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POTENTIALLY ETHNICALLY MOTIVATED INCIDENTS:

CHALLENGES IN DEFINING AND REPORTING

An EU funded project managed by the
European Union Office in Kosovo

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ECMI Kosovo is the principal non-governmental organisation engaged with minority issues in Kosovo, with the overarching aim to develop inclusive, representative, community-sensitive institutions that support a stable multi-ethnic Kosovo. ECMI Kosovo contributes to the developing, strengthening and implementation of relevant legislation, supports the institutionalisation of communities-related governmental bodies, and enhances the capacity of civil society actors and the government to engage with one another in a constructive and sustainable way.

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LIST OF ACRYONYMS AND ABBREVIATIONS

CC	Criminal Code
CPC	Criminal Procedure Code
CSAT	Community Safety Action Team
ECMI Kosovo	European Centre for Minority Issues Kosovo
EULEX	European Union Rule of Law Mission
ICITAP	International Criminal Investigative Training Assistance Program
KFOR	Kosovo Force
KP	**K**osovo Police
MCSC	Municipal Community Safety Council
OSCE	Organisation for Security and Co-operation in Europe
PEMI	Potentially Ethnically Motivated Incident

1. INTRODUCTION

Being a multi-ethnic society, it is of paramount importance that Kosovo promotes and protects stable inter-ethnic relations. Although inter-ethnic incidents are not an exclusive problem of Kosovo, they pose a particular threat to stability and security in the country. The ongoing political instability of the country, the memory of the violent conflict of the 1990s and early 2000s, and the vulnerable position of minority communities, make that potentially ethnically motivated incidents (PEMIs) carry particular weight; sometimes they have far-reaching consequences for Kosovo's stability and they are prone to being politicised. This especially applies for incidents involving the Serb and Albanian communities.

An example of how PEMIs can lead to violent escalations along ethnic lines are the riots of March 2004. After an incident when two Albanian boys drowned after being allegedly chased by Serbs, Serbs and Serbian property were attacked by angry crowds of Albanian youth and the situation erupted and escalated quickly. Although the direct incident was a PEMI, the riots were also the result of the public's broader frustration over the political scene and overall standstill under the UNMIK administration, going to show that riots and escalated inter-ethnic incidents can spring out from citizens' need to vent broader frustrations with the socio-economic situation.

Many incidents are the consequence of rather banal inter-ethnic events occurring in politics or sports, and will intensify through a ripple effect and convergence with broader socio-economic and political frustrations. There was for example a spike in number of incidents reported in Kosovo after the 2014 European Cup Qualifier between Albania and Serbia. The game was cancelled because of physical clashes between members of both teams after a drone flew over the field carrying a banner referring to Greater-Albania.

Reflecting the politicisation and sensitivity of the issue, inter-ethnic incidents and security issues in Kosovo, and especially those involving the Serb community, are closely followed by the international community. The European Commission's Progress Report of 2015 mentioned that: "While the overall security situation for non-majority communities remains relatively stable, an increasing trend of incidents occurred targeting the Kosovo Serb community residing in western Kosovo, with frequent thefts from homes causing a heightened sense of insecurity with in the affected community. Kosovo's police and judicial authorities need to develop a better understanding of what constitutes an inter-ethnically motivated incident."[1]

Community security and inter-ethnic incidents are also a permanent segment of the quarterly report from the Secretary-General on the United Nations Interim Administration Mission in Kosovo to the UN Security Council. The report of January 2015 mentioned "some increase in the number of potentially ethnically motivated incidents",[2] referring to the incident when a bus with Serb internally displaced persons on its way to celebrate Orthodox Christmas Gjakovë/Đakovica was hit by one stone.[3]

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[1] KOMISIONI EVROPIAN. Kosovo* 2015 Raporti I Progresit (2016), fq.26;

[2] UNITED NATIONS SECURITY COUNCIL 'Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo', (Document S/2015/74, 30 January 2015), p. 5 para. 24.

[3] ECMI KOSOVO. 'ECMI Kosovo Condemns the Violent Blockage of Entrance to the Serb Orthodox Church in Gjakovë/Đakovica and Calls on Kosovo Authorities to Ensure Free and Impeded Access to Places of Worship' (6 January 2015).

Reporting and monitoring of these incidents by the international community is important due to the implications these incidents might have to the overall security of Kosovo and they are also an indicator of Kosovo's progress in integration of the different ethnicities. This reporting mechanism does however raise concerns that the institutions and the politicians of Kosovo might refrain from classifying incidents as inter-ethnic or hate crimes out of fear that the incident will be mentioned in the report to the UN Security Council.

People's perception of security and the frequency of inter-ethnic incidents and the role of media and politicians in reporting on these incidents are important to take into account. The simple perception and/or media representation of an incident as being ethnically motivated can incite real ethnically motivated violence. Mainstream media and Kosovo Albanian politicians have drawn important lessons from the March 2004 riots and are very cautious when reporting on incidents involving members of different communities and attempt to lessen the inter-ethnic elements of the incidents, out of fear of escalation or politicisation. On the contrary, Serbian media tend to focus on the inter-ethnic element in an incident, which can sometimes instil a real or perceived sense of fear among some communities, particularly the Serb community. The rise of social media makes the reporting process even more difficult to control.

Police reporting and the following criminal proceedings play a particularly important role in dealing with PEMIs, as the police gives a factual and non-speculative account of incidents, which can decrease drastically the potential for politicising and escalation. Furthermore, proper reporting and investigation by police can help strengthen the security and confidence of communities in Kosovo institutions. However, there is a risk of discrepancy between perception at the community level and police reporting. The PEMIs that were reported in the Klinë/Klina area in 2015, particularly targeting members of the Serb community, revealed that police reporting often minimises elements of ethnicity when reporting on incidents revolving members of different ethnic communities.[4] As such, they often stand diametrically against politicised statements made by Kosovo Serb politicians and representatives of the Serbian government, but also the perception of the Serb community in the Klinë/Klina area itself.

