the case - we can sometimes have an oral conversation - and then they forward to the prosecutor – there is often a delay, we need a shorter process", Amnesty International interview with local SPRK prosecutor, October 2011.

Prosecutorial investigations and court proceedings – including the issuing of indictments, verdicts, decisions and other court documents – are repeatedly delayed by a lack of translators for documents required by both international and local prosecutors and judiciary.

All relevant documentation including, for example, witness statements or indictments prepared by local prosecutors have to be translated from Albanian and/or Serbian into English

and vice versa. Investigations and court proceedings continue to be delayed by the time taken in translation. Such delays may result in violations of defendants' rights to trial within a reasonable time, or prevent them appealing within the time designated by law.

According to local SPRK prosecutors interviewed by Amnesty International, the translation of an indictment from Albanian into English may take up to a month. The indictment may then, depending on its complexity, have to be translated back into Albanian. In some cases, the delay caused by the need for translation has resulted in the extension of pre-trial detention. According to Article 285 (1) of the CPCK, pre-trial detention on remand should only be extended for the reasons set out in Article 281 (fear of flight, interference with witnesses, or repetition of the offence), and when "the investigation has been initiated and that all reasonable steps are being taken to conduct the investigation speedily".

Translations also need to be more expeditious in the cause of transparency. On 14 November 2011 a complaint was submitted by the family of Agim Zogaj (see witness protection, below) to the EULEX Human Rights Review Panel, mandated to review alleged human rights violations by EULEX Kosovo in the conduct of its executive mandate. The complaint was still "under translation" and not publicly available on the Review Panel's website as of 26 March 2012.[114]

While EULEX has employed additional translators within the SPRK, increased the number of translators/interpreters in the courts to 25, and employed court recorders,[115] this is clearly insufficient. Concerns about the accuracy of translations during EULEX-led trials have been raised by the Balkan Investigative Report Network (BIRN), in their report on trial observations in 2010- 2011. The same organisation has also reported that no translation was available in a case where the prosecutor was Serbian.[116] Proceedings involving international judges and prosecutors must be properly, fully and simultaneously translated into all the official languages of Kosovo. All parties, including defence counsel, and the accused and the victims and their families should receive copies of all court documents, translated into the relevant language, in a timely manner. This is particularly important in relation to the concept of "equality of arms": in the absence of timely access to court documents, and of accurate interpretation during proceedings, the defence may be severely impeded.

9. EFFECTIVE INTERNATIONAL WITNESS PROTECTION

Amnesty International considers that the chronic failure to provide adequate protection for witnesses in proceedings in cases of crimes under international law is a fundamental barrier to the investigation and prosecution of those crimes. The organization urges that EULEX is provided with the necessary financial and other resources needed to develop an effective and comprehensive witness protection programme.

Such a programme should receive the full commitment of EU member states. The Kosovo authorities should, in tandem, commit to the full implementation of the 2011 Law on Witness Protection.

Despite the availability of procedures and measures, set out in domestic law, potential witnesses continue to be reluctant to come forward. The failure to guarantee adequate witness protection and effectively investigate threats against witnesses in war crimes cases severely reduces the number of potential witnesses prepared to give evidence and so prevents prosecutions coming before the courts. Witnesses in key cases have been killed, threatened - or their families threatened, bribed, and otherwise persuaded not to testify. Others, fearing retribution, are not willing to come forward. The situation is exacerbated by a climate of impunity encouraged by members of the Kosovo government.

The urgent need for an effective witness protection programme – including witness relocation - has been repeatedly highlighted by Amnesty International, Human Rights Watch, the OSCE Mission in Kosovo, the Council of Europe, the UN Human Rights Committee, the International Criminal Tribunal for the former Yugoslavia and the Humanitarian Law Centre-Kosovo, and reiterated by the European Commission in their annual progress reports.[117]

Without adequate measures, including the cooperation and financial support of EU member states, to ensure continued protection of key witnesses – before, during and after trial – no progress can be made. As one EULEX official told Amnesty International, "Without the support of the member states for witness protection, we might as well pack our bags". [118]

The OSCE Mission in Kosovo, in their periodic reports, based on monitoring war crimes trials for over a decade, has repeatedly emphasized the impact of the absence of an effective witness protection system, "This issue has undermined prosecution of war crimes cases perhaps more than any other single issue. This topic has been addressed at length in other reports…. However, the gravity of the problem and the great challenges faced in solving it cannot be overstated".[119]

THE CHALLENGE

Potential witnesses remain unwilling come forward to cooperate, either out of admiration or loyalty to the suspect, or because they fear that they would not be adequately protected. The authorities – both international and local - are reluctant or unable to fund adequate protection, and since 2000 there has been reluctance by UN and EU member states to

provide long term protection, including after proceedings. Finally, and in the context of the suicide of witness Agim Zogaj, questions must be asked about the quality of witness protection.

Over the past decade, witnesses have been killed. UNMIK – with an under-funded and understaffed Witness Protection Unit - was unable to provide sufficient protection to prevent these deaths. Further, in scant few cases have those responsible for the deaths of witnesses been brought to justice.

In December 2010, the Supreme Court of Kosovo, in a third instance ruling, presided over by an EULEX judge, overturned a previous Supreme Court decision of July 2009. The court re-classified the original charges of an armed attack and conspiracy, as murder and attempted murder. Osman Zyberaj and Shykeri Shala had in October 2005 ambushed Hasan Rrustemi and Nazim Rrustemi who were due to testify in a war crimes trial at Prizren district court; both were seriously injured; Hasan Rrustemi later died of his injuries. [120]

FEAR OR LOYALTY?

"*With particular reference to war crimes, perpetrators are in a powerful position, regarded as war heroes and freedom fighters by Kosovo society*", EULEX judge, speaking to Amnesty International, October 2011.

The gravity of the need for witness protection is underlined by the fact that even the Tribunal, with all its resources, has been unable to protect witnesses in high profile cases. The partial retrial for war crimes of Ramush Haradinaj, a former commander of the KLA, and later Prime Minister of Kosovo, along with Idriz Balaj and Lahi Brahimaj, opened in August 2011. Thirty-four witnesses in the initial trial in 2007 were granted protection measures and 18 had to be issued with summonses to attend. The retrial had been ordered by the Tribunal Appeals Chamber because of the threat that witness intimidation had posed to the first trial's integrity.

Once again, a key prosecution witness refused to testify. On the second day of the trial, former KLA member and witness Shefqet Kabashi, a US citizen, repeatedly refused to answer questions. [121] He had been arrested a few days previously, on an international arrest warrant for contempt of the Tribunal in 2007. He was charged that he had, "knowingly and wilfully interfered with the Tribunal's administration of justice by contumaciously refusing or failing to answer questions as a witness in the case of Ramush Haradinaj and others on two occasions in June and November 2007". He had at that time stated that he had refused on the basis that the court could not provide adequate witness protection. On 26 August Shefqet Kabashi pleaded guilty to contempt and was convicted and sentenced to two month's imprisonment on 16 September 2011.[122]

The Serbian National Council for Cooperation with the Tribunal commented: "Already at the opening of the re-trial it seems that the pressure on witnesses has not diminished at all, but has rather increased. This is the last moment for the Tribunal to secure witnesses in the Haradinaj case, to secure adequate and efficient protection and enable them to give their statements without fear".[123]

On 10 October 2005, in a war crimes trial held before an international panel of judges in Gnjilane/Gjilan, a key prosecution witness was murdered and an anonymous witness seriously injured in the market in Zerze/Xërxë

near Prizren. According to the OSCE, unknown individuals subsequently disinterred the body of the former witness and set it alight, and distributed leaflets claiming responsibility for the murder, stating that they "[would] not cease executing all collaborators". A local newspaper then included the surviving witness' name in its report on the incident. OSCE reported that according to investigators in the case, "The reluctance of the local population to co-operate (fear of revenge and admiration of the two main suspects) is a primary problem in the case. Even if willing to testify or co-operate, the public does not have confidence that the authorities could effectively protect them from revenge by the suspects".[124]

Fear is not the only factor which motivates potential witnesses in their refusal to testify. Loyalty to the KLA is another strong factor. For example, many Kosovo Albanians considered the Mayor of Suva Reka/Suhareke, a former member of the KLA, to be a hero for his refusal to testify in a pre-trial hearing in the Klečka/Kleçkë (Limaj) case. He was subsequently imprisonment for two months for contempt of court. [125]

EULEX WITNESS PROTECTION PROGRAMME

"*EULEX has its own Witness Security Programme which is in operation in Kosovo and beyond. It is staffed by officers who have considerable experience in this highly sensitive and important area. I cannot go into names or details or numbers, because that is the whole point of it -- it must remain secret for the safety and security of those individuals and their families who pass through the programme. But I can tell you that the programme has been repeatedly tested and many people have used, and are using it. EULEX develop[ed] this Programme in order to help Kosovo deal with some of its most difficult and challenging court cases. …*", Head of EULEX mission, Xavier de Marnac, following allegations related to Agim Zogaj (see below). [126]

Concerns about EULEX's Witness Security Unit/Protection Programme , its professionalism, capacity and effectiveness have been repeatedly raised, including by EULEX officials, (although none have been prepared to go on record), and some permanent representatives of EU member states interviewed by Amnesty International in January 2012 in Brussels.

In January 2011, in a report to the PACE, Rapportuer Jean-Charles Gardetto expressed concern at the "chronic lack of staff" in the EULEX Programme, which meant that, "a number of cases cannot be currently investigated because the EULEX WPU [Witness Protection Unit] would not have the means to protect the witnesses. The Rapporteur believes that this is a serious obstacle in the administration of justice that could be remedied by allocating more manpower to the WPU".[127] An internal briefing dated June/July 2011, seen by Amnesty International, notes that, in connection with investigations into the Marty report (above) "the main challenge remains to enhance the witness protection unit inside EULEX which called for the strengthening of EULEX's provisions for witness protection" and to find locations outside Kosovo where witnesses could be effectively protected.

Another reason for the failure of witness protection programmes is the financial cost. An example is the trial of Sabit Geçi and Riza Alija, charged with the torture and abuse of Albanian civilian detainees in Kukës in Albania, which opened in March 2011. Some 20 witnesses who testified in proceedings were placed in the witness protection programme.[128] For obvious reasons, Amnesty International is not party to the measures applied to these witnesses, however, based on interviews with members of the UNMIK Witness Protection Unit, many witnesses were relocated to a safe house or houses within Kosovo, often with all

of their family members, during proceedings. The costs of such protection were such that the Head of the WPU was constantly raising funds for further witness protection.

However, as the PACE recently reported, "Relocating witnesses safely inside Kosovo is nearly impossible due to its size. The only real protection measure for endangered witnesses (and their relatives) is relocation outside Kosovo. However, several factors (for example, the traditionally large size of Kosovo families, their lack of knowledge of English, the non-recognition of Kosovo's independence by a number of states, etc.) have as a consequence that not many countries accept relocation candidates from Kosovo. Similarly, the rapporteur was told that some governments are reluctant to accept witnesses from Kosovo due to wider issues concerning their migration and political asylum policies".[129] According to the UNMIK WPU, relocation costs (prior to 2008) could amount to up to €400,000 per annum for each witness and their family.

