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EU Rule of Law Mission in Kosovo – EULEX

Justice Monitoring Report

Implementation of Recommendations

November 2024

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List of abbreviations

ACA	Anti-Corruption Agency
ACTF	Anti-Corruption Task Force (KP)
AMSCA	Agency for the Administration of Sequestrated and Confiscated Assets
APC	Agency for Prevention of Corruption
BC	Basic Court
BPO	Basic Prosecution Office
CC	Criminal Code
CCSFRY	Criminal Code of Yugoslavia
CMIS	Case Management Information System
CoA	Court of Appeals
CPC	Criminal Procedure Code
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GBV	Gender-Based Violence
HLCK	Humanitarian Law Centre Kosovo
JJC	Juvenile Justice Code
KCS	Kosovo Correctional Service
KJC	Kosovo Judicial Council
KP	Kosovo Police
KPA	Kosovo Property Agency
KPC	Kosovo Prosecutorial Council
KPCC	Kosovo Property Claims Commission
KPS	Kosovo Probation Service
KPCVA	Kosovo Property Comparison and Verification Agency
LECS	Law on Execution of Criminal Sanctions
LEPS	Law on Execution of Penal Sanctions
PAK	Privatisation Agency of Kosovo
SCSC	Special Chamber of the Supreme Court
SIU	Special Investigation Unit (KP) (former ACTF)
SPRK	Special Prosecution of Kosovo
SC	Supreme Court
TNA	Training Needs Assessment
WCIU	War Crimes Investigation Unit (KP)

Foreword

I am pleased to present to our counterparts and to the wider public in Kosovo the fourth public Justice Monitoring Report of the European Union Rule of Law Mission in Kosovo (EULEX).

Since the phasing out of its executive mandate in 2018, EULEX has been actively monitoring the entire chain of justice, including the police, within a critical context, where its new mandate aligned not only with the specific needs of Kosovo's legal institutions, but also with the broader principles of the European Union's rule of law.

The phased transition from an executive mandate to a monitoring and advisory role reflects EULEX's evolving strategy in Kosovo, now focusing on strengthening local ownership of the justice system. This strategic shift highlights the EU's broader approach of empowering domestic institutions while maintaining oversight to ensure alignment with European standards.

The EU's vision for rule of law emphasizes judicial independence, transparency, accountability, and respect for human rights - cornerstones that form the foundation of any stable and democratic society. In this regard, EULEX's monitoring, advisory, and support roles are of paramount importance to fostering these principles in Kosovo as it continues on the path towards EU integration, in order to assess institutional compliance with Kosovo's legal framework and with international human rights standards.

Based on the findings of its robust monitoring process, and with full respect for the independence of the monitored institutions, EULEX issues recommendations to the relevant authorities to help address identified shortcomings, while also following up on their implementation.

Since 2018, EULEX has published six Justice Monitoring Reports. The first three were shared exclusively with judiciary bodies and institutions responsible for the rule of law. However, since 2020, the reports have been made public, aiming to enhance institutional accountability and contribute to a deeper understanding of how the rule of law is implemented in Kosovo. More in detail, the previous Justice Monitoring Reports, published in 2020, 2021, and 2022, assessed various aspects of the functioning of the criminal and civil justice systems, adopting both systemic and thematic perspectives. In addition to presenting monitoring findings, these reports offered numerous recommendations to the rule of law institutions with a view to supporting better compliance with Kosovo's legal framework and with international human rights standards.

This report is different, as it specifically examines the implementation of recommendations made in earlier reports, assessing the extent of progress achieved so far. However, this report does not address all systemic and thematic issues monitored by EULEX, but focuses on a selected subset based on the monitoring of over 300 cases, as well as data and information gathered from relevant institutions and consultations with police, prosecution, and judicial officials, along with members of bar associations and civil society.

Through the monitoring of specific cases, EULEX has evaluated the implementation of many recommendations designed to address systemic concerns. Likewise, EULEX has assessed the handling of certain types of criminal offences, such as corruption, gender-based violence, and crimes under international law. In addition, this report evaluates progress on other topics, such as civil cases involving property disputes, the application of diversion measures for juveniles in criminal cases, and the functioning of the Case Management Information System (CMIS).