The ability of Kosovo institutions to properly prosecute and adjudicate ethnically motivated offences also play a pivotal role to in establishing a sense of rule of law, security and trust in institutions among communities. When looking at the statistics on inter-ethnic incidents provided by the Kosovo Police (KP), the Prosecution Office and the Judiciary, the numbers are remarkably low. For instance, in 2016, the Judiciary received only six hate crime cases under Article 147 of the Criminal Code (CC) in 2015. The low number portrays a discrepancy of the general perception of the people on inter-ethnic incidents and the factual number of cases which are processed in Kosovo's official institutions. It bears to note, however, that in cases where a crime has other aggravating circumstances (for example, an ethnically-motivated burglary that ends up with physical violence or physical victims, will end up being characterized as a physical assault and not as an ethnically-motivated burglary), statistics reflect the weight of the heavier crime, and not always that of the ethnically-motivated one.

The topic of PEMIs has been given attention it previous reports by organisations and been the topic of a number of workshops conducted in Kosovo.

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[4] ECMI KOSOVO. 'On the recent security incidents in Klinë/Klina and the difficult return process' (21 May 2015).

[5] See for example the report from, Center for Peace and Tolerance. 'Potentially Ethnically Motivated Incidents in Kosovo – an ugly story that has never been told'. July 2016. The OSCE also organized a workshop on July 11-12, on improving the recording of hate crimes in Kosovo, see http://www.osce.org/odihr/253136

This report aims to provide a comprehensive examination of the different factors that explain this discrepancy between perception at the community level, media coverage and police reporting and adjudication of PEMIs. The report will analyse the existing legal framework for inter-ethnic crimes in Kosovo, it will examine the reporting process of the KP and the criminal proceedings of these incidents in the Prosecution Office and in the Judiciary. The most recent statistics from these institutions will be analysed, and finally the responsibility of the media and Kosovo politicians will be examined.

2. METHODOLOGY

This report scrutinises reporting procedures applied by KP, with a particular focus on PEMIs, from the initial investigation and reporting phase (including statements made to media) to data sharing and harmonisation with the judiciary. It will also present and analyse statistics received on inter-ethnic crimes which have gone through criminal proceedings. This general overview of the institutional setup and cooperation between the three institutions of Kosovo Police, State Prosecutor and the Judiciary is provided to give a proper account of the current system of reporting and prosecution of PEMIs in Kosovo. For each of these facets, the report will reveal challenges and present recommendations to further improve the way PEMIs are defined, reported, and prosecuted.

The report is based on desk research of definitions and procedures for reporting of PEMIs and in-depth interviews with representatives of KP, Prosecutor's Office, EULEX, OSCE, the Department of Statistics within the Kosovo Judicial Council, and the International Criminal Investigative Training Assistance Program (ICITAP). The report also includes a small case study of the registration, classification and prosecution by KP, Prosecution Office and the Judiciary of an incident that took place in 2015 to illustrate the complexity of classifying inter-ethnic incidents.

The report has chosen to aim the main focus on PEMIs involving incidents between persons from the Serb and Albanian communities. Although ECMI Kosovo acknowledges that other minorities are subject to incidents with bias motivation, it is not research topic of this report.

3. DEFINING ETHNICALLY MOTIVATED INCIDENTS

3.1 General Remarks on the Definition of Ethnically Motivated Incidents and Hate Crimes

Hate crimes are crimes that are based on prejudice and preconception. These offences are based on two elements, and if both elements are present in the crime, it will constitute a hate crime. The first element provides that the incident must be a crime under the CC. Second, the crime must have been committed with a *bias motivation*, meaning that the perpetrator chose the victim or target based on some protected characteristics. The target can be both a person, a group of persons or a property that is associated with a group that shares a particular characteristic, for example, a church, a mosque or asynagogue. A protected characteristic is a characteristic that is shared by a group, such as language, religion, ethnicity or any other common denominator.[6] An offence committed against a disabled person because of its handicap can therefore be classified as a hate crime.

The aforementioned entails that an incident involving members of different communities does not immediately imply that the crime was a hate crime. Only if there was a bias motivation behind the criminal actions committed, should it be classified as a hate crime.

In May 2015, an incident occurred when a Serb inhabitant of the village Pasjane/Pasjan in the municipality of Parteš/Partesh was reported to have been be stabbed by two Kosovo Albanian inhabitants of the nearby village of Vllashticë/Vlaštica. The incident, which was the topic of an ECMI information statement,[7] is a good example to illustrate the complexity of determining the motivation behind inter-ethnic incidents. The incident occurred after an overtaking manoeuvre on the road that came close to ending in a traffic accident. Despite the fact that there was no collision, the victim and the defendants engaged in subsequent verbal aggression and ultimately a physical fight, with the victim suffering injuries.

The question of the motives behind the incident was immediately raised as the offenders were Kosovo Albanian and the victim was Kosovo Serb. KP representatives swiftly announced that the direct cause of the incident was road rage and that the incident was not ethnically motivated. In Serb media however, reactions from Kosovo Serb and Serbian official representatives were reported who defined the incident as ethnically motivated with the intention to scare and chase away Serbs remaining in the southern parts of Kosovo.[8] This illustrates the tendency of Kosovo Serb and Serbian politicians to focus on the ethnic component in inter-ethnic incidents and defining these incidents as ethnically biased in order to politicise the incident. In addition, this case illustrates KPs tendency to minimize any possible ethnic element or motive in an inter-ethnic incident at the primary reporting phase, perhaps out of fear of politicisation. The issue of evidence and complexity of determining bias motivation is also illustrated in this case as someone could argue that this is a clear case of road rage gone awry, without element of bias motivation, while others could argue that the actual stabbing would not have happened if the parties were not from different ethnicities and argue for the presence of bias motivation.

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[6] OSCE/ODIHR. 'Hate Crime Laws – a Practical Guide'(2009).
[7] ECMI KOSOVO. 'On the occasion of the recent incident in Pasjane'(10 May 2015)
[8] B92. 'Da se kazneonikoji su napadali'(5 May 2015).

3.2 The Legal Framework

The standards by which hate and ethnic crimes are judged in Kosovo follow international standards and as such are adequate, in theory, for appropriately categorising and reporting incidents involving minority communities. Current legislation regarding hate crimes and ethnically motivated incidents can be found in the CC of the Republic of Kosovo under Article 147.

The first and second provisions of Article 147 of the CC state that anyone who publicly incites and spreads hatred or intolerance between those of different nationality, race, religion, or ethnicity can be punished by fine or imprisonment of one to eight years.