In November 2001, the UK Minister for Europe, in a report to the UK parliament, stated, "I have supported increases in individual budget lines where these are reasonable, justifiable and integral to enabling the Mission to deliver. In some areas some additional staff would help EULEX better meet UK objectives. The witness support [protection] unit and justice component suffer from a shortage of suitable seconded candidates. This hampers EULEX's ability to proceed with investigations and prosecutions and could impact on its investigations into allegations in Senator Dick Marty's Council of Europe report …"[130]

Without the cooperation of EU member states in funding the programme, and in providing protection on their territories for witnesses in need of long-term protection, short-term measures taken to protect key witnesses will fail. This is a long term commitment – as a Brussels official told Amnesty International in July 2011, "This may need to continue longer than the EULEX mission itself".[131]

EU member states also need to be aware that the protection of witnesses will not be resolved solely through funding witness protection. The EU has to make it clear to the Kosovo government that without a clear demonstration of their political support for such the prosecution of crimes under international law, the lives of witnesses will continue to be at risk.

AGIM ZOGAJ

The death in Germany of Agim Zogaj, allegedly a protected witness in proceedings in Kosovo against Fatmir Limaj, a former KLA commander and Minister of Transport and Telecommunications, has raised as yet unanswered questions about the EULEX witness protection programme.

In September 2011, the body of ethnic Albanian Agim Zogaj was found in a park in Duisberg, Germany. Agim Zogaj had been a prison guard at the Klečka/Kleçkë camp in 1999, and had been expected to be a key witness in the case of Fatmir Limaj et al (Klečka/Kleçkë), apparently on the basis of detailed diaries which he had kept during the period. On this basis, he had provided evidence to EULEX prosecutors. A police investigation established that he had committed suicide. He left behind a letter in which he accused EULEX of psychological torture during the time he had provided evidence. Amnesty International cannot confirm or refute these allegations. For several months EULEX declined to confirm whether or not Agim Zogaj was a protected witness.

It may be assumed that Agim Zogaj committed suicide because he feared for his safety: he had allegedly received repeated threats and attempt had been made on his life. In addition, if the allegations in his letter are true, he was under extreme stress. But his death has also raised further questions about the witness protection programme.

On 14 November 2011 the family of Agim Zogaj lodged a complaint against EULEX, through the Human Rights Review Panel, alleging that EULEX had failed to protect their son, a witness.[132] Following the suicide of Agim Zogaj, the OWCP in Belgrade reported receiving a telephone call from a potential witness, who had decided to withdraw his testimony following Agim Zogaj's death.

On 1 February 2012, in proceedings in the Klečka/Kleçkë case, the defence demanded that the international prosecutor in the case be suspended, as they wished to question him in relation to Agim Zogaj's allegations that he had testified under pressure. The prosecutor claimed immunity.[133]

The trial of former Minister of Transport and ex-KLA leader Fatmir Limaj and nine others opened in November 2011. They were charged with war crimes, including ordering the torture and killing of at least eight prisoners, at Klečka/Kleçkë prison camp in Drenica/Drenicë in 1999. An arrest warrant issued in March against Fatmir Limaj, a parliamentary deputy, had not been enforced until the Constitutional Court ruled in September that deputies did not enjoy parliamentary immunity for actions outside their official responsibilities. Fatmir Limaj and nine other defendants were released from detention by a mixed panel of judges of 21 March 2012, after Agim Zogaj's diaries were ruled inadmissible.[134]

Amnesty International notes that in contrast, measures to ensure that Kosovo Albanian witnesses may travel to and testify in war crimes trials in Serbia have improved since 2004, when proceedings against Serbian suspects started at the War Crimes Court. Measures are also in place for witnesses reluctant to travel to Serbia to testify by video-link. According to the Head of the WCIU, "Witnesses who have gone to Belgrade have been pleased and happy with the way that they have been treated; it is important for them to see the suspects."

Conversely, Kosovo Serbs remain too frightened to return to Kosovo and are denied access to justice. The Pristina District Court Prosecutor told Amnesty International in October 2011: "In [civil] cases in which properties were damaged [during the war or in the 2004 inter-ethnic violence], most are now in Serbia. We have tried to invite them back to examine them as a witness or injured party, but they have not come because they are frightened, even though they may claim compensation. This is also a problem in the abduction cases, where the evidence was not properly taken".

WITNESS PROTECTION UNDER KOSOVO LAW

In July 2011 the Kosovo Assembly passed a Law on Witness Protection, which established procedures for the protection of witnesses. This law empowers a Witness Protection Committee (comprising the Chief State Prosecutor, head investigator in the KP, and the director of the Witness Protection Directorate within the Kosovo Police) to decide on "the inclusion, stay and termination of the Witness Protection" – that is, who is accepted into the programme, the duration of the protection and when the period of witness protection ends. This applies to all witnesses except where a witness had requested, and been included in, EULEX's programme. This transitional measure, remains in force whilst the EULEX programme remains in operation.

As the law has only recently entered into force, it is too soon to evaluate how effective it will be. Measures set out in Article 2 of the law include, amongst other things: physical protection; temporary relocation to a secure place; change of the place of residence, work or study; change of identity or appearance, including plastic surgery; financial support for the protected person; social, legal and other necessary assistance for the protected person; and special procedures for access to documentation.

Provision is also made for a "special regime for the protected person in custody, in correctional institutions". In an interview with the Deputy Minister of Justice, in addition to the need for protection outside Kosovo, he identified this as the primary mode of witness protection, stating "The law demands a huge budget for the security of high risk witnesses. It needs special institutions for international protection and for protection in correctional institutions. We need to enhance this within the Department of Correctional and Probation Services. We need to ensure the physical infrastructure in high security prisons".

Amnesty International is deeply concerned by this extraordinary proposal - that witnesses should be deprived of their liberty in correctional institutions as an alternative to providing them with proper protection.

Until the introduction of the 2011 Law on Witness Protection, measures for the protection of witnesses during proceedings, were established under the Provisional Criminal Code and derived from previous UNMIK regulations. These included Articles 168-174 relating to protected witness status and anonymous witness procedures, and Articles 298-303, on cooperative witness status. They included provisions that, if applied, would ensure effective in-court protection – at least for the trial period – in almost any other jurisdiction.

Article 169 (1) of the Criminal Procedure Code provides that Protective Orders may be applied for by "the public prosecutor, private prosecutor, subsidiary prosecutor, defendant, defence counsel, injured party or witness [who] may file a written petition with a judge for a protective measure or an order for anonymity if there is a serious risk to an injured party, witness or his or her family member". Under Article 170 "The judge may order such protective measures as he or she considers necessary, including but not limited to:

"1) Omitting or expunging names, addresses, place of work, profession or any other data or information that could be used to identify the injured party or witness; 2) Non-disclosure of any records identifying the injured party or witness; 3) Efforts to conceal the features or physical description of the injured party or witness giving testimony, including testifying behind an opaque shield or through image or voice-altering devices, contemporaneous examination in another place communicated to the courtroom by means of closed-circuit television, or videotaped examination prior to the court hearing with the defence counsel present; 4) Assignment of a pseudonym; 5) Closed sessions to the public, in accordance with Article 336 of the present Code: 6) Orders to the defence counsel not to disclose the identity of the injured party or witness or not to disclose any materials or information that may lead to disclosure of identity; 7) Temporary removal of the defendant from the courtroom if a witness refuses to give testimony in the presence of the defendant or if circumstances indicate to the court that the witness will not speak the truth in the presence of the defendant; or 8) Any combination of the above methods to prevent disclosure of the identity of the injured party or witness".

However, in a 2011 report to the Parliamentary Assembly of the Council of Europe, Jean-Charles Gardetto, Rapporteur for the Committee on Legal Affairs and Human Rights highlighted the ineffectiveness of these provisions: "[i]t was made clear to the rapporteur that these measures are useless as long as the witness is physically in Kosovo, where everybody knows everybody else. Most witnesses are immediately recognised by the defence when they deliver their testimony, despite all the anonymity measures".[135]

RECOMMENDATIONS BY THE COUNCIL OF EUROPE

In January 2011, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution of witness protection in the Balkans, based on the report by Jean-Charles Gardetto, Rapporteur for the Committee on Legal Affairs and Human Rights.[136]

In addition to recommendations made to all countries in the region (see for example, s.16.1-16.10), the PACE also called on the authorities in Kosovo to: [16.6.1] "seriously tackle problems encountered by witnesses, given the acute difficulties they are faced with, which have resulted in several of them being killed; and to [16.6.2] "enact legislation that provides for the protection of witnesses that testify in war crimes and other serious crime cases, during the investigation proceedings, the judgment and after the trial, including the creation and functioning of witness protection and support units, and implement it fully".

The PACE further called on "[16.7]: the European Union to continue to make effective witness protection an essential criterion for the setting up of a partnership with the countries concerned, as well as to provide more manpower to EULEX's Witness Protection Unit.

The PACE also called on all of its member states to: [16.8.1] accept and organise the relocation of endangered witnesses on their territories, especially those from Kosovo; [16.8.2] consider financing witness protection plans and adequate training for staff in charge of carrying out this task, and consider the possibility of bearing part of the living costs of witnesses relocated in their country; and [16.9] on "the international community to continue to provide funding, expertise and training in witness protection and witness support in the region".

As an SPRK prosecutor told Amnesty International: "*This is a small community and it is not so difficult to know each other. I don't have high hopes of the new law on witness protection – the budget pressures are* [too] *low to secure witnesses, even if they are guarded for six months. The provisions* [in the CPCK] *on anonymity - not holding the trial in public or concealing the defendant - have been more efficient*".

WITNESS SUPPORT

Of equal importance to the conduct of war crimes proceedings is the need for the implementation of measures for the support of victims and witnesses. Despite the establishment under UNMIK of the Victims and Witness Support Unit, and the presence of a Victims Protection Division, which provides assistance to the victims of violence and victims of crime within the Ministry of Justice, the PACE reported in 2011, that "witness support barely exists".[137] Indeed, as already noted above, this was confirmed by an SPRK prosecutor.[138]

Syleman Sopa, Director of Department for Access to Justice at the Ministry of Justice, told a June 2011 conference that, "The Victims Protection Division was initially established in

accordance with UNMIK regulation 1999/24.Despite the established legal framework, there have been difficulties in putting in place the required procedures to protect victims."[139]

Measures to support victim-witnesses of crimes of sexual violence have already been elaborated; such measures, including psycho-social support, could also be adopted to ensure the support of witnesses in all war crimes cases, to ensure that they are not re-traumatized by the proceedings.