Furthermore, the accessibility of our findings and recommendations to the wider public is intended to promote the participation of all relevant stakeholders, first and foremost the people of Kosovo, in the further advancement of Kosovo on its European path. It should serve as a call to action for Kosovo's leadership and its civil society to engage more deeply in reform processes. The road to EU accession is inherently political, requiring not only institutional reforms, but also sustained commitment from all sectors of society to uphold the values of democracy, rule of law, and human rights. This participatory approach is critical: without broad-based societal support, even the most well-designed legal reforms may fail to take root in practice.

Overall, the report highlights advancements in certain areas, while identifying limited or no progress in others. It is concerning that we continue to observe a gap between the comprehensive legal framework, which largely aligns with international and European standards, and its practical application. This highlights the need for continued support and advice to Kosovo's rule of law institutions to bridge this gap and ensure effective and accountable implementation.

Furthermore, it is essential that Kosovo's government continues to prioritize the fight against corruption, the protection of vulnerable groups, and the enforcement of human rights, especially in areas such as gender-based violence and war crimes. These are not merely technical issues, but are deeply intertwined with Kosovo's political stability and its international reputation. The EULEX findings suggest that progress in these areas has been uneven, and this should be interpreted as a strategic risk to Kosovo's European trajectory.

EULEX remains a steadfast partner of Kosovo, and this report stands as a tangible expression of our continuous commitment to supporting Kosovo and its people on their path to the European Union; but Kosovo must demonstrate political will, judicial independence, and active engagement with civil society to close the gap between legal standards and their application in daily practice. The ability to translate laws into effective and fair justice is not only a requirement for EU accession, but a strategic imperative for the long-term stability, prosperity, and democratic resilience of Kosovo. It is also important to remember that EU accession is not solely a responsibility of institutions, but a process driven by all segments and sectors of society, as seen in all past accession processes.

Against this backdrop, we have chosen to share our findings and recommendations with the wider public, in the hope that many in Kosovo will find them both informative and inspiring.

The shortfalls identified in this report that remain unresolved, as well as the emerging challenges observed during the current year, will continue to guide our monitoring and advisory activities. These will be the focus of next year's report, ensuring ongoing accountability and progress.

In conclusion, the report serves as both a diagnostic tool and a roadmap. The strategic focus must now shift towards accelerating reforms, ensuring that Kosovo's institutions move beyond mere compliance towards genuine, sustainable transformation in the justice sector. This will require not only external support, but an internal political consensus that aligns Kosovo's future squarely with European values and principles.

As with all previous reports, this one would not have been possible without the engagement and cooperation of the relevant Kosovo institutions, to whom I express my gratitude for their ongoing cooperation. I am confident that our seventh Justice Monitoring Report will be received in the same constructive spirit as its predecessors.

Giovanni Pietro Barbano
Head of Mission of EULEX Kosovo

1. Introduction

The European Union Rule of Law Mission in Kosovo (EULEX) Case Monitoring Unit (CMU) assesses the functioning of the Kosovo Police and the judiciary in terms of procedural, legal and human rights compliance. It spans the entire criminal justice chain (the police, prosecution and courts) as well as aspects of the civil justice system. This is the fourth Justice Monitoring Report prepared by EULEX and made available to the public.

The previous Justice Monitoring Reports, published in 2020, 2021 and 2022, assessed specific aspects of the functioning of the entire chain of criminal and civil justice, combining a systemic and a thematic perspective. Next to monitoring findings, these reports put forward numerous recommendations to the relevant rule of law institutions in Kosovo aimed to assist them in achieving better compliance with Kosovo law and human rights standards.

To follow up on progress achieved by the rule of law institutions in Kosovo, this Justice Monitoring Report assesses to what extent some of the previous recommendations have been implemented. It does not cover all systemic and thematic issues monitored by EULEX, but only a selection of them.

Based mainly on monitoring of selected cases, EULEX assessed the implementation of many of the recommendations aimed at addressing identified systemic concerns in the section titled 'Findings of Systemic Monitoring'. Similarly, through the monitoring of the handling of specific types of criminal offences, such as corruption, gender-based violence and crimes under international law, EULEX assessed many of the recommendations previously put forward in relation to specific thematic areas, in the section titled 'Findings of Thematic Monitoring'.

Additionally, recommendations made on other topics, such as the processing of civil cases related to property disputes, the application of diversion measures to juveniles in criminal cases and the functioning of the Case Management Information System, have also been assessed for this report and can be found in the section titled 'Findings of Thematic Monitoring'.