The third provision of Article 147 lists the means by which one can cause offense as follows: coercion, jeopardising safety, exposing national, racial ethnic or religious symbols to derision, damaging another person's belongings or desecrating monuments or graves. The last and fourth provision of Article 147 provides for different aggravating circumstances where the offence is considered graver and which consequently can lead to more severe punishment. Namely, committing these offences in a systematic manner or by taking advantage of one's position or authority, is considered more severe and graver, and therefore the offender is punishable by imprisonment of two to ten years.[9]

It is important to note that Article 147 is not limited to bias motivation because of ethnicity or religion. It is also applicable to offenses where the perpetrator has attacked members from the LGBT community or disabled people.

Article 147 is however limited in its scope as a strict use of the Article does not cover any potentially ethnically motivated intentions behind the crime. The exclusive use of Article 147 would mean that the registration of incidents would not take account of any potential ethnic motivation behind the incident. It has therefore been suggested that this limitation in the Article can be addressed by applying Article 74(2.12) of the CC, which takes the crimes motivation and intentions in to account.[10] This Article provides that the following can be considered an aggravating circumstance namely "if the criminal offence is committed against a person, group of persons or property because of ethnicity or national origin, nationality, language, religious beliefs or lack of religious beliefs, color, gender, sexual orientation, or because of their affinity with persons who have the aforementioned characteristics."[11] Article 74, is however a general provision and is not a provision that provide a legal basis for a criminal offense that a judge can use independently in his/her decision. The judge may only use Article 74 as a legal basis to extend a sentence due to aggravating circumstances. Nevertheless, Article 74(2.12) does present an important tool for which the judges can address inter-ethnic offences, which are not covered by Article 147, and utilize it to extend the sentence. However, Article 74(2.12) has not yet been reflected in any verdicts.[12]

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[9] Criminal Code of the Republic of Kosovo Code No. 04/L-082 (20 April 2012), Article 147.
[10] EUROPEAN COMMISSION. Report from the Commission to the European Parliament and the Council,Third report on progress by Kosovo* in the requirements of the visa liberalization roadmap(COM (2015) 906 final, 18 December 2015), p. 10.
[11] Criminal Code, Article 74(2.12).
[12] EULEX, Compact Progress Report(September 2015), p. 12.

Additionally, Article 333 on destruction and damage to property and Article 179 on aggravating murder both contain provisions that increase the severity of the offence if the murder or damage to property was committed with bias motivation.[13]

3.3 The Relevant Institutional Structure: Kosovo Police, Prosecution Office and the Judiciary

The rule of law in Kosovo rests on three institutions, namely Kosovo Police, the Public Prosecutors and the Courts. Any criminal proceeding will be processed by all three institutions and will go through four distinctive stages: the investigation stage, the indictment and plea stage, the main trial stage and the legal remedy stage.[14] The criminal proceedings and the cooperation between the KP and the public prosecutors are very well regulated in the Criminal Procedure Code (CPC). The graph below will illustrates the different roles the three institutions have in the criminal proceeding of a criminal offence.[15]



As first responder, the KP are the first to arrive to the site where the incident has taken place. If the initial police patrol suspects that a criminal offence has taken place it will start an initial investigation to investigate whether reasonable suspicion exists that a criminal offense has indeed taken place and will file an initial incident report.[16] As soon as the police obtain a reasonable suspicion that a criminal offense has been committed, they provide a police report within 24 hours to the competent state prosecutor. The state prosecutor then decides whether to initiate a criminal proceeding or not.[17]

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[13] Criminal Code, Article 333(4) and Article 179(1.10).
[14] Ibid., Article 68.
[15] This graph is based on Chapter IX of the Criminal Procedure Code of Kosovo and from interviews with the KP Head of Legal Affairs, Police Headquarters Pristina, 17 May 2016 and with the Coordinator of Inter-Ethnic Hate Crimes at the Office of State Prosecutor, State Prosecutor Office Pristina, 26 May 2016.
[16] Ibid., Article 70(1).
[17] Ibid., Article 70(4).

Thus, an investigation can only be initiated by a decision of the prosecutor.[18] The state prosecutor may thereafter carry out the investigative actions, but may also authorize the police to undertake the investigative actions which relates to collection of evidence.[19] As the CPC makes a distinction between less severe crimes or misdemeanours and serious crimes, the investigative procedures will be different depending on the nature of the crime.[20] As Article 147 provides that any incidents with bias motivation can lead to imprisonment to up to five years, any incident of hate crime will be processed as a serious crime, both by the KP and the State Prosecutor's Office.

When the case has been sent over to the competent state prosecutor it is the responsibility of the prosecutor to ensure the appropriate collection of all relevant evidence, either by the prosecution or the police. It is also the sole responsibility of the prosecution to classify the nature of the criminal offence and to find the applicable articles of the CC. Accordingly, the prosecutor will analyse the evidence and decide if there is enough information to provide a well-grounded suspicion that the defendant has committed a criminal offense. If so, the state prosecutor may file an indictment and on the basis of this indictment, proceedings before the court may be conducted.[21]

In line with the principle of independence of judicial institutions, the Court will analyse the evidence which has been presented, and they may also request further evidence to be collected by the prosecutor or the police.

Given the involvement of three institutions in criminal proceedings, it is crucial that they have an extensive and well-functioning cooperation mechanism for effective result and a satisfactory execution of rule of law. The next chapter will identify challenges in defining, reporting and analysing PEMIs by and between the three relevant institutions.

[18] The police can however take initial steps to start an initial investigation according to Articles 69 and 70 of the CPC.
[19] Ibid., Article 104(1) and 104(2).
[20] Misdemeanors and less severe crimes are criminal offences which are only punishable with fine or imprisonment under three years, while serious crimes are punishable with imprisonment over three years, Criminal Procedure Code, Article 101(2).
[21] Criminal Procedure Code, Article 240(1).

4. CHALLENGES RELATED TO DEFINING AND REPORTING ETHNICALLY MOTIVATED INCIDENTS

4.1. Paucity of Data Gathering, Sharing and Analysis

From the government side of the reporting process, the biggest roadblock to proper reporting and recording of PEMIs is the lack of substantial data sharing between the different institutions. With the current mechanism of data gathering and sharing, it is very difficult to perform any sort of data analysis, let alone to base policy or decision making processes with regard to community issues on concrete statistical data. First and foremost, the current case tracking system is not uniform across departments. The system lacks a universal number which can be assigned to cases as they progress through the justice system from the KP, to the Prosecutor's Office, to the Judiciary.