10. A SUSTAINABLE PROSECUTORIAL AND JUDICIAL SYSTEM

"*The CSDP mission will assist the Kosovo authorities, judicial authorities and law enforcement agencies in their progress towards sustainability and accountability. It will further develop and strengthen an independent and multi-ethnic justice system and a multi-ethnic police and customs service, ensuring that these institutions are free from political interference and adhering to internationally recognised standards and European best practices*", EULEX Mission Statement.[140]

Amnesty International considers that measures must taken by EULEX in 2012-2014 to develop the capacity and independence of both prosecutors and judges, to ensure that in the future, Kosovo will be able to prosecute crimes under international law and other grave human rights violations.

Amnesty International therefore recommends that EULEX, in conjunction with other providers, develops a programme to build the capacity of local prosecutors within the SPRK, who have the potential, capacity and willingness to investigate and prosecute such crimes. Such a programme should include:

- An intensive programme of training for selected prosecutors and judges (including newly arrived EULEX staff) in international humanitarian, human rights and criminal law, and in the jurisprudence of the International Criminal Tribunal for the former Yugoslavia, developed in conjunction with the Kosovo Prosecutorial Council (KPC) and Kosovo Judicial council (KJC);

- Within the framework of EULEX's Monitoring, Mentoring and Advising (MMA) programme, a programme for the gradual transfer from the current practice of monitoring and supervision of the work of SPRK prosecutors by EULEX prosecutors, to their mentoring and advising SPRK Prosecutors, as is currently the case in District Prosecutors' Offices. This programme should be jointly managed by the Head of the SPRK and the local deputy, in conjunction with the Chief Prosecutor of Kosovo;

- Further measures to ensure the independence and impartiality of local prosecutors and judges;

- Implementation of measures for the protection of Kosovo prosecutors, judges and their families in war crimes cases.

Without a truly independent, impartial – and multi-ethnic –body of local prosecutors and judges it is likely that the legacy of war crimes cases which will inevitably be left by EULEX, will neither be promptly nor independently investigated.

DEVELOPING A CONFIDENT AND COMPETENT BODY OF PROSECUTORS AND JUDGES

Amnesty International's interviews with both international and local prosecutors and judges in Kosovo indicate strongly that EULEX should retain a role within Kosovo's justice system beyond 2014, particularly in relation to crimes under international law. However, Amnesty International – along with many local prosecutors and judges – recognises the necessity for EULEX to adopt an exit strategy.

To this end Amnesty International advocates that EULEX should be mandated to support the ongoing development of a competent, confident, impartial, independent and effective body of local prosecutors and judges with the capacity to prosecute and adjudicate on war crimes cases, to work alongside EULEX as long as they remain in Kosovo.

FROM MONITORING TO MENTORING AND ADVISING

Amnesty International recommends that a gradual transition from the current model of monitoring local SPRK prosecutors to mentoring and advising them, should be adopted in the next mandate period.

This provision fits neatly within the current Monitoring, Mentoring and Advice (MMA) framework, although it is clear that additional international experts, prosecutors and judges, with expertise in international criminal law and complex war crimes cases, will be needed to provide such mentoring and advice, leaving experienced international prosecutors with executive powers to continue their prosecutorial function .

"*As a prosecutor in district prosecutor's office and here in the SPRK I have had very different experiences. In the District Court EULEX did not have an executive role, so it worked quite well. We had regular MMA meetings. On very sensitive cases, we had mixed teams– it worked very well. In the SPRK the international prosecutors have executive powers. The international prosecutors all have different experiences in different states, and it takes a long time for them to get adjusted to the system here. They should ask the locals and get to know us better. A Finnish prosecutor told me, when he was leaving at the end of his contract, "I was not able to give you a lot of advice. I got more from you than I could give to you.*"[141]

"At the moment it is always EULEX and local judges on a joint panel – we need to train local judges to be competent", Ismet Kabashi, Chief State Prosecutor, October 2011.

" [e]fforts will be evaluated by the degree to which local prosecutors are able or willing to assume controversial and significant cases in the absence of international assistance". [142]

The Law on the SPRK enables local prosecutors within the SPRK to conduct prosecutions for war crimes. Yet, to date, only two local prosecutors within the SPRK have undertaken such prosecutions: "*There has been a general improvement in the SPRK: there are now 10 local prosecutors, and they have the competency and the courage to take on sensitive cases. Seven of them are ready to take on war crimes cases. In relation to war crimes cases we need more training, especially in relation to international law. EULEX is temporary and […] over time the local prosecutors need to adjust and take these cases*", Amnesty International interview with Deputy Head of SPRK, October 2011.

This was confirmed in interviews with local SPRK prosecutors, some of whom were not only

willing, but enthusiastic to engage in such prosecutions.

If they are to become more extensively involved in prosecutions of crimes under international law, local prosecutors and judges will additionally need training in the use of protection measures set out in the CPCK. EULEX identified in their 2010 report on the judicial system that local judges and prosecutors largely ignored provisions in the CPCK, but notes that judges were often not in a position to invoke such measures, "as they have the same problems of personal security". Judges in particular refrained from invoking such provisions, even where they had the practical knowledge for implementation of the law, but continued to ask EULEX to advise them". This was confirmed by an EULEX judge, who told Amnesty International and that the judiciary see the initiative to invoke Witness Protection as the role of prosecutors. [143]

ENSURING THE INDEPENDENCE OF JUDGES AND PROSECUTORS

The judicial system in Kosovo remains weak, concerns about the independence of prosecutors and the judiciary remain, and political interference still needs to be addressed. However, some measures have already been taken to strengthen local prosecutorial and judicial bodies. These must be built upon over the next mandate period.

Kosovo's judges and prosecutors continue be subject to both interference from the executive, and receive threats from within Kosovo society, which prevent them from exercising their responsibilities with independence and impartiality. Amnesty International notes, for example, in the "Llapi group" case, (in which the then Prime Minister publicly stated that he expected the defendants to be acquitted), the Kosovo Albanian judge on the mixed panel stated publicly that he had been threatened and intimidated, and announced his dissenting opinion on the mixed panel's decision to convict the former KLA members. The judge was later disciplined.[144]

The Kosovo Institute for Policy Research and Development (KIPRED) has reported that there is almost no need for active interference in the judicial system, citing judges, "who give up and withdraw without being directly interfered with at all". EULEX has described this as the "pre-emptive abstention of local judges and prosecutors to deal with sensitive cases".[145] KIPRED note the reluctance of judges to adjudicate in a case concerning the alleged defamation of a Kosovo Assembly deputy by the Prime Minister, Hashim Thaçi, requesting that EULEX take over the case; conversely, local judiciary were reportedly more than eager to adjudicate in a case where the prime minister was the alleged victim of a burglary. [146]

Indeed, as the OSCE stated in their January 2012 report, "[The Kosovo judiciary's] readiness to participate or even take the lead in adjudicating cases of corruption or organized crime is often paralysed by threats against themselves or their families".[147] This OSCE report comprehensively analyses the threats to the independence of the judiciary, again highlighting that both judges and prosecutors are reluctant to participate in political cases: they cite, for example, the reluctance of Pristina District Court prosecutors to engage in a case in which former KLA members were alleged to have thrown Molotov cocktails at the government building.[148] An EULEX judge also confirmed the lack of independent thinking by members of the local judiciary, who were used to agreeing with the perceived consensus, rather than forming their own independent opinions.

Any measures to increase the participation of local judges and prosecutors in war crimes proceedings must ensure their protection from political influence. At a conference in June 2011, a local SPRK prosecutor criticized statements by politicians that war crimes were not a priority and that cases against Kosovo Albanians should not be prosecuted "at this time". He asserted that the Prosecution Council was not bound by politics but by the law.[149]

"*Political interference is a Balkans problem: politicians cannot agree that the judiciary should be independent. The rest is political …you can see interference*", Amnesty International interview with the Head of the KJC, Enver Peci, October 2011.

In 2010, the Kosovo Assembly adopted four laws, the Law on Courts, Law no. 03/L-199; the Law on State Prosecutor, Law no. 03/L-225; the Law on Kosovo Judicial Council, Law no. 03/L-223; and the Law on Kosovo Prosecutorial Council, Law no. 03/L-224, all of which are to be fully implemented by 2013.

Each of these legal instruments includes measures to increase independence. Measures to increase salaries to an equitable level with the executive and to extend both prosecutorial and judicial mandates to a life-term were implemented in 2011. Responsibility for the management of the prosecution offices was also transferred from the Ministry of Justice to the newly formed KPC. Other measures include vetting and evaluation procedures, and the elections of members of the Kosovo Judicial Council and the Kosovo Prosecutorial Council.

Concerns about political interference in the election process were immediately raised in November 2010, when the Independent Judicial and Prosecutorial Commission (IJPC) announced the completion of the process of vetting and reappointing applicants to permanent positions in courts and prosecutorial offices. When the "recommended list" was sent to the Assembly for approval, four names were not confirmed. According to the "Justice in Kosovo" newsletter, at least one of the candidates was removed from the list because of his father's ties to the Democratic League of Kosovo (LDK), former President Rugova's party.[150]

"The selection of KJC members had to go through the assembly [to confirm] appointments. There were reports of political interference; there were some names which the president did not appoint and he did not offer an explanation. According to the constitution, the KJC should propose and he [the President] should not vet; that is the duty of the KJC", Amnesty International interview with Enver Peci, October 2011.

According to the OSCE,"…it is the heavy hand of the executive branch in rejecting thoroughly-vetted candidates for no known reason that casts a pall on judicial independence". [151]

Members of the local judiciary also highlighted concerns, reflected by KIPRED, about the potential for political interference from the Consultative Council for Justice, established in April 2011, and composed of five members of the judiciary and 13 representatives of other institutions, the latter nominated by the government. All matters relating to legal projects and their funding will have to be referred to the Council. Enver Peci, Head of the KJC told Amnesty International that he found this unacceptable, "We should take their opinion, and then make our own decision". Many local judges and prosecutors see an independent budget as a priority.

PROTECTION OF PROSECUTORS AND JUDICIARY

"*There is no attempt to regulate* [the protection of the judiciary] *by the government or any*

others. [They are] trying to make an ad hoc solution: you have to present the risk to the KP who have an obligation to provide protection. Two SPRK prosecutors are protected. If we go to war crimes and organised crime then we should find a solution. We will need a plan and an analysis to protect us and our families", Amnesty International interview with Enver Peci, Chair of the Kosovo Judicial Council, October 2011.

In February 2012, launching OSCE's report on the independence of the judiciary, Werner Almhofer, head of the OSCE Mission in Kosovo stated, "Improvements are needed especially in ensuring safe working environment for judges and prosecutors, free from improper and undue [executive] interference, notably in politically sensitive and high-profile cases".