The findings and recommendations included in this report are based on the monitoring of over 300 cases, as well as on data and information obtained from the relevant institutions and consultations with police, prosecution, judicial officials, members of the bar associations and civil society.

As a baseline, many of the findings refer to the period September 2022 to September 2023; however, the report also covers developments having occurred before or after that timeline, until mid-2024, depending on when the respective recommendations were issued and their relevance, as indicated in each chapter.

An overview with additional details of all court cases mentioned and referred to in this report is provided in the Annex of Cases.

2. Findings of Systemic Monitoring

2.1. Handling of 'high-profile' and former EULEX cases by the Kosovo judiciary

Background

For monitoring purposes, EULEX defines a 'high-profile' case as a case in which the defendants had high political or administrative positions, the charges brought against them concerned large, organised groups, serious criminal offences and high-value damages, as well as cases previously dealt with by EULEX which are still ongoing (currently, EULEX is monitoring a total number of 49 high-profile cases). The main criminal offences concern organised crime, high level corruption and violent crimes.

In all its previous Justice Monitoring Reports, EULEX reported that a significant number of high-profile cases had shown slow progress during both investigation and court proceedings, sometimes including repeated retrials further delaying adjudication. Adjudicating cases without undue delay is essential in every efficient justice system. High-profile cases attract wide public interest and high visibility given the fact that perpetrators are often well-known persons and/or that they are charged for very severe crimes. It is therefore of particular interest that these cases are dealt with in a timely and effective manner, as they impact the credibility of the justice system as a whole and shape the public's trust in the judiciary.

Recommendations issued by EULEX

- ✓ The courts should ensure that trials are not unduly delayed, which is of specific concern in relation to many high-profile cases, also to avoid the impression that the Kosovo judiciary was not fully ready or willing to adjudicate these cases.
- ✓ The prosecution offices and the courts should monitor more systematically the processing of high-profile cases, flag extremely long procedures and repeated retrials, identify the causes of these delays and remedy them.
- ✓ The Kosovo judiciary should prioritise cases attracting significant public and media interest, as well as cases involving high-level corruption and politicians or other public figures, in line with the *Strategic Plan for the Effective Solution of Cases of Corruption and Organised Crime 2022-2024*[1] of the Kosovo Judiciary Council (KJC).

Implementation

The KJC's *Strategic Plan for the Effective Solution of Cases of Corruption and Organised Crime 2022-2024* sets out objectives and actions for the judiciary to improve efficiency in resolving corruption and organised crime cases. Since 2022, some progress has been observed in the processing of several high-profile cases, including former EULEX cases where hearings were scheduled again after the COVID-19 pandemic. One specific aspect of improvement was the increased use of consecutive hearings in corruption and high-profile cases (see Chapter 2.11. 'Scheduling of Court Sessions'), in line with the provisions outlined in the aforementioned Strategic Plan.

1 KJC 'Strategic Plan for the Effective Solution of Cases of Corruption and Organised Crime 2022-2024', https://www.gjyqesori-rks.org/wp-content/uploads/decisions/44297_Vendimi_KGJK_se_Nr_292_2021_Miratohet_Plani_Strategjik_per_Zgjidhjen_Efikase_te_Lendeve_te_Korrupsionit_dhe_Krimit_te_Organizuar_2022-2024.pdf, KJC website only in Albanian version, KJC, October 2021 (last accessed on 20 September 2024).

Some progress was identified in a number of high-profile cases, with some of them regaining pace after being dormant for a long period of time, and others being adjudicated.

A considerable number of cases ended with acquittals, although previous convictions had been issued in the initial trials, while other cases are still ongoing for several years, without a final judgment.

Below several relevant high-profile cases are exemplified, in order to analyse their progress, or the lack thereof, in the period following September 2022.

High-profile cases with some progress, either regaining pace or being adjudicated

In the former EULEX *Olympia Case*, the basic court convicted one of the two defendants to eight years of imprisonment, while the other one was acquitted. They were charged of killing one UNMIK and one Kosovo Police (KP) officer in Podujevë/Podujevo. The verdict was delivered 19 years after the crime was committed and six years after the indictment was filed.