After recommendations put forward by the European Commission,[22] a new case management information system is currently being developed that will be operational from 2017. This system will unify the case information of seven institutions, namely the KP, the State Prosecutor, the Judiciary, Customs, the Civil Registry, Kosovo Investigation Unit and Kosovo Intelligence Agency. When fully operational, the tracking and reporting system will define each case by a unique case number across the institutions which, will enable easy tracking of all cases processed by these institutions.[23]

4.2.Kosovo Police Reporting Procedures on Potentially Ethnically Motivated Incidents

When responding to an incident, the KP are required to fill out an incident report. Within this incident report, the officer must check a box indicating the motive of the incident out of the following options: disagreement/anger, family, ethnic, personal profit or political.[24] It is at this point that the officer must do an initial estimation of the motive behind the incident– leaving very little room for grey areas, potential ethnic motives or the possibility of multiple motivations. It is more than possible that, though an incident may not have been primarily motivated by an ethnic bias, it had an unconscious, underlying tone or perception of ethnic bias.[25] The police reporting system also include another reporting detail when it regards reporting on sensitive cases. Any incident with a suspected bias motivation should be treated as a sensitive case (along with any other serious crimes such as for example homicide) and the reporting therefore requires that a second report form is filled in. This report, called 'flash report', contains a section which demands that the officer actively confirms or rejects that the incident is ethnically motivated. Hence, the police officer has to respond yes, no, or unknown in the section where the flash report specifically ask whether the incident was ethnically motivated.

In classifying an incident, the KP employs specific definitions for categorising incidents as a hate crime or ethnically motivated incident in addition to the basic definition of a hate crime or ethnically motivated incident provided in Article 147 of the CC. According to these more defined parameters, hate or ethnic crimes are any act or threat of violence, property damage, inconvenience, intimidation, as well as others not enumerated, fuelled or motivated by a bias against race, religion, ethnic origin, gender, sexual orientation or disability.

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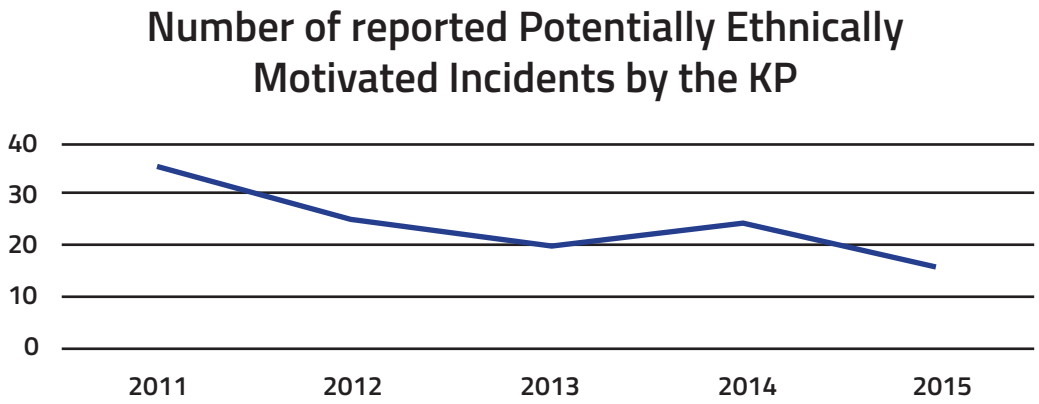
[22] As pointed out by the European Commission in their second progress report on Kosovo's implementation of the roadmap to visa liberalisation, Kosovo institutions could benefit from developing a common approach and improved coordination. They also recommended to "develop an integrated case management system allowing the tracking of criminal cases from investigation through prosecution and conviction to asset recovery". EUROPEAN COMMISSION. Report from the Commission to the European Parliament and the Council on Second report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap(COM (2014) 488 final, 24 July 2014), pp. 5 and 7.

[23] Interview with Coordinator for Inter-Ethnic Hate Crimes, State Prosecutor Office Pristina, 24 May 2016.

[24] Interview with Head of Legal Affairs, Kosovo Police, Police Headquarters Pristina, 17 May 2016.

[25] As illustrated in the Pasjane incident, see above part 3.1.

Police officers should carry out a list of procedures at the crime scene to classify an incident. These include, but are not limited to: ensuring the scene, protecting the victims and witnesses, preserving any physical evidence, and collecting statements.[26] In addition, as part of basic training all officers go through a human rights training which includes hate crimes.[27]



The graph illustrates a clear decreasing trend since 2011 of PEMIs reported by the KP. The data only present the cases where the prosecutor has authorized the investigation.[28] According to the KP, the classification of potentially ethnically motivated crimes was implemented differently before the year 2011 and those statistics were not provided as they would be inconsistent with the more recent data. In the classification procedure applied before 2011, the KP would classify any incident involving members from different ethnicities as a PEMI, leading to significantly higher numbers of PEMIs in the statistics. As of 2016, the KP will no longer keep statistics on recorded PEMIs, as this will be the sole responsibility of the State Prosecutor.[29]

Indeed, the reports from the KP have no finality in categorising incidents as ethnically motivated or not. The responsibility to categorise it falls with the prosecutor and finality of categorisation falls with the Judiciary. Though the KP is responsible for the initial assessment, reporting and categorisation of an incident, if upon further investigation the Prosecutor's Office or the authorised judge finds the incident to be ethnically motivated or not, they may re-categorise it and pursue it as such.

The primary role of the KP in the process of reporting and resolving an incident is not to make a final assessment of the ethnic motivation behind incidents, but to gather hard evidence and report strictly on that. This should include identifying any elements or factors that might lead to the conclusion that the incident was ethnically motivated. In other words, the KP should focus on elements which might indicate ethnic motives behind an incident and to take into consideration the perception of people or underlying ethnic motives.

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[26] Criminal Procedure Code, Article 70.
[27] Interview with Head of Legal Affairs, Kosovo Police, Police Headquarters Pristina 17 May 2016.
[28] Interview with EULEX Advisor to the KP Deputy General Director Operations/Deputy Head of Advisory Unit Police and Border Matters, Pristina 7 July 2016.
[29] Interview with Head of Legal Affairs, Kosovo Police 17 May 2016.