Following publication of OSCE's report, the acting head of the Prizren district prosecutor's office, Style Hoxha reportedly stated, "It is obvious judges and prosecutors in Kosovo are not properly protected. They can be threatened at any moment. We are still not free to independently exercise our duties", According to the media, he had employed personal bodyguards at work and at home for several months. [152]

Until the current climate of impunity is eradicated, all prosecutors and judiciary will require protection – whether international or Kosovo Albanian or Kosovo Serb. But the risk is greater for locals: as Enver Peci and others have pointed out, their families are also at risk. And if Kosovo is ever able to build a truly multi-ethnic justice system, the need for protection may be even the greater.

11. THE FINAL CHALLENGE: INTERFERENCE BY THE EXECUTIVE

"The Parliamentary Assembly [of the Council of Europe] strongly reaffirms the need for an absolutely uncompromising fight against impunity for the perpetrators of serious human rights violations, and wishes to point out that the fact that these were committed in the context of a violent conflict could never justify a decision to refrain from prosecuting anyone who has committed such acts (see Resolution 1675 (2009)).

There cannot and must not be one justice for the winners and another for the losers. Whenever a conflict has occurred, all criminals must be prosecuted and held responsible for their illegal acts, whichever side they belonged to and irrespective of the political role they took on", The Marty Report.[153]

Amnesty International is concerned that interference in the justice system by the Kosovo authorities, by UNMIK and by other international actors in Kosovo has had a long-term impact on measures to combat impunity for crimes under international humanitarian law.

The continued influence and political authority of former leading members of the KLA, has fostered a climate of impunity. Members of the government regularly make statements which undermine EULEX's prosecutions of crimes against international law.

Following the release of Fatmir Limaj and other defendants from detention in March 2012, Deputy Prime Minister and Minister of Justice Hajredin Kuçi asserted Fatmir Limaj's innocence – a statement which accords with the presumption that any suspect is innocent until proven guilty or otherwise. However, Amnesty International is deeply concerned that he went on to state, "*I will say again that this was a war for the liberation and in line with international norms.*" Elsewhere, he was reported as stating: "*What I want to say is that we never had any doubts that the KLA war was a just war and in accordance with international norms and standards, and I also believe that the pronouncement of innocence in both Limaj and Haradinaj cases, as well as all other cases related to the war will be welcomed by the Kosovo Government. We are convinced that our people, [the] people of Kosovo, responded to the call of justice and I said to the prosecutors, and I repeat this now for everyone, the purpose of prosecutors is not to win the case but for justice to prevail.*"[154]

Similarly on 17 March 2011, Radio Television Kosovo, reported: "*The Kosovo government issued a statement expressing concern over EULEX raising war crimes charges against some former KLA soldiers. In the statement, the Kosovo government assessed that any attempt to taint the KLA soldiers will fail. The Kosovo government is convinced that these accusations will be proven unsubstantiated and slanderous, because the KLA war was there to protect the country and its people. The government appeals to the citizens for restraint and to believe in the innocence of the accused and in the justice system*". Minister of the Kosovo Security Force Agim Ceku stated in an interview on the same day, "As a Kosovo citizen in the first place, and as a KLA member and a chief of staff, and just like any other Kosovo citizen, I am worried that charges against former KLA fighters are continuing, that attempts sponsored by Serbia to taint our sacred, clean and just war are continuing".[155]

The climate of impunity is also perpetuated by war-veteran's associations, who issued a statement on the same day: "*We are frustrated because of the arrests of KLA war veterans from Malisheva and Lipjan. EULEX's action is unsubstantiated and irresponsible and aimed at tainting the liberation war and provoking tension in Kosovo. The associations stemming from the KLA war do not agree with these anti-Albanian actions by EULEX and believe that this mission has disgraced itself in the eyes of the Kosovo citizens*".[156]

Any failure to prosecute human rights abuses is unacceptable. While the refusal of the former warring parties to see that the prosecution of "their own" is in compliance with international obligations, it is not unusual in the region, and all too frequent in Kosovo.

Amnesty International has documented in other reports how, up until 2009, interference by the executive in the conduct of crimes against international law has helped to create a climate of impunity for war crimes in Kosovo. [157]

In June 2011, in an interview with the Kosovo daily *Zeri*, the outgoing EULEX Chief Prosecutor Johannes Van Vreeswijk stated that he had come under pressure in April 2010, again in connection with the case of Fatmir Limaj. This pressure included both statements by politicians, and visits to his office by "certain people" in order to "give him advice" about the course of action he should take. He declined to take such advice.[158]

Public statements by leading politicians fuel a culture of impunity that stretches throughout Kosovo's institutions. On 16 March 2011, when EULEX police and the Kosovo Police First Intervention Team, acting on the instruction of an EULEX prosecutor, sought to arrest Nexhmi Krasniqi, commander of Prizren police station on suspicion of war crimes, armed Kosovo Police resisted, closing the police station down. After two hours. Nexhmi Krasniqi surrendered. Amnesty International is not aware of any criminal or disciplinary action taken against the police who attempted to prevent Krasniqi's arrest.[159]

INTERFERENCE BY INTERNATIONAL ACTORS

Political influence in the conduct of crimes under international law has not been confined to the Kosovo government. Under the UNMIK Administration, such interference was widespread and its consequences disastrous for the investigation and prosecution of such crimes.

Few members of the current mission are prepared to go on record, although several EULEX personnel told Amnesty International off the record that there had been political or other executive interference in the conduct of some cases.[160] In his interview with *Zeri* in June 2011, the former EULEX Chief Prosecutor expressed concerns at the lack of indictments in Kosovo, stating that he was disappointed that indictments had not been raised in some cases, due to a "change of strategy", and that he had not managed to complete cases as he had planned, or as quickly. The interview focussed in particular on the investigation against former Minister Fatmir Limaj. [161]

Amnesty International notes that although Fatmir Limaj was initially investigated on suspicion of corruption and organized crime – during a search of his offices in 2010, evidence had been found implicating Fatmir Limaj in the war crimes for which he was later indicted. This evidence was not made public at the time, when support for EULEX's prosecution of officials for corruption was so popular amongst Kosovo Albanians that the

chief prosecutor was praised in street graffiti.

In interviews with EULEX officials conducted in October 2011, Amnesty International found that, whilst none was prepared to go on the record, several EULEX officials – as well as local prosecutors and judges commented on continued political interference by EULEX in particular cases or in policy areas, including a resistance to prosecute in both the Sabit Geci case, and interference by other international actors in the Fatmir Limaj case. Several credible independent interlocutors have suggested that the US Office in Kosovo had suggested to EULEX that measures should be taken to avoid the prosecution of Fatmir Limaj. It is to EULEX's credit that they resisted such pressure, and proceedings were concluded in the former case, and are now ongoing in the latter.

INTERFERENCE AND IMPUNITY

Following publication of the Marty Report and subsequent revelations in the media, there is now incontrovertible evidence to suggest that active measures were taken by UNMIK, including by the SRSG and the Department of Justice, to ensure that investigations were not conducted, including into crimes under international law (including abductions as crimes against humanity). These include allegations against former members of the KLA, including those occupying positions of high office. Interference was not confined to the Kosovo courts: in March 2006, the UMNIK Office of Legal Affairs sought to interfere in the issuance of international arrest warrants by Serbia on the basis that Serbia had no jurisdiction over Kosovo.[162] Interference in certain cases by the US office was also reported, including in the case of the then prime minister, Ramush Haradinaj, indicted by the Tribunal.

Amnesty International has also been informed in interviews with former UNMIK officials, that a number of case files were deliberately "lost" by UNMIK in the handover of cases to the EUPT and EULEX. In others cases involving the KLA, investigations were stopped: in 2003, for example, the son of a Serbian woman, abducted and killed – allegedly by the KLA – received a telephone call from the investigating police officer, to inform him that he could no longer work on the case. No further reason was given.

In the aftermath of the Marty report, an internal document from the Tribunal, dated 30 October 2003, was made available in the media; according to *France 24*, this document had "never been presented to the European Union's police and justice mission in Kosovo (EULEX)".[163]

The document noted that, in a meeting on 29 October 2003, the Head of the UNMIK Department of Justice had provided the Tribunal's Chief of Investigations with "relevant material" relating to what is described as "The Albanian Issue". This included 29 pages of documentation related to the allegations that have since been made public in the Marty report; this also includes a possibly subsequent letter, dated 12 December 2003, signed by Paul E Coffey, then Director of the UNMIK Department of Justice.

The bundle of documents included interviews with four witnesses, who stated that they were participants in the transport of prisoners to Albania (as described in the Marty report) and a list of four other potential witnesses. The names of 10 "captives", and information relating to where and when they were last seen by the witnesses, are also included. As of 24 February 2012, six of those named as "captives" – Vlastimir Stovanović, Zlatko Antić, Simisa Vitosević, Gradimir Majmarević, Mladen Vasci and Sladjana Fan - remain listed as missing persons on the ICRC database.[164]

According to Senator Marty, "*In February 2004, an exploratory visit to the site was organised jointly by the ICTY and UNMIK, with the participation of a journalist. This visit cannot in fact be regarded as a proper forensic examination according to all the technical rules. Participants in the visit whom we interviewed explicitly condemned a certain lack of professionalism, particularly regarding the taking of samples and the recording of scientific observations. Neither the ICTY nor UNMIK, nor indeed the Albanian Public Prosecutor's Office, followed up this visit by conducting more thorough inquiries. Moreover, the Albanian investigator who took part in this site visit hastened to assert publicly that no leads of any kind had been found. The physical samples collected at the scene were subsequently destroyed by the ICTY, after being photographed, as the current Chief Prosecutor of the ICTY confirmed to me in a letter. We must permit ourselves to express astonishment that such a step was taken*."[165]

On 24 January 2011, details of a leaked NATO document were published in the UK daily, The Guardian, published details of a leaked NATO document marked "USA KFOR", which included detailed information about organised criminal networks in Kosovo, based on reports by western intelligence agencies and informants, and including some of the allegations against former KLA and current office holders, as included in the Marty report.[166]

Amnesty International has also seen another document, not yet made public, originating from the UNMIK War Crimes Investigation Unit. Dated 9 September 2003 the document comprises a Case report, and two pages of information which included the names of two individuals interviewed, and the names of four KLA commanders or other senior officers, in connection with the transfer of Serbs and "Albanian collaborators" to Kukës in May and June 1999, and in two other cases.

One of the named suspects was Sabit Geçi. On 29 July 2011, almost eight years after original allegations, Sabit Geçi and three others were found guilty of war crimes against the civilian population by a mixed panel sitting at Mitrovicë/Kosovska Mitrovica District Court, on charges relating to the inhuman treatment and torture of civilians, including ethnic Albanians, detained at a KLA camp in Kukës, Albania between April and June 1999.[167] The three other men named in the document have not yet been prosecuted.

As Senator Marty stated in para.10 of his report: "*The international organisations in place in Kosovo favoured a pragmatic political approach, taking the view that they needed to promote short-term stability at any price, thereby sacrificing some important principles of justice. For a long time little was done to follow-up evidence implicating KLA members in crimes against the Serbian population and against certain Albanian Kosovars*".[168]

This was reflected in an interview with a EULEX official: "*The international community had a choice – to work with a strong man or an intellectual; they chose the strong man*".