In the *Murder Case of Oliver Ivanović*, leader of the 'Civic Initiative Serbia, Democracy, Justice', committed in 2018, the indictment was filed in December 2020, and the main trial started on 6 July 2021. Regular hearings were scheduled since the main trial started, but a considerable number of them were unproductive or cancelled. The judgment was announced in the Basic Court (BC) of Pristina on 28 June 2024. Four out of six defendants were found guilty.

In the second retrial in the *Sekiraqa Case*, the defendant was convicted by the basic court on 3 May 2024 and sentenced to 25 years of imprisonment for the murder of a police officer. The crime took place 17 years earlier, and the indictment was filed by EULEX ten years ago. When the judgment was announced by the basic court, the trial judge removed the measure of house arrest imposed against the defendant, which resulted in the judge being suspended by the KJC. The Court of Appeals (CoA) later changed the measure to detention, but the defendant could not be located anymore by the KP.

In the *Turkish Deportees Case*, which raised serious human rights concerns, the BC of Pristina sentenced the former Director of the Kosovo Intelligence Agency for abuse of official position or authority to four years and eight months of imprisonment. The other defendants were acquitted. The verdict was delivered on 19 July 2023, almost two years after the indictment and five years after the deportation of six Turkish citizens from Kosovo to Turkey based on a request by the Turkish authorities.

In the *People's Eye Case*, the indictment was filed in 2018, with charges concerning preparation of terrorist offenses and/or criminal offences against the constitutional order and security. The judgment was announced in November 2022. One defendant was sentenced to four years of imprisonment, while the other one was acquitted.

In the case of Judge Sali Berisha, the Basic Court of Peja/Peć sentenced him, on 28 April 2023, to two and a half years of imprisonment for receiving bribes and unauthorised ownership, control, or possession of weapons, based on an indictment from 2020. In addition, he received an accessory punishment which prohibits him from exercising public administration functions for three years. On 29 February 2024 the CoA confirmed the guilty judgement but lowered the sentence to two years of imprisonment.

The retrial of the *3 % Case* was also finalised. The indictment was filed in 2017 against three defendants who allegedly embezzled money related to '3% donations' (a voluntary contribution, mainly originating in the diaspora, in support of Kosovo during the 1990s) during the period 2006-2015. On 19 December 2023, the CoA confirmed the first instance's guilty verdict of 13 July 2023 but reduced the prison sentence from three years to 18 months and imposed a fine of

EUR 3,500. Finally, the Supreme Court (SC) decided on 30 May 2024, that the criminal offences had reach absolute statute of limitation on 20 May 2022. Hence, the defendants in the end did not get convicted.

A verdict was also delivered in the *Skopje Highway Case*, in which an indictment was filed on 4 February 2022 against the former Minister of Infrastructure, Pal Lekaj, and other three defendants for abuse of official position or authority. On 31 January 2024, all four defendants were sentenced in the first instance to imprisonment between three years and eight months and one year and eight months.

High-profile cases adjudicated with acquittals

In the former EULEX *City Club Case*, the indictment was filed in 2017 against a defendant accused of having killed, in January 2010, in the City Club in Pejë/Peć, one person and injured two. On 30 November 2023, in the second retrial, the court found the defendant not guilty, after seven years in detention and two prior convictions from the BC of Pejë/Peć. The ineffective handling of the case resulted in the defendant being in detention for seven years before he was found not guilty.

In the *Gjilan/Gnjilane Highway Case*, in which four officials from the Ministry of Infrastructure were indicted in February 2021 with several charges such as trading in influence, abusing official position or authority and money laundering, all of them were acquitted in a first-instance judgement on 7 May 2024.

In the former EULEX *Medicus Case*, where the indictments were filed in 2020, the BC of Prizren acquitted both defendants in the second retrial in June 2023, although they had been previously found guilty, including by former EULEX panels. The decision on the appeal is still pending.

The former EULEX *Grande I Case* ended in an acquittal in October 2023 in the BC of Pristina for the most serious charges after having been in the court system since the indictment was filed in 2016. Other examples of high-profile cases which ended in an acquittal are the cases *Naser Kelmendi Cases* (after nine years),[2] *Olympus II* (after seven years),[3] *Infrakos* (after three years)[4] and *Hydropower* (after three years).[5]

High-profile cases still ongoing without significant progress

A considerable number of high-profile cases still remained slow-paced or even dormant. For example, the *Stenta III Case* was dormant for some time and although it picked up pace recently, the progress is still slow.