The KP processes PEMIs along well-regulated procedures and through carefully developed strategies, structures and standard operating procedures they have the capacity and capability to effectively process inter-ethnic incidents.[30] Nonetheless, when looking at the statistics presented by the KP, the number of recorded PEMIs are remarkably low. As mentioned earlier, the current reporting mechanism does not allow for multiple motives or potential ethnic bias. Additionally, there is a tangible risk that officers of the KP hesitate to classify an incident as ethnically motivated due to the political consequences and escalations that could ensue. Where media and political representatives of minority communities often point to the primacy of ethnic motives, KP seems to have a tendency to deny even the potentiality of ethnic motives or perceptions and points to the primary motives behind the incident and sticking closely to that motive in the police report, which does not allow for grey zones or perception of the victim. While it is definitely justifiable to point to other more banal and material factors or motives at play, such as sheer financial benefit of the perpetrator, disregarding all ethnic elements behind these incidents is never the appropriate approach.

4.3. The State Prosecution Office Classification and Data Collection on Potentially Ethnically Motivated Incidents

In 2015 the State Prosecutor recorded 11 inter-ethnic cases within the state prosecutors. Statistics from previous years were not released because the statistics were significantly higher and would not in fact represent the actual number of offenses committed under Article 147. This is because the State Prosecutor Office until 2015 classified and categorised any criminal offence involving two different ethnicities as a PEMI.

As mentioned previously, the State Prosecutor Office as of 2016 is responsible for collecting the statistics on PEMI's from the KP and the prosecutor, and has appointed a coordinator for inter-ethnic crimes. This coordinator will collect and report on the statistics on inter-ethnic incidents received from the KP and local prosecutor offices in Kosovo. The ultimate purpose is to present coherent and uniform statistics from the KP and the State Prosecutor.

Although a coordinated data tracking system is definitely valuable and commendable, uniformisation of the statistical data of the KP and the State Prosecutor might lead to the loss of valuable information, as any discrepancies between the two levels of criminal proceedings will not be presented. As the Prosecution Office is more evidence orientated than the KP is required to be, the statistics could decrease even more the potentiality of ethnic motivations and depict a less representative view of the real status. An enhanced focus on joint training between the two institutions as a method to attain a common definition and approach to the PEMIs would lead to a more sustainable and representative approach, in line with the recommendations of the European Commission.[31]

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[30] Interview with EULEX Advisor to the KP Deputy General Director Operations/Deputy Head of Advisory Unit Police and Border Matters, Pristina, 7 July 2016.

[31] EUROPEAN COMMISSION: COM (2014), p. 5.

4.4 Judiciary Practices and Data Collection

The final categorisation of an incident as ethnically motivated or not takes place within the judiciary. The most recent statistics from 2014 and 2015 shows that in 2014 there were nine cases processed under the Article 147 of the CC, six were new cases and the other three came from the backlog of the reporting period of 2013. Of these nine cases, four were resolved and five were still pending at the end of the reporting period. In 2015 there was, six new cases processed, in total eleven cases due to the backlog from 2014. Three of these were resolved during the reporting period and eight were still pending at the end of reporting period.

Cases regarding Article 147 of the Kosovo Criminal Code in 2013–2015:[32]

Reporting Period	2013	2014	2015
Backlog from previous reporting period	2	3	5
New cases received during the reporting period	4	6	6
Cases in total	**6**	**9**	**11**
Penalty resulting in imprisonment	0	0	1
Penalty resulting in fine	1	1	0
Suspended sentence	0	2	0
Cases resolved in other manner	2	1	2
Cases resolved in total	3	4	3
Pending cases at the end of the reporting period	3	5	8

Looking at the statistical data, it is clear that the number of cases being adjudicated under Article 147 are significantly lower than the number of cases which the KP record as potentially ethnically motivated. The reasons for this drop in numbers are manifold.

Firstly, when the police in its incident report categorises an incident as potentially ethnically motivated, the categorisation is only based on *suspicion*. This suspicion could in the court proceeding be discarded on account of lack of evidence. The Courts and their judgements can only be convinced by the presented evidence and not by suspicions.

Secondly, the aforementioned statistical data from the Kosovo Judicial Council (KJC) only depicts cases where Article 147 is the only article referred to in the judgement.[33] Any judgements where Article 147 has been used in conjunction with another article, will therefore not be included in the statistics presented above, thereby making the data on Article 147 variable and partly uncovered. Additionally, the statistics include all offenses committed under Article 147, therefore the statistics also include offences committed with bias motivation due to racial differences or sexual orientation. The exact number of cases adjudicated on the basis of ethnic bias is therefore unknown.

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[32] Statistical data from the Kosovo Judicial Council's Department of Statistics. Acquired from a member of the Judicial Council on 12 May 2016.

[33] Director of Statistics Department, Kosovo Judicial Council, Office of the Kosovo Judicial Council, personal interview, 12 May 2016.

Unfortunately, the Judicial Council does not keep any statistics on the previously mentioned Article 74(2.12) of the CC, which offers the opportunity to extend a sentence due to aggravating circumstances such as bias motivation. If statistics are kept on this Article, it will perhaps give a wider and more correct picture of the number of ethnically motivated cases processed in the judiciary. According to the EULEX Compact Report from 2015, Article 74(2.12) has never been reflected in any verdicts. [34]

4.5 OSCE and EULEX Monitoring of Potentially Ethnically Motivated Incidents in Kosovo

Both OSCE and EULEX have PEMIs as an important area of focus in their work in Kosovo. The latest publication of the OSCE Community Rights Assessment Report, presented the number of incidents which "had the potential to negatively affect the security perceptions of communities in a numerical minority at the municipal level." The total number of incidents reported was 479, which by comparison to the Kosovo institutions is significantly higher.[35] It should be noted that the OSCE statistics is not solely focused on PEMIs but could also to some extent include incidents where the involved parties are from different ethnic backgrounds but the motivation of the crime is not confirmed to have been bias motivation.[36] In other words, the OSCE uses a broader definition for classification than what is laid out in Article 147 of the CC. EULEX also monitors PEMIs in Kosovo, but does not publish statistics on this matter. EULEX too applies a lower threshold for classifying an incident as PEMI than the CC, as it includes what *potentially* is an inter-ethnic incident.[37] Nevertheless, the monitoring of EULEX and OSCE should not be discarded for being exaggerated. In fact, the number of actual PEMIs taking place in Kosovo is believed to be considerably higher than the numbers from OSCE, as the number of unrecorded incidents is unknown. Under-reporting is a serious concern. As many minorities lack trust in the official authorities, many incidents go unreported, leaving a shadow of uncertainty on the recorded statistics.[38]

4.6 Case Studies

The complexity of reporting on and prosecuting an incident will be illustrated through the case-study of the stabbing incident that took place on 4 May 2015 in Pasjane/Pasjan. ECMI reported on this incident in 2015 and this report will follow up on the result of the criminal proceedings, including KP, Prosecution Office, Judiciary and medical files.