12. THE FUTURE PROSECUTION OF CRIMES UNDER INTERNATIONAL LAW

Amnesty International considers that if EULEX is mandated to implement the measures set out so far in this report, it would be able to make a significant contribution towards ending impunity for crimes under international law.

However, EULEX cannot and will not remain in Kosovo for the decades it will take to address the vast backlog of cases. Immediate steps must be taken within the period of the 2012-14 mandate to move towards the development of a long-term, comprehensive plan to build a sustainable justice system for the investigation and prosecution of war crimes.

Amnesty International believes that urgent consideration should be given towards exploring the possibilities of a long-term judicial mechanism to ensure the future prosecution of the remaining legacy of war crimes cases. Such an undertaking should be carried out in consultation with the Ministry of Justice, and members of the Kosovo prosecutorial and judicial bodies, and involve consultation with civil society. Such a mechanism should take into account both Kosovo's particular situation and the experience of other post-conflict countries in the region.

Consideration should be given to balancing the continued necessity of an internationalised element with the need to establish an independent and impartial body of local police investigators, prosecutors and judiciary specialising in war crimes. Such a mechanism should ensure the highest standards of protection and support for witnesses and victims, and for prosecutors and judges involved in such cases.

Working in conjunction with other European Union institutions, EULEX should help to establish long term institutions and structures to ensure continuity of its work. The organization is aware of the launch of a structured dialogue between the European Commission and the Kosovo government on the rule of law in Kosovo, to focus on organized crime and corruption, and on visa liberalization. Amnesty International considers that measures to address impunity for war crimes should form an essential component of this dialogue.

ACROSS THE REGION

Across the region, several different mechanisms have been established for the prosecution of war crimes. They include so-called hybrid courts, which maintain an internationalized presence, special chambers for the prosecution of war crimes and other serious crimes under international law, and the conduct of proceedings in local domestic courts.

The War Crimes Chamber (WCC) at the State Court of Bosnia and Herzegovina was established in March 2005, under the Law on the Court of BiH, with the aim of increasing the capacity of the judiciary in BiH to investigate and prosecute cases of war crimes.[169] The Special Department for War Crimes of the Prosecutor's Office was established at the same

time by the Law on the Prosecutor's Office of BiH[170]

Since its creation, the WCC has included both domestic and international judges and prosecutors. The establishment of the WCC, comprising both international and national judges and prosecutors in its first five years, later extended for a further two years, was planned to gradually transform from a so-called 'hybrid' institution, with both international and domestic staff, into a fully national court (without international judges and prosecutors) . A detailed plan to gradually transition from this "hybrid" model to fully domestic institutions is due to be fully implemented by the end of 2012.The WCC adjudicates on cases of war crimes, crimes against humanity and genocide, set out in the BiH Criminal Code which entered into force in 2003. Proceedings for war crimes also take place in cantonal and other lower courts in the two entities of BiH.

In Croatia, the 2003 Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law[171] mandated the establishment of special war crimes chambers in four county courts in Croatia. The act aimed, through these chambers, to try war crimes cases outside of the communities where those crimes were committed, and decrease pressure on witnesses in war crimes proceedings. The law envisaged that war crimes cases could be transferred from the jurisdiction of county courts to the special war crimes chambers upon a request by the Chief State Prosecutor, subject to the approval by the President of the Supreme Court. In May 2011 the Parliament adopted an amendment to the law which allowed for the use of evidence collected by the Tribunal by the Croatian judiciary.

In Montenegro, the Department for the Suppression of Organised Crime, Corruption, Terrorism and War Crimes was established within the Supreme State Prosecution Office in 2008, headed by a Special Prosecutor, and five deputies. At the same time, specialised departments dealing with organised crime, corruption, terrorism and war crimes – comprising eight specialised judges and three investigation judges – were established within the Podgorica and Bijelo Polje Superior Courts in 2008.[172] Proceedings, including appeals, are ongoing in four cases of crimes against international law.

The Criminal Code of Montenegro was amended in 2003, and introduced two new offences of crimes against humanity (Article 427) and the failure to take measures to prevent crimes against humanity and other values protected under international law (Article 440), which includes command responsibility as a separate offence. Amendments were introduced on the basis that both crimes were prohibited, "pursuant to ratified international treaties during the conflicts in the 1990s".

Serbia's Special War Crimes Chamber at the Belgrade District Court and the Office of the War Crimes Prosecutor of the Republic of Serbia were established with exclusive responsibility for crimes against international law, and as a wholly domestic institution, under the Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, adopted in July 2003.[173] The War Crimes Chamber was set up in October 2003, and the OWCP became operational in January 2004. Prosecutions opened in 2004 and as of 10 February 2012 proceedings in some 26 war crimes cases have been conducted, including decisions related to Kosovo. With only one court dedicated to war crimes proceedings, and with insufficient staff in the OWCP, and a lack of political support for the institutions,

progress in the prosecution of war crimes in Serbia has been relatively slow. While the court has jurisdiction over all crimes against international law, including war crimes, crimes against humanity and genocide, prosecutions to date have been brought only for war crimes, including on the grounds that crimes against humanity was not a distinct offence in the 1976 Basic Penal Code in force during 1990s. [174]

OPTIONS FOR KOSOVO

Both international and local prosecutors and judiciary interviewed by Amnesty International were agreed on the necessity to retain an internationalized court for the prosecution of crimes under international law for the foreseeable future.

In their 2010 report on war crimes in Kosovo, the OSCE advocated the establishment of a Special War Crimes court or dedicated chamber.[175] A similar idea had been previously proposed in 1999-2000 by the Technical Advisory Commission on Judiciary and Prosecution Service which had recommended to UNMIK Department of Justice that a separate court be established to try war and ethnically-motivated crimes. The Kosovo War and Ethnic Crimes Court (KWECC) was proposed as an extraordinary court within the Kosovo legal system, composed of local and international judicial personnel. It was to have jurisdiction over cases involving grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, crimes against humanity and other crimes committed on political, racial or religious grounds in Kosovo since 1 January 1998.

It was anticipated that the KWECC would have primacy over other domestic courts, and would be able to assume jurisdiction, on the determination of the Chief Prosecutor, over a case at any given point. The KWECC was to be composed of panels with both local and international representatives, but its President, Vice President, Chief Prosecutor, Deputy Chief Prosecutor, Registrar and staff would all be international. It was planned that the KWECC would work together with Kosovar judges and prosecutors on these complex cases as one form of capacity building.

The UNMIK Department of Judicial Administration spent a great deal of time and effort in developing operational plans to establish the court and continued into 2000.By March 2000, the UN Secretary-General in his report to the Security Council referred to the Court's establishment. It was then reported in June 2000 that the chief international prosecutor for the KWECC had been appointed and had arrived in Kosovo and that the Court was expected to start work in the summer. However, the KWECC never materialised. The reasons suggested for its abandonment vary, but it seems concern as to the financial implications, United States reluctance and the establishment of the International Judges and Prosecutors Programme in February 2000 led to the proposal being quietly laid to rest by the end of 2000.[176]

While Amnesty International does not propose that the KWECC be resuscitated, the organization notes that, with the establishment of the SPRK, a formal structure allowing the prosecution of war crimes and other serious crimes by a specialized prosecutorial body, including both local and international prosecutors is already in place.

"*The SPRK will be the main authority for war crimes and organised crime. But for this we need to have a Special Chamber or such a court - with financial stimulation, better*

conditions, legal advisers. There is an anti corruption task force – we need a war crimes task force. There could be a Special Chamber in the District Court, responsible for all of Kosovo, and to decide on witness protection and other things", Amnesty International interview with Ismet Kabashi, Chief State Prosecutor, October 2011.

The establishment of a special chamber, presided over by international and local judiciary, would compliment the existing SPRK. The chamber would require a dedicated court for proceedings in war crimes cases, which could, as in other countries in the region, be equipped with the facilities required not only in war crimes cases, but in other proceedings – including organized crimes and corruption - which require the highest standards of witness protection, support and security.

Amnesty International does not wish to be proscriptive, but suggests very strongly that the time has come to open a discussion on the long-term future of war crimes prosecutions in Kosovo.

ENDNOTES

[1] Amnesty International, *Kosovo (Serbia): The challenge to fix a failed UN justice system*, **29 January 2008,** http://www.amnesty.org/en/library/info/EUR70/001/2008/en

[2] Kosovo declared unilateral independence from Serbia on 17 February 2008; as of 14 March 2012, 91 UN member states had recognized its independence. Serbia was a constituent state of the Federal Republic of Yugoslavia in 1999. The name of the country was changed to Serbia and Montenegro under the November 2002 Constitutional Charter, which came into force on 4 February 2003. In June 2006 the Republic of Montenegro seceded from Serbia and Montenegro after a referendum, and the Republic of Serbia became an independent state.

[3] See: Amnesty International, *FRY (Kosovo), A Decade of Unheeded Warnings*, Vols. 1 & 2, (Index: EUR 70/39/99 & EUR 70/40/99).

[4] Amnesty International*: "Collateral Damage" or Unlawful Killings? Violations of the Laws of War by NATO during Operation Allied Force,* (Index: EUR 70/18/00), June 2000.

[5] http://www.unhcr.ch/news/media/kosovo.htm, 4 May 1999.

[6] http://www.nato.int/kosovo/docu/a990609a.htm

[7] Because of the UNSCR mandate KFOR/UNMIK were not considered an occupying power and so would not have been subject to the law of occupation

[8] Resolution 1244 (1999), Adopted by the Security Council at its 4011th meeting, on 10 June 1999, S/RES/1244 (1999), retrieved at http://daccess-ods.un.org/TMP/658974.9.html

[9] Article 9 (c); Article 11(k); Article 10, UNSCR Resolution 1244/1999.

[10] Under Section 1.1, UNMIK Regulation 1999/1, 25 July 1999, "All legislative and executive authority in Kosovo, including the administration of the judiciary is vested in UNMIK and is exercised by the Special Representative of the Secretary General".

[11] See: Amnesty International*, A Broken Circle: "Disappeared" and abducted in Kosovo province*, (Index EUR 70/106/1999), November 1999, p.8.

[12] Based on estimates from different sources.

[13] Statute of the International Criminal Tribunal for the former Yugoslavia. Articles 7 and 9.