In the former EULEX *Olympus I Case*, an indictment was filed in 2016 on charges of illegal ownership of socially owned land and other properties. After the COVID-19 pandemic, starting in the middle of 2022, hearings took place regularly in front of the BC of Pristina until 11 May 2023, but with very slow pace in the second part of 2023. Several consecutive hearings were scheduled at the beginning of 2024, but not many of them were productive and therefore the trial is still ongoing. The prolonged detention of two of the defendants for more than seven years and more than two years respectively before they were released to house arrest, combined with the poor progress of the trial, raise serious concerns regarding the right to liberty, the right to a trial within a reasonable time and the presumption of innocence of the defendants.

2 The indictment in the case was filed in July 2014, and the Court of Appeals judgment was announced in October 2023.
3 The indictments in the case were filed in October 2016, and the Court of Appeals judgment was announced in September 2023.
4 The indictment in the case was filed in December 2019, and the BC of Pristina judgment was announced in January 2023.
5 The indictment in the case was filed in April 2020, and the basic court judgment was announced in November 2023.

The *Veterans Case* is still ongoing, six years after the indictment was filed. After five failed attempts, the first hearing of the retrial took place on 31 October 2023, after the annulment by the CoA of the acquittal judgment issued in the first instance for all twelve defendants in March 2022. The trial is still ongoing.

The former EULEX *Land 4 Case*, in which a large group of defendants is charged with illegal ownership of socially owned land, and which is connected to the former EULEX cases *Olympus I* and *Olympus II*, is another example of a high-profile case which was dormant for years, with no productive hearings in the period 2019-2022. The trial restarted at the end of 2022 and recorded productive hearings during 2023, even if at a slow pace. The case is still pending, eight years after the indictment was issued by the EULEX prosecutors, on 3 March 2016.

Other high-profile cases continue to stall due to inefficient proceedings. For instance, the *Avanci Case*, in which two officials employed with the Kosovo Agency for Medicinal Products and with the Ministry of Health were indicted, in 2020, with misappropriation in office and intrusion into computer systems, is far from completion, regardless of the fact that numerous court hearings took place.

Similarly, the retrial in the *Salih Qitaku et al. Case* has been dormant since the initial hearing in the retrial in July 2017. The indictment was filed in 2014 against four alleged members of an organised criminal group for the organisation of illegal migration of Kosovo residents to Western European countries.

The trials in the several *Brezovicë/Brezovica Cases* experienced a slow pace. In the *Brezovicë/Brezovica I Case*, based on an indictment dated 11 November 2020 against 11 defendants, after numerous unsuccessful attempts for almost two years to hold the initial hearing, this took place only in August 2023. In the *Brezovicë/Brezovica* II Case, with an indictment filed on 9 December 2022 against 12 defendants, the initial hearing eventually took place on 3 April 2023. However, the start of the main trial has been postponed on several occasions.

Two of the former EULEX cases which saw little or no progress, despite indictments being filed between nine and seven years ago, are the *Touareg Case* (indictment filed in 2015) and the *Transport Case* (indictment filed in 2016). Both had been transferred from the Basic Court of Mitrovica to the BC of Pristina in February 2024.

The *Fahredin Gashi Case*, in which the indictment was filed before the BC of Pristina on 5 November 2010, stalled for a long period pending the request of the presiding judge to the KJC regarding the appointment of a foreign expert to evaluate the defendant.

In the former EULEX *Bill Clinton II Case*, the indictment was filed on 30 October 2019, after which no progress was registered for almost four years.

Furthermore, the investigation in the former EULEX case of the murder of EULEX staff member Audrius Šenavičius in September 2013 (the *Blue Case*), no new developments were registered since 2021.

Conclusions

Very little progress has been registered concerning the handling of high-profile cases. A considerable number of them have not experienced meaningful progress and require further action after being ongoing for years. Other high-profile cases progressed, and often ended with acquittals, including in several former EULEX cases. The Kosovo Prosecutorial Council (KPC) and the KJC should closely follow whether cases are properly adjudicated based on procedural and material law and the evidence administered. If concerns are identified, the mentioned institutions should look into the causes of inappropriate delivery of justice in high profile cases

and identify where in the chain of criminal justice improvements could be made. Cases subject to extensive procrastination risk reaching the statute of limitation, which means that the case can no longer be adjudicated. This is particularly worrying in high-profile cases[6] and should be duly addressed by the judiciary.