Immediately after the incident, the KP was called to the scene and were therefore the first responders. Police initiated the investigation and notified the prosecutor on call. It classified the incident as attempted murder and filed both an incident report and a flash report since the offence was categorized as a serious criminal offence. In neither of these reports did the police indicate that there was any suspicion of ethnic motivation behind the incident.[39]

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[34] EULEX: Compact Report, p 12.
[35] OSCE MISSION IN KOSOVO, Community Rights Assessment Report, Fourth Edition(November 2015), p.9.
[36] Interview with OSCE National Professional Officer, Communities Section of the Department for Human Rights and Communities, OSCE Office Pristina, 6 July 2016.
[37] Interview with EULEX Advisor to the KP Deputy General Director Operations/Deputy Head of Advisory Unit Police and Border Matters, Pristina 7 July 2016.
[38] EULEX Advisor to the KP Deputy General Director Operations/Deputy Head of Advisory Unit Police and Border Matters, Pristina 7 July 2016.
[39] Case number 044-2015 of the Kosovo Police. Read on 9 June 2016 at the office of the State Prosecutor in Pristina.

In its indictment, the Basic Prosecutor's Office in Gjilan/Gnjilane changed the classification of the crime and argued that the defendant should be charged with having committed light bodily harm. The indictment also explicitly refers to a statement from the victim where he declares that this incident had nothing to do with ethnic conflict, but it happened because the defendant is a violent person.[40] The indictment does not go further to elaborate on the possibility of a bias motivation behind the stabbing hence, neither the KP nor the state prosecutor voiced any suspicion that the criminal offence was committed with bias motivation.

Finally, the Court found the defendant guilty of inflicting light bodily harm to the victim, and gave him a six months sentence on parole.[41] Thus, the Court did not include Article 147 and it did not consider the inter-ethnic character of the incident to be an aggravating circumstance.

When examining the proceedings of this case the non-reference of the Court to Article 147 is correct. Many incidents however, between people of different ethnicities are in carried out with other motivations behind them. As such, it is right to assume that theft has no bias motivation, but is foremost motivated by the material benefit of the perpetrator. This is most likely the case until any evidence point to bias motivation. Nevertheless, when a committed incident of theft does point to bias motivation, Article 74(2.12) becomes relevant. As this potential secondary or multiple motivation based on ethnicity does not necessarily provide that the perpetrators should be sentenced after Article 147, due to the limited scope of the article. The perpetrator should however, be sentenced after the appropriate Article of the CC, in conjunction with 74(2.12) due to aggravating circumstances due to bias motivation.[42]

To illustrate this point, another case, which ECMI Kosovo reported on in May 2015, has been examined and followed up on. ECMI Kosovo wrote a report on a number of security incidents taking place in the municipality of Klinë/Klina in May 2015 where the victims of the assaults and robberies were a number of Kosovo Serb inhabitants that had recently returned to the municipality.[43] These incidents were reported to the police, who conducted investigations and apprehended the perpetrators. One of the incidents involved three Albanians which robbed and assaulted two families which were both Serb returnees. The three defendants were indicted and the judicial proceedings took place on 20 January 2016,[44] where they were found guilty of two criminal offences, namely robbery after Article 239, paragraph 1, in conjunction with paragraph 4, of Article 239. Similarly, to the other incident in Pasjane/Pasjan, the Basic Court in Peja/Peć did not include Article 147 nor Article 74(2.12) in its verdict.[45]

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[40] Indictment from the Basic Prosecutor's Office in Gjilan/Gnjilane, document number, PP.II.nr. 992/2015, 19 June 2015.

[41] The judge convicted the defendant under Article 188, paragraph 2 and subparagraph 1.1 of the Criminal Code, Judgment of the Basic Court in Gjilan/Gnjilane, P.nr. 620/2015, 8 December 2015.

[42] See especially the first paragraph of Article 147 which provides a narrow interpretation of hate crimes and states the following: "Whoever publicly incites or publicly spreads hatred, discord or intolerance between national, racial, religious, ethnic or other such groups living in the Republic of Kosovo in a manner which is likely to disturb public order shall be punished by a fine or by imprisonment of up to five (5) years."

[43] ECMI KOSOVO. 'On the recent security incidents in Klinë/Klina and the difficult return process' (21 May 2015).

[44] Prosecutor case file number PP/I nr. 133/15.

[45] Judgment of the Basic Court in Peja/Peć, P. 173/15 (20 January 2016)

Without knowing the details in this specific case, it is seemingly correct to argue that the primary motive was perhaps the economic benefit of the defendants, however, because the two families were Serb returnees, it suggest that they were chosen as the victims because of their ethnicity. A case like this should arguably be processed as a case with multiple motives, and if the necessary evidence is provided, the perpetrators should be sentenced with robbery according to Article 239 of the CC in conjunction with Article 72(2.12). A case like this one, should also be included in the statistics of recorded PEMIs at the Kosovo institutions, including both the statistics of the police and the judiciary, to show a more realistic picture of the current status of inter-ethnic tensions in Kosovo.

4.7 Lack of Community Trust and Knowledge Regarding Justice Mechanisms

Lack of trust and communication between the police and community is another ubiquitous impediment to proper incident reporting. Community members regularly hesitate to report incidents because they do not trust that it will lead to proper police investigation and prosecution. This might actually be linked to reporting procedures applied by KP, which in the perception of minority communities does not acknowledge their fears and concerns as a minority community.