[14] (IT-05-87) Šainović et al, *The Prosecutor v. Nikola Šainović, Dragoljub Ojdanić, Nebojša Pavković, Vladimir Lazarević, Sreten Lukić & Milan Milutinović*,
http://www.icty.org/x/cases/milutinovic/tjug/en/090226summary.pdf

[15] Đorđević (IT-05-87/1) "Kosovo",
http://www.icty.org/x/cases/djordjevic/tjug/en/110223_djordjevic_judgt_en.pdf

[16] *The Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu* (IT-03-66),
http://www.icty.org/x/cases/limaj/ind/en/lim-2ai040212e.pdf,

[17] *The Prosecutor v. Ramush Haradinaj, Idzriz Balaj and Lahi Brahimaj*, (IT-04-84).
http://www.icty.org/case/haradinaj/4#tjug

[18] http://www.icty.org/sid/10434; http://www.icty.org/x/cases/haradinaj/acjug/en/100721.pdf, para. 40.

[19] http://www.tuzilastvorz.org.rs/html_trz/predmeti_eng.htm

[20] Basic Penal Code, Official Gazette of the SFRY, no. 44/1976,46/1977, 34/1984, 37/1984, 74/1987, 57/1989, 3/1990, 38/1990, 45/1990 and 54/1990, Official Gazette of the SRY, no. 35/1992, 16/1993, 31/1993, 37/1993 and 24/1994, see Articles 141–156; the Kosovo Criminal Code of 1989 makes no provisions for crimes under international law.

[21] Dragomir Yordanov, former EULEX judge, available at www.balcanicaucaso.org/eng/Regions-and-countries/Kosovo/EULEX-the-delicate-balance-of-justice-96838

[22] The CCK contains a list of war crimes that reproduces the Rome Statute of the International Criminal Court and a number of other war crimes not covered at the Rome Statute.

[23] The Regulation vested all legislative and executive authority in UNMIK and set out the duty of all persons undertaking public duties or holding public office in Kosovo to observe internationally recognized human rights standards. http://www.unmikonline.org/regulations/1999/reg01-99.htm

[24] Regulation No. 1999/24, UNMIK/REG/1999/24, 12 December 1999. It also provides that "[i]n case of a conflict, the regulations and subsidiary instruments issued thereunder shall take precedence" (Section 1, 1(1), third paragraph).

[25] Official Gazette of the SFRY, Nos. 44/76, 36/77, 56/77, 34/84, 37/84, 74/87, 57/89, 3/90, 38/90 and 45/90. http://www.unmikonline.org/regulations/1999/reg24-99.htm

[26] See Supreme Court of Kosovo, 12 October 2009, Prishtine/Pristina, Pkl – Kzz- 108/08, Court findings, para.10; UNMIK/REG/2003/25, 6 July 2003. http://www.unmikonline.org/regulations/2003/RE2003-25.pdf;

[27] http://www.unmikonline.org/regulations/2003/RE2003_26_PCPC.pdf

[28] The Rome Statute was adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

[29] Law on Supplementing and Amending of the Criminal Code of Kosovo, 03/L-002, 06.11.2008, Decree No. DL-059-2008, date 27.11.2008; Law on Supplementing and Amending of the Kosovo Code of Criminal Procedure, 03/L-003, 06.11.2008, Decree No. DL-058-2008, date 27.11.2008

[30] Amnesty International, *Rape and Sexual Violence: Human Rights Law and Standards in the International Criminal Court*, http://www.amnesty.org/en/library/asset/IOR53/001/2011/en/7f5eae8f-c008-4caf-ab59-0f84605b61e0/ior530012011en.pdf

[31] See, for example, District Court of Peja/Pec, P.nr.67/09, 29 April 2009, where the Court found that: "The charge against G.K. of committing the criminal offense of war crimes against the civilian population, contrary to Article 142 of the SRFY Criminal Code, the article 3 and 147 of the 4th Convention, the article 4 of the II Additional Protocol to the Geneva Conventions as to the illegal arrest of P.L. committed in the village of Doblibare/Doblibare, Gjakova/Dakovica Municipality on the 24th of March 1999 is reclassified as unlawful deprivation of liberty contrary to the article 162 of the CCK and

consequently rejected since the period of statutory limitation has expired".

[32] SRFY CC, Article 142. See, for example, District Court of Prizren, P.No.134/11, 2 August 2011, VII (5), http://www.eulex-kosovo.eu/docs/justice/judgments/criminal-proceedings/DCPrizren/134-11/(2011.08.02)%20JUD%20-%20Ejup%20KABASHI%20et%20al%20(DC%20PZ).ENG_redacted.pdf

[33] Criminal Code of Kosovo, Article 129. In at least some respects, Article 129 falls short of international law. For example, principles of superior responsibility with regard to civilians in Article 129 (2) are not as strict as required by customary international law, as well as conventional international law, such as Protocol I, which holds civilian superiors to the same standards as military commanders.

[34] "At the time the crime was committed, a written or unwritten norm must have existed upon which to base criminality under international law. The principle of legality (*nullum crime sine lege*) is part of customary international law", Gerhard Werle, *Principles of International Criminal Law* ,TMC, Asser Press, p.32.

[35] http://www.balcanicaucaso.org/eng/Regions-and-countries/Kosovo/EULEX-the-delicate-balance-of-justice-96838

[36] On the contrary Article 95 of the CCK provides that: "No statutory limitation shall apply to the prosecution or execution of punishment of genocide, war crimes and crimes against humanity, as well as of other criminal offences to which statutory limitation cannot be applied under international law."

[37] Amnesty International distinguishes enforced disappearances -- in which state agents are directly or indirectly involved -- from abductions carried out by non-state actors, such as armed opposition groups.

[38] HLC-Kosovo, "Human losses during the NATO bombing", 23 March 21012, http://www.hlc-rdc.org/?p=19413&lang=de

[39] Constitution of the Republic of Kosovo (entered into force: 15 June 2008), Article 33 (1). The Principle of Legality and Proportionality in Criminal Cases.

[40] See for example, *Papon v. France*, (No. 2) no. 54210/00. November 15, 2001; *Touvier v. France*, No. 29420/95, January 13, 1997; *Kolk and Kislyiy v. Estonia*, Nos. 23052/04 and 24018/04, January 17, 2006; and Streletz, Kessler and *Krenz v. Germany*, Nos. 34044/96, 35532/97 and 44801/98..

[41] "According to the principle of legality, everybody must know in advance whether specific conduct is consonant with, or a violation of, penal law [...]. [a]ccording to Article 15 [of the International Covenant on Civil and Political Rights] of which no breach of the nullum crimen principle exists when the act was criminal "under national or international law, at the time when it was committed".

"This provision does not necessarily entail, however, that the authorities of a State party to the ICCPR may try and convict a person for a crime that is provided for in international law but not yet codified in the domestic legal order: in criminal matters, international law cannot substitute itself for national legislation; in other words, international criminalization alone is not sufficient for domestic legal orders to punish that conduct. Nevertheless, Article 15 of the ICCPR allows at the very least that fresh national legislation (or, where admissible, a binding case) defining a crime that was already contemplated in

international law may be applied to offences committed before its enactment without breaching the nullum crimen principle. This implies that individuals are expected and required to know that a certain conduct is criminalized in international law: at least from the time that the same conduct is criminalized also in a national legal order, a person may thus be punished by domestic courts even for conduct predating the adoption of national legislation". Special Tribunal for Lebanon, Appeals Chamber, Interlocutory decision on the applicable law: terrorism, conspiracy, homicide, perpetration, cumulative charging case, STL-11-01/I, 16 February 2011, para.132-133. Available at: www.stl-tsl.org/en/the-cases/stl-11-01/rule-176bis/filings/orders-and-decisions/appeals-chamber/interlocutory-decision-on-the-applicable-law-terrorism-conspiracy-homicide-perpetration-cumulative-charging. Although Kosovo is not a state party to the ICCPR, Article 22 of the Constitution provides for the direct applicability of international human rights standards ,including the ICCPR, which have priority over domestic law.

See also, Constitutional Court of Bosnia and Herzegovina, case no. AP 1785/06, Decision on admissibility and merits, 30 March 2007, para.76.

[42] Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, 16 February 2011, EULEX KOSOVO http://www.eulex-kosovo.eu/en/info/docs/JointActionEULEX_EN.pdf; In parallel with this Joint Action, the Council adopted another Joint Action appointing an EU Special Representative for Kosovo, see Council Joint Actions 2008/123/CFSP and 2009/137/CFSP and Council Decisions 2010/118/CFSP , 2010/446/CFSP and 2011/119/CFSP.

[43] Joint Action 2006/304/CFSP, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:112:0019:0023:EN:PDF. The Head of EUPT Kosovo is to act under the direction of the Head of the EU crisis management operation in Kosovo.

[44] *Report of the Secretary-General of the United Nations Interim Administration Mission in Kosovo*, S/2008/692, 24 November 2008, paragraph 23, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/518/31/PDF/N0851831.pdf?OpenElement

[45] *08 Jun 2010* http://www.eulex-kosovo.eu/en/pressreleases/0065.php

[46] Council Joint Action 2008/124/CFSP.

[47] http://www.amnesty.org/en/library/info/EUR70/001/2008/en

[48] Committee on Legal Affairs and Human Rights, *Inhuman treatment of people and illicit trafficking in human organs in Kosovo*, Report, AS/Jur (2010) 46, 12 December 2010, Ajdoc46 2010, Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, http://assembly.coe.int/CommitteeDocs/2010/20101218_ajdoc462010provamended.pdf

[49] Amnesty International interview, February 2009. See also Appendix 1. The extent of the disarray of UNMIK police's investigative files was shown in a television broadcast on BBC2 on 17 April 2009.

[50] See Human Rights Watch, *Under Orders*, pp. 258-60, available at http://www.hrw.org/sites/default/files/reports/Under_Orders_En_Combined.pdf ; Amnesty International interview, October 2011.

[51] "Kosovo struggles to prosecute war crimes cases", http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/03/20/feature-03

[52] HLC, pp. 112-114, in English, Idriz Gashi, Ap-Kz- 108/2010, http://www.eulex-

kosovo.eu/docs/justice/judgments/criminal-proceedings/SupremeC/Idriz-Gashi-108-2010/(2010.11.25)%20JUD%20Idriz%20GASHI%20(SC).ENG_redacted.pdf

[53] P nr.425/11, 25 July 2011, http://www.hlc-kosovo.org/Indictment-Klecka-Case-25-07.2011.pdf

[54] http://www.balkaninsight.com/en/article/limaj-still-suspected-of-war-crimes-6-cleared-in-klecka-case

[55] See for example: Amnesty International, www.amnesty.org/en/library/info/EUR70/007/2009; Human Rights Committee, Eighty-seventh session, Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, *Concluding observations of the Human Rights Committee, Kosovo (Serbia)*, CCPR/C/UNK/CO/1, 14 August 2006, paras.12-13, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/436/91/PDF/G0643691.pdf?OpenElement; OSCE Mission in Kosovo, Department of Human Rights and Communities, *Kosovo's War Crimes Trials: An Assessment Ten Years On, 1999 – 2009*, http://www.osce.org/kosovo/68569; Humanitarian Law Centre - Kosovo, *Trials for Ethnically and Politically Motivated Crimes and War Crimes in Kosovo in 2010*, February 2011, page 116.