Generally speaking, the KP is among the most trusted security institution in Kosovo. In a cluster survey of the general public perceptions towards Kosovo security institutions, KP came out as the third most trusted security institution, closely preceded by the Kosovo Security Force and KFOR.[46] Notably, the KP's percentage of respondents who trusted this institution increased by 10 percentage compared to the previous year of the survey.[47] The KP was also the institution which had been in direct contact with the most respondents of the survey, namely 58 percent.[48] The same survey also revealed that the public perception and trust to the justice institutions are low, where 40 percent do not trust the prosecution and 51 percent do not trust the Court.[49]

One of mechanisms that have been put in place to increase community awareness of justice mechanisms and avenues of communication between local communities and police are the Municipal Community Safety Councils (MCSC).[50] The attendees at these meetings, which take place at least six times per year, cover a gamut of organisations and individuals including, but not limited to, the Kosovo Police, Kosovo Security Force (KSF), the media, local politicians, education directors, etc.[51] At the meetings, the Council members have the opportunity to bring up any grievances, worries, comments, and suggestions they might have in regards to community safety. The MCSC's can play an essential part in increasing community trust as it is a mechanism for the municipalities and KP to respond quickly and effectively to incidents that may be ethnically motivated and to follow-up on eventual incidents, realising the victims' and communities' rights to justice, security and non-repetition.

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[46] KOSOVAR CENTER FOR SECURITY STUDIES.Kosovo Security Barometer, Fifth Edition(December 2015), p.10.
[47] Ibid., p.8.
[48] Ibid., p.10.
[49] Ibid., p.12.
[50] The MCSC is an "advisory body chaired by the Municipal major and with membership representing all communities within the municipality." Its purpose and mandate is "to develop awareness related to the nature of crime, disorder and violent behavior in the local community, to identify the concerns regarding public safety and security and to recommend action plans, to address those concerns through the cooperative efforts of municipal authorities, local communities and the police." Law No. 04/L-076 on Police(2 March 2012), art. 7.
[51] REPUBLIC OF KOSOVO, MINISTRY OF INTERNAL AFFAIRS, 'Administrative Instruction 27/2012 on Municipal Community Safety Councils' (March 2012), Article 4, 11(2).

In addition to these meetings, each municipality which participates[52] in the programme also has Community Safety Action Teams (CSATs) which consist of municipal officials, police officers and community officers. The MCSC's are also required to have one CSAT representative as a member and to attend the mandatory meetings. CSATs cooperate with the KP and operate on a volunteerism base similar to the American programme of neighbourhood watch. The CSATs' primary purpose is to cooperate to identify and address issues of crime, safety and liability.[53] For further progress in this programme it is necessary to develop the notion of volunteerism in regards to community safety and to put additional community members through CSAT training.

The two mechanisms of the MCSCs and the CSATs are two valuable approaches to address the issues of under-reporting as well as victim and community perception of PEMIs. If the community have confidence in the police's ability to properly report on PEMIs it will suggest that more victims are more inclined to report the crimes that have been committed against them.

[52] As of May 2016, 34 municipalities has established the MCSC's. The four remaining municipalities are the ones in north Kosovo, namely Leposavić, Zvečan, Zubin Potok and North Mitrovica. These four remaining municipalities is however in the process to establish these councils. Information received in interview with Advisor at International Criminal Investigative Training Assistance Program (ICITAP), Pristina 16 May 2016.

[53] Administrative Instruction 27/2012 MPB, Article 2(1.10) and 17(2).

5. MEDIA REPORTING AND POLITICAL RAMIFICATIONS

Media reports, both by Kosovar and Serbian media, have a profound effect on the general population's perception on inter-ethnic incidents. The media coverage in Kosovo is still ethnically polarized to a large extent. Media is often biased and rarely reaches other communities than the one it addresses. The polarization is evident as Kosovo Albanians tend to predominately watch Kosovo media, whilst Kosovo Serbs' primary source of information is media from Belgrade.[54] The reporting is also polarized in the sense that the reporting is typically restricted to the journalists' sources within his/hers community, which often result in biased and incomplete reports. Reports on inter-ethnic incidents in particular are often based on single community sources, thereby rendering many reports unsubstantiated. OSCE monitoring has identified that media tend to make reference to the alleged perpetrators ethnicity, even when an incident does not show any indicators that it was committed with ethnical or political motivation.[55]

Previous ECMI reports also identify Kosovo Serb and Serbian media's tendency to quickly state that incidents are ethnically motivated. By not taking its responsibility to report on these incidents in an objective and multifaceted manner, the media's reporting risk to fuel a potential outburst of ethnic tensions spreading throughout Kosovo. As indicated by the March 2004 riots, through sensationalist and one-sided reporting, one single incident can have a rippling affect and result in an outburst of ethnically motivated violence. This does not mean that media should refrain from or minimize reporting on the potentially ethnic motivation in PEMIs. But both the Albanian and Serbian-language media need to improve the reporting and strive towards including sources and viewpoints from different communities and voices from the political and public sphere in order to provide substantiated, objective and reliable news.

In a similar fashion, politicians are often quick to politicize inter-ethnic incidents.[56] In the reporting of the stabbing incident in Pasjane/Pasjan, Serbian-language media based their report on statements made by Kosovo Serb political representatives. They quoted the Mayor of Parteš/ Partesh, DraganNikolić, saying that "the attack is aimed at harassment and expulsion of the remaining Serbs in this part of Kosovo."[57] Considering the nature of the incident in Pasjane/Pasjan and the uncertainty of a bias motivation, the rash and immediate ethnic framing of Nikolić seem impulsive and unsubstantiated. Whereas Kosovo Serb politicians are aware of the sensitivity of PEMIs in Kosovo and often make balanced statements pointing to the authority of rule-of-law institutions, Serbia-based politicians in particular are quick to classify an incident as inter-ethnical when commenting on PEMIs in Kosovo, in order to make their argument stronger, that support from Serbia is necessary to guarantee the security of the Kosovo Serb community.[58] Such statements are duly taken over by Serb-language media, which leads to a powerful one-sided interpretation of PEMIs, which as a rule are very complex.

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[54] BUREMA, Lars. 'Reconciliation in Kosovo: A Few Steps Taken, a Long Road Ahead', Journal on Ethnopolitics and Minority Issues in Europe (2012/4), pp. 7–27. p. 20.
[55] OSCE Mission in Kosovo: Community Rights Assessment Report, Fourth Edition, p.34.
[56] ECMI Kosovo. 'Incidents and Tensions in Mitrovica: Need for Unbiased Reporting and the Strengthening of the Rule of Law' (21 April 2015).
[57] KOSSEV, 'Izboden Srbina u Pasjanu' (4 May 2015). Original in Serbian: "NapadzaciljimauznemiravanjeiproterivanjepreostalihSrbaizovogdelaKosova"
[58] ECMI Kosovo, 'On the Recent Security Incidents in Klinë/Klina and the Difficult Return Process'(21 May 2015).

Thus, the media and the politicians and other public figures have a joint responsibility to report objectively and to not misuse these incidents for their own political agenda. It is therefore paramount that politicians from both ethnicities take responsibility for their statements refrain from issuing hasty assumptions on motives behind an incident and reiterate their faith in police and prosecution to investigate and analyze the case. If these incidents are approached correctly by politicians and the media, they can offer a sense of reassurance to the affected citizens and establish a culture of rule of law, which is crucial to tackling inter-ethnic incidents in Kosovo.

6. CONCLUDING REMARKS

This report has set out to provide a comprehensive report on challenges both within the legal framework, data collection and media reporting on inter-ethnic incidents in Kosovo.

It can be concluded that the number of registered cases of PEMIs within the KP, the Prosecutor Office and the Judiciary is not in accordance with inter-ethnic incidents and the general population's perception of these incidents. Poor integration is one factor that could explain the discrepancy. In other words, less incidents are recorded than perceived, because Serbs and Albanians live very segregated.

Secondly, and perhaps more importantly, the manner in which the KP, Prosecution Office and the Judiciary categorize incidents and keep statistics, suggests that we are not seeing the whole picture of inter-ethnic crimes in Kosovo. As explained, the KP's reporting template does not allow for the potentiality of ethnic motivations behind incidents. In keeping with political sensitivities of inter-ethnic relations in Kosovo, KP tends to under-report potential ethnic motivations when no nuance is allowed for in the reporting template. Additionally, statistical data are not coordinated or integrated across the three institutional levels for criminal proceedings, which hampers accurate analysis of statistical data on PEMIs for policy and decision-making. Ongoing reform measures to establish a uniform data tracking system for all institutions involved brings about the required basis for accurate statistical analysis, but the quest for uniform data at all institutional could have the unintentional effect of disguising the finesses of statistics rather than unifying it.

The current legal framework, finally, is adequate to address the inter-ethnic incidents, but is not utilized according its intended purpose. Article 147 does not adequately cover bias motivation and Article 74(2.12) is therefore an important legal tool. To date, Article 74(2.12) has not yet been referred to in any verdicts by the Courts. The Prosecution and the Judiciary will have to begin to apply Article 74(2.12) to effectively address committed inter-ethnic offences.

7. RECOMMENDATIONS

In examining the current incident reporting process there are a few improvements we would recommend be implemented throughout different stages of the incident reporting process – from the police to the judiciary.

7.1 Definition and Reporting

Introducing a flagging mechanism and normalizing PEMIs:

- To introduce a mechanism that allows for the police to flag a case if a victim perceives the incident was motivated by prejudice towards them. Flagging a case would indicate to the investigators who collect evidence the potentiality of ethnic motivation behind an incident, but would not imply a definitive categorization of the incident as ethnically motivated.The final categorization of the incident is up to the competent court, and relies on the case made by the Prosecutor. PEMIs per se are not extraordinary, but the ethnic motive should be put in perspective. This applies both to the tendency of Serb politicians to exaggerate the ethnic component in an incident, and to the KP and Kosovo politicians, who minimize any ethnic element or motive, even when there can be underlying motives and the incident may be perceived as such by the people. The KP should focus on elements which might indicate ethnic motives behind an incident and to take into consideration the perception of people or underlying ethnic motives. Flagging should therefore be introduced as a technique to remove the stigma and fear of political ramifications.

7.2 Increasing Data Gathering, Sharing and Analysis

As the incident reporting processes improves, it would also be important to place more focus on statistical analysis of ethnically motivated crimes to pin point trouble areas and groups as a basis for policy and decision making. In order to make this possible we suggest the following:

- The completing of the central, cross-departmental database for case management system needs to be finalised as soon as possible. A massive impediment to proper data collection and analysis is the current lack of a system which can disseminate information between the KP, the Prosecutor's Office and the Judiciary;

- To ensure that all police officers and all police stations in every municipality acquire the proper training and the right equipment to properly manage, update and utilize the new case management system according to the intended purpose;

- Police reporting on potential ethnic motives and the inter-ethnic component (cf. 4.2) should form the basis for more meaningful statistical information on the ethnic component in criminal incidents, which for its part should be taken into consideration in policy- and decision-making. The decision for the KP to not keep any statistics from 2016 should be revised, as key information is lost when the statistics is being kept and presented only by the Prosecution Office. Instead of trying to merge the statistics, the three institutions should increase their cooperation and implement joint trainings to reach a consensus and a common approach to the classification of these incidents. Additionally, the KP should keep statistics on all recorded inter-ethnic incidents, not just the ones where the prosecution has authorized the investigation.

7.3 Prosecuting and adjudicating PEMIs

- There should be an overall increased focus on Article 74(2.12) in prosecuting PEMIs. Although this Article is a general provision of the CC, and not a criminal offense, it is still an important legal tool to properly address and sentence incidents with multiple motivations. The Courts should therefore utilize the full potential of this article to address crimes that fall out of the scope of Article 147, but which are still committed with bias motivation.

- The Judiciary should begin to collect statistics on when Article 74(2.12) has been used as a legal basis to increase the length of a sentence.

7.4 Strengthening Community Ties

In order to adequately address and understand victim and community perception, it is necessary to foster an environment in which the minority community feels comfortable reporting incidents. It is paramount that people in the community feel confident in the police's ability to properly address the incident and assuage community fear. Existing efforts to strengthen ties between the KP and the community can help all relevant sides to understand each other' concerns.

Stronger ties with communities can help the KP to continue to defuse inaccurate or rash categorisations of incidents as primarily ethnically motivated, but at the same time take into account the potentiality or underlying presence of ethnic elements and the perceptions of the people involved.

- MCSC's should be established in all municipalities of Kosovo, also the four Serb-majority municipalities in the North of Kosovo.

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