[56] Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, S/2010/169, 6 April 2010, Annex I, Section 2, Police. www.unmikonline.org/SGReports/S-2010-401.pdf

[57] Article 5, The right of family members to be informed on the fate of missing persons. (1). Everyone shall have the right to know about the fate of his or her missing family member(s), including the whereabouts, or in case they deceased, the circumstances of their death and location of burial, if such location is known, and they shall also have the right to recover the mortal remains.

[58] http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Kosovo%20S2007%20168.pdf ;http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=143&Itemid=56&lang=en

[59] Unless otherwise stated, references are from SPRK Activity Report, 9 December 2008 – 15 June 2009'; *Statistical Booklet, as of 28 June 2011*, http://www.eulex-kosovo.eu/docs/justice/SPRK-booklet-28-06-2011.pdf.

Law no.03/L-052, Law On the Special Prosecution Office of the Republic of Kosovo, adopted 13 March 2008, http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=view&id=143&Itemid=56&lang=en

[60] Articles 5.1-5.2, Law no.03/L-52.

[61] OSCE Mission in Kosovo, Department of Human Rights and Communities, *Kosovo's War Crimes Trials: An Assessment Ten Years On 1999-2009*, May 2010, p.14, http://www.osce.org/kosovo/68569

[62] *EULEX Programme Report 2010*, pp. 43-44, http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf

[63] Law No. 03/L-053, On the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors In Kosovo, see in particular Article 3, para. 1, http://www.assembly-kosova.org/common/docs/ligjet/2008_03-L053_en.pdf

[64] Law on Jurisdiction, Article 3, para. 7.

[65] *Annual Report On The Judicial Activities Of EULEX Judges*, 2010, Number of judgments issued in

criminal cases at the municipal, district and Supreme Court level according to the criminal offence, p.23, http://www.eulex-kosovo.eu/docs/justice/annual-report2010/Judges%20Annual%20Report%202010.pdf

[66] "Number of judgments issued in criminal cases at the municipal, district and Supreme Court level according to the criminal offence", *Annual Report on the Judicial Activities of EULEX Judges*, 2010, Table, p.23.

[67] See http://www.eulex-kosovo.eu/en/judgments/CM-Supreme-Court.php, for LLapi case , (Ap.-Kz. No. 89/2010, Latif Gashi, Rrustem Mustafa and Nazif Mehmeti); and Krasniqi (Ap. Kz – 353/2009; P.No. 445/2010, Novobrdo case; P.no. 371/10, Fahredin Gashi, both at http://www.eulex-kosovo.eu/en/judgments/CM-District-Court-of-Pristina.php

[68] "EULEX judges Struggle to Adapt to Kosovo Justice", *Justice in Kosovo Court Monitoring Project, Newsletter 6*, April 2011, www.jetanekosove.com

[69] See for example, *Justice in Kosovo, Court Monitoring Project, Newsletter 2*, October 2010, *ibid.*

[70] http://www.eulex-kosovo.eu/en/pressreleases/0248.php

[71] Gregory L. Naarden and Jeffrey B. Locke, "Note And Comment: Peacekeeping And Prosecutorial Policy: Lessons From Kosovo", *American Journal of International Law* , October 2004, https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=98+A.J.I.L.+727&srctype=smi&srcid=3B15&key=8f921fb8edbfc6a329a5932239612d91

[72] No.03/L –187, 29 April 2010, http://www.assembly-kosova.org/common/docs/ligjet/2010-187-eng.pdf

[73] "Dozens of new sites to be searched for the missing", EULEX Press Release, 1 December 2011, http://www.eulex-kosovo.eu/en/pressreleases/0209.php

[74] Law No. 03/L-137, 25 June 2009, gazetazyrtare.rks-gov.net/Documents/GZRK_70_eng.pdf

[75] *EULEX/DFM Annual Activities Report 2011- Missing Persons Operation*, p.14, http://www.eulex-kosovo.eu/docs/justice/ompf/ANNUAL%20REPORT%20DFM%202011.pdf.

[76] *DFM Annual Report*, pp.9-11.

[77] Committee on Legal Affairs and Human Rights, *Inhuman treatment of people and illicit trafficking in human organs in Kosovo**1, Report, Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe, (hereafter, Marty Report). http://www.assembly.coe.int/CommitteeDocs/2010/ajdoc462010prov.pdfhttps://wcd.coe.int/wcd/ViewDoc.jsp?id=1736769&Site=DC

[78] *DFM Annual Report*, p.1; http://www.eulex-kosovo.eu/en/pressreleases/0209.php

[79] *EULEX Programme Report 2010*, p.49; *EULEX 2011 Stocktaking Report*, pp. 47-50.

[80] http://www2.ohchr.org/english/law/disappearance-convention.htm;

[81] Law on Missing Persons, http://www.ic-mp.org/wp-content/uploads/2007/11/law-on-missing-persons-republic-of-kosovo.pdf

[82] The International Commission on Missing Persons (ICMP) strongly recommended in 2010 "the creation of a central records archive on missing persons at the domestic level that would systematically

consolidate existing investigative data, antemortem and postmortem records, site location information, as well as identification and repatriation information, which would in turn permit for improved casework, while establishing better foundations for overall analysis", *The Situation in Kosovo: A Stock Taking*, 2010, para.76, http://www.ic-mp.org/wp-content/uploads/2007/11/icmp-dg-264-4-doc-general.pdf

[83] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 18, www2.ohchr.org/english/law/remedy.htm

[84] *Burying the Past: Impunity for enforced disappearances and abductions in Kosovo*, EUR 70/007/2009, pp. 47-55.

[85] UN Doc A/HRC/14/22 23 April 2010, http://daccess-ods.un.org/TMP/3664857.74517059.html

[86] Amnesty International interview, Pristina, October 2011.

[87] http://www.familylinks.icrc.org/eng/missing-kosovo.

[88] Law No.03/L -023, promulgated by Decree No.DL-023-2011, 31 August.2011, http://www.ic-mp.org/wp-content/uploads/2007/11/law-on-missing-persons-republic-of-kosovo.pdf

[89] Under Articles 2 (1); 3 (1.a, 1.c); and 33 (2) of the Geneva Convention on Protection of Civilian Persons in Time of War (Geneva Convention IV) of 12 August 1949; and Article 2 (2) re articles 5 and 6 re Article 4 (1, 2.a, 2.e, 2.g) of the Protocol Additional to the above Convention, relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

[90] Appellate Court, Kž1 Po2 8/11, 7 December 2011; http://www.balkaninsight.com/en/article/new-trial-starts-in-case-against-members-of-kosovo-liberation-army

[91] KTRZ 16/08 Gnijlane group (Ajdari and others), 11 August 2009, http://www.tuzilastvorz.org.rs/html_trz/optuznice_eng.htm

[92] Amnesty International interview with N.N, Belgrade, February 2009.

[93] *Marty report*, op.cit..

[94] Carla del Ponte, *Io e i criminali di guerra* [The *Hunt*: War criminals and I], Feltrinelli, Milan, 2008.

[95] http://www.hrw.org/en/news/2008/04/03/letter-kosovar-authorities-calling-investigation-serbs-missing-1999

[96] http://www.eulex-kosovo.eu/en/pressreleases/0177.php

[97] http://www.kosovocompromise.com/cms/item/topic/en.html?view=story&id=3589&sectionId=1. 30 August 2011; http://consilium.europa.eu/media/1384079/first_extraordinary_2012_eulex_annexi-jds.pdf

[98] http://www.balkaninsight.com/en/article/albania-eulex-eye-agreement-on-organ-harvesting-probe

[99] Amnesty International, *The challenge to fix a failed UN justice system*, p. 79.

[100] http://www.womensnetwork.org/images/pdf/KWN_1325_Facts_and_Fables.pdf, pp. 98-99.

[101] Amnesty International, News Service: 104/99 *KOSOVO: Incidents of multiple rapes*, EUR 70/076/1999, 27 May 1999; Humanitarian Law Centre, *Kosovo: Roma: Targets of Abuse and* Violence, 1 December 1999 - http://www.hlc.org.yu/english/Ethnic_Minorities/Kosovo/index.php?file=177.html,

[102] Amnesty International interview, 4 April 2006.

[103] Human Rights Watch, *Kosovo: Rape as a Weapon of "Ethnic Cleansing"* , HRW Index No. D1203, 1 March 2000, http://www.hrw.org/reports/2000/03/01/kosovo-rape-weapon-ethnic-cleansing.

[104] HRW, *Kosovo: Rape as a Weapon of "Ethnic Cleansing",* Section 3, http://www.hrw.org/legacy/reports/2000/fry/Kosov003-02.htm#P113_16068

[105] "KWN Welcomes the Establishment of the Institute for War Crimes", Kosova Women's Network, e-News no.5 / June - July 2011, http://www.womensnetwork.org/images/pdf/enews/eNEWS%20June%20-%20July%202011.pdf

[106] Press Release: "Forget Flowers: Women Call for Justice for War–Raped Women on 8 March", http://www.womensnetwork.org/index.php; email from chair of KWN.

[107] No specific allegations of sexual assault are included in the persecution charges, but see paras. 27, 72, http://www.icty.org/x/cases/milutinovic/tjug/en/090226summary.pdf, paras 183 -203, http://www.icty.org/x/cases/milutinovic/tjug/en/jud090226-e1of4.pdf

[108] http://www.icty.org/x/cases/milutinovic/tjug/en/090226summary.pdf

[109] *Jokić* case, Verdict, No. P. no. 27/2000, District Court of Gjilan (local panel), 20 September 2000, *rev'd*, Verdict, No. AP nr. 8/2001, Supreme Court of Kosovo (international panel), *acquittal*, Verdict, S No. P. No. 45/2001, Verdict, District Court of Gjilan (international panel), 3 May 2002.

[110] KTRZ 7/04 Đakovica (Lekaj), Indictment, http://www.tuzilastvorz.org.rs/html_trz/OPTUZNICE/O_2005_07_07_ENG.pdf

[111] Basic Penal Code, Article 142: War crime against the civilian population] includes attack against civilian population, resulting in death, serious physical injury or serious damage to health; killings; torture; inhuman treatment; infliction of great suffering or violation of bodily integrity or health; dislocation or displacement or forcible conversion to another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror; taking hostages; imposing collective punishment; unlawful bringing into concentration camps and other illegal arrests and detention; forcible service in the armed forces of enemy's army or in its intelligence service or administration; forced labour; starvation of the population; property confiscation; pillage; illegal and extensive destruction of property not justified by military necessity.

[112] Amnesty International, *Bosnia and Herzegovina: Briefing to the UN Committee against Torture*, EUR 63/005/2010, p. 12.

[113] Amnesty International interview with SPRK prosecutor, October 2011.

[114] http://www.hrrp.eu/Pending.php

[115] Amnesty International interview with Bernard Rabatel, October 2011.

[116] *Court Monitoring Annual Report April 2010 - February 2011*, Jeta ne Kosove, BIRN, http://www.jetanekosove.com/lexo/836/Eng

[117] Amnesty International, *Burying the past*, pp. 42 and recommendations; Human Rights Watch, for example, http://www.hrw.org/news/2011/06/10/kosovo-eu-investigation-step-justice, and *Kosovo: Kosovo Criminal Justice Scorecard*, 28 March 2008, http://www.hrw.org/sites/default/files/reports/kosovo0308webwcover.pdf; PACE, Resolution 1784 (2011),

Protection of witnesses as a cornerstone for justice and reconciliation in the Balkans, paras.128, 135. http://assembly.coe.int/Mainf.asp?link=/Documents/AdoptedText/ta11/ERES1784.htm ; OSCE Mission in Kosovo and US Office in Kosovo, *Witness security and protection in Kosovo: assessment and recommendations*, November 2007, http://www.osce.org/kosovo/49124; Human Rights Committee, CCPR/C/UNK/CO/1, para. 12; see for example, European Commission, Brussels, 12.10.2011, SEC(2011) 1207 final, *Commission Staff Working Paper, Kosovo* 2011 Progress Report*, p. 59, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf; HLC-Kosovo, *Trials for Ethnically and Politically Motivated Crimes in Kosovo in 2010*, p. 117,

[118] Amnesty International interview with EULEX official, October 2011.

[119] OSCE Mission in Kosovo, Department of Human Rights and Communities, *Kosovo's War Crimes Trials: An Assessment Ten Years On, 1999 – 2009*, May 2010, p. 26. http://www.osce.org/kosovo/68569; see also previous OSCE reports, *Review of the Criminal Justice System* (March 2002 – April 2003). http://www.osce.org/documents/mik/2003/05/859_en.pdf; *Witness Security and Protection in Kosovo: Assessment and Recommendations* (November 2007), http://www.osce.org/documents/cio/2007/11/27752_en.pdf

[120] Osman Zyberaj Case, *Trials for Ethnically and Politically Motivated Crimes and War Crimes in Kosovo in 2010*, Humanitarian Law Centre, Kosovo, February 2011, pp.114-116.

[121] http://www.blic.rs/Vesti/Hronika/272735/Svedok-protiv-Haradinaja-Ne-mogu-da-govorim-srecan-sam-sto-sam-ziv (trans."Proceedings against Haradinaj: I can't speak, I'm [just] happy to be alive"). See also http://www.balkaninsight.com/en/article/haradinaj-s-retrial-postponed-on-monday, 20 August 2011

[122] http://www.icty.org/sid/10808

[123] http://www.blic.rs/Vesti/Hronika/273049/Beograd-po-nalogu-Tribunala-stopirao-istrage-o-Haradinaju,

[124] OSCE LSMS, *Review of the Criminal Justice System in Kosovo, 2006*, pp.14-15, www.osce.org/documents/mik/2006/12/22703_en.pdf

[125] Amnesty International interviews with individual members of NGOs.

[126] *EULEX's de Marnhac: freedom of movement is a must*,17 December 2011, http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2011/12/17/feature-01

[127] PACE, Protection of witnesses.

[128] http://www.balkaninsight.com/en/article/trial-against-kla-members-sabit-geci-and-riza-alija-begins

[129] PACE, Protection of witnesses, para. 134.

[130] Explanatory Memorandum of 4 November 2011, http://www.publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/428-xli/42818.htm

[131] Amnesty International interview, CPCC official, July 2011.

[132] 2011-27, 14/11/2011, Family of Agim Zogaj, The alleged failure of EULEX to protect a witness, Under translation – http://www.hrrp.eu/Pending.php; site last updated 21 December 2011.

[133] http://www.balkaninsight.com/en/article/salustro-refuses-to-testify-on-limaj-s-case

[134] http://www.balkaninsight.com/en/article/limaj-released-from-detention

[135] http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12440.pdf, see in particular para.127.

[136] PACE, Protection of witnesses.

[137] PACE, Protection of witnesses, para. 155.

[138] Amnesty International interview with SPRK prosecutor, October 2011.

[139] University of Essex, *Access to Justice in Kosovo*, *Report*, Conference, June 2011 p. 11, http://www.essex.ac.uk/human_rights_centre/practice/conferences/ACCESS_TO_JUSTICE_IN_KOSOVO[1].pdf.

[140] http://www.eulex-kosovo.eu/en/info/whatisEulex.php

[141] Amnesty International interview with SPRK prosecutor, October 2011.

[142] Gregory L. Naarden and Jeffrey B. Locke, "Note And Comment: Peacekeeping And Prosecutorial Policy: Lessons From Kosovo", p. 743.

[143] *EULEX Programme Report*, 2011, p.37, http://www.eulex-kosovo.eu/docs/tracking/EULEX%20ProgrammeReport%202011.pdf

[144] *EULEX Programme Report, 2010*, p. 31, http://www.eulex-kosovo.eu/docs/tracking/EULEX%20Programme%20Report%202010%20.pdf

[145] EULEX Justice spokeswoman, quoted in http://www.balkaninsight.com/en/article/leaked-memo-slams-kosovo-pm-s-interference-in-judiciary, 4 June 2010.

[146] Kosovo Institute for Policy Research and Development (KIPRED), *The Inseparable Power. An analysis of the independence of the judiciary in Kosovo*, September 2011, pp. 32-4, http://www.kipred.net/web/upload/Inseparable_power_ENG_final.pdf

[147] *EULEX Programme Report 2010*, p. 32.

[148] OSCE Mission in Kosovo, *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, January 2012, http://www.osce.org/kosovo/87138

[149] http://www.kipred.net/web/upload/ACCESS_TO_JUSTICE_IN_KOSOVO.pdf

[150] "Justice in Kosovo", Newsletter 3, November 2010.

[151] OSCE, *Independence of the Judiciary in Kosovo*, p.17.

[152] "Kosovo judiciary endures threats", http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/02/07/feature-02

[153] *Marty report*, paras 14-15.

http://assembly.coe.int/CommitteeDocs/2010/20101218_ajdoc462010provamended.pdf

[154] http://lajme.shqiperia.com/lajme/artikull/iden/1047206720/titulli/Gjykata-i-shpall-te-papranueshme-deshmite-ne-procesin-kunder-Fatmir-Limajt http://www.fishmedia.info/lajme/kuqi-limajtje-i-mirseardhur/, Amnesty International translations.

[155] RTK TV, Pristina, in Albanian 1830 gmt 17 Mar 11, BBC Mon EU1 EuroPol gh/dz

[156] RTK TV, Pristina, in Albanian 1830 gmt 16 Mar 11, BBC Mon EU1 EuroPol gh/dz

[157] *Burying the Past*, pp. 42-47; see also, Amnesty International, *The challenge to fix a failed UN justice system.*

[158] http://www.zeri.info/artikulli/1/1/28708/vreeswijk-fola-se-nuk-ishim-sherbim-sekret/

[159] http://www.balkaninsight.com/en/article/eu-police-confronted-by-kosovo-police-over-arrest

[160] See also, http://www.balcanicaucaso.org/eng/Regions-and-countries/Kosovo/Kosovo-the-contradictions-of-the-European-presence-93864

[161] See footnote 158; see also, "EULEX prosecutor: Lack of indictments in Kosovo", 30 August 2011, http://www.balkanopen.com/articlev.php?id=156

[162] "Note by the Legal Advisor. Subject: International Arrested Warrants and Purported Jurisdiction of Serbia and Montenegro in respect of Kosovo and Criminal Matters"; document signed by "Alexander Borg Olivier, The Legal Adviser, 16 March 2006.

[163] http://www.france24.com/static/infographies/documents/kosovo_house_2003.pdf

[164] http://www.icrc.org/Web/doc/siterfl0.nsf/htmlall/familylinks-kosovo-eng

[165] *Marty Report*, paras. 16-17.

[166] http://www.guardian.co.uk/world/2011/jan/24/hashim-thaci-kosovo-organised-crime

[167] For verdict, Enacting Clause, redacted, see http://www.eulex-kosovo.eu/en/judgments/CM-District-Court-of-Mitrovica.php

[168] *Marty report*, para.10.

[169] Law on the Court of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", 29/00, 16/02, 24/02, 3/03, 37/03, 42/03, 4/04, 9/04, 35/04, 61/04, 32/07.

[170] Law on Prosecutor's Office of Bosnia and Herzegovina, "Official Gazette of Bosnia and Herzegovina", 24/02, 3/03, 37/03, 42/03, 9/04, 35/04, 61/04.

[171] Act on the Application of the Statute of the International Criminal Tribunal and on the Prosecution of Criminal Offences against International Military and Humanitarian Law, adopted by the Croatian Parliament on 17 October 2003. Narodne Novine, br. 175/2003, 4 November 2003.

[172] State Prosecution Office Act (Sl. list RCG 69/2003, Sl. list CG 40/2008), Articles 66 and 70; Act Amending the Act on Courts (Sl. list CG 22/08).

[173] Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, *Official Gazette of the Republic of Serbia*, no. 67/2003, July 1, 2003 (War Crimes Law).

[174] Law Amending the Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, *Official Gazette of the Republic of Serbia*, no. 135/2004, December 21, 2004, art. 3 (amending art. 2 in the original law); Basic Penal Code, Official Gazette of the SFRY, no. 44/1976, 46/1977, 34/1984, 37/1984, 74/1987, 57/1989, 3/1990, 38/1990, 45/1990 and 54/1990, *Official Gazette of the SRY*, no.35/1992, 16/1993, 31/1993, 37/1993 and 24/1994, arts. 141–156.

[175] OSCE Mission in Kosovo, *Kosovo's War Crimes Trials*, pp. 27-8, http://www.osce.org/kosovo/68569

[176] Amnesty International, *The challenge to fix a failed UN justice mission*, pp.11-13.

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KOSOVO: TIME FOR EULEX TO PRIORITIZE WAR CRIMES

In June 2012, the European Union will extend the mandate of the EU-led Rule of Law Mission in Kosovo (EULEX). In this report, Amnesty International urges EU member states and institutions to ensure that in 2012-2014, EULEX is mandated to prioritize the investigation and prosecution of war crimes.

Hundreds of war crimes from the 1998-9 war in Kosovo have yet to be investigated. Despite some progress, few members of the Kosovo Liberation Army (KLA) have been prosecuted for war crimes against Kosovo Serbs, Roma and other minorities – as well as other ethnic Albanians. Similarly, few Serbian military, police and paramilitary forces responsible for war crimes against Kosovo Albanians have been brought to justice.

Amnesty International recommends that EULEX should be provided with the resources and personnel to effectively investigate outstanding war crimes, including war crimes of sexual violence and the post-war abduction of minorities by the KLA. The organization calls on EU member states to provide long-term witness protection. Finally, it should develop an independent and impartial body of local prosecutors and judiciary, and ensure that the justice system is able to prosecute war crimes after EULEX leaves Kosovo.

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