2.2. Productivity of court hearings

Background

EULEX continued to follow the ratio of productive hearings in the cases it monitors. A hearing is considered productive when it is held as scheduled and progress is made towards adjudication (e.g., when material evidence is discussed, defendants, injured parties or witnesses are examined, or opening and closing statements are delivered). A hearing is unproductive when it starts but is adjourned without any meaningful progress.

Unproductive hearings cause unjustified procedural delays, which constitute an additional burden on the justice system, and, most importantly, impact negatively on the right to a trial within a reasonable time recognized by Article 6 of the European Convention on Human Rights (ECHR). The same applies for hearings which are being cancelled on a very short notice, often on the very day the hearing was scheduled to take place.

EULEX monitoring observed high ratios of unproductive hearings, as well as a trend of cancelling hearings at short notice. The reasons for both are similar, mainly the absence of defence counsels, of defendants, or of prosecutors.

Recommendations issued by EULEX

- ✓ Judges should be more thorough in verifying the parties' reasons of absence and in applying the available punitive and disciplinary measures stipulated in the Criminal Procedure Code (CPC). The courts should hold prosecutors accountable for unjustified delays or absence by notifying the Chief Prosecutor of their respective prosecution office. Also, the courts should fine defence counsels for delaying proceedings and notify the Bar Association.
- ✓ Courts should prioritise high-profile cases and avoid unnecessary procedural delays.
- ✓ The Kosovo Judicial Council (KJC) and court presidents should keep track of cases where legal measures are not applied and hold the responsible judges accountable.

Implementation

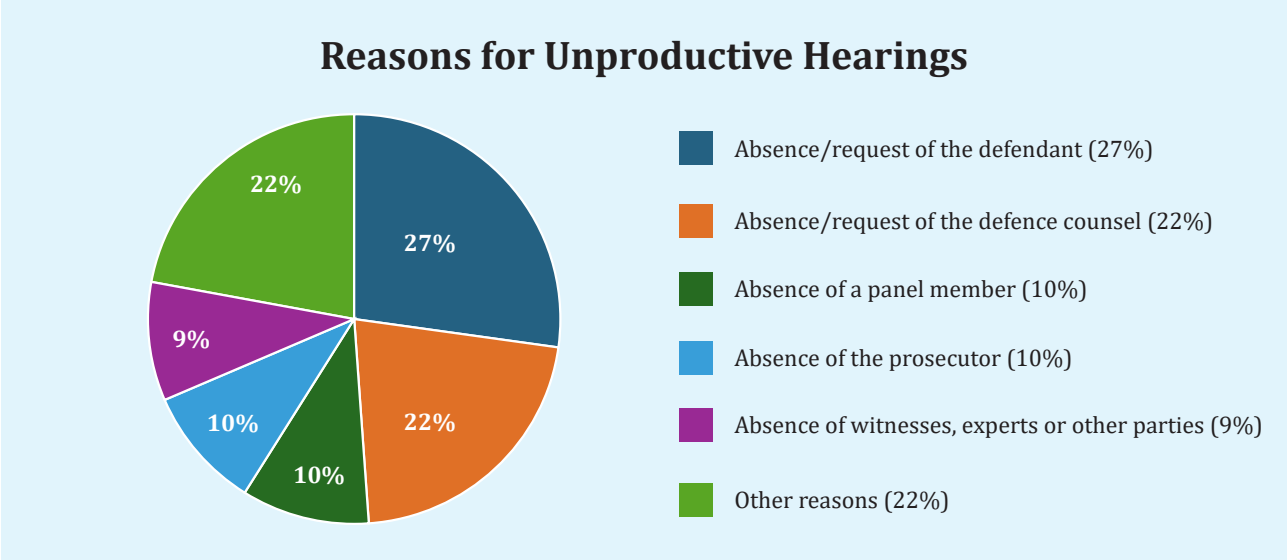
In the period September 2022 – May 2024, EULEX monitored a total of 821 hearings,[7] out of which 230 (28%) were without any progress in the adjudication of the cases (138 unproductive hearings and 92 cancelled hearings).

It should be borne in mind that before September 2022, EULEX did not keep track of the number of cancelled hearings, but only of unproductive ones. In the period from November 2021 to August 2022, 26% of the hearings monitored by EULEX were unproductive and in the period from the mid-March 2020 to October 2020, 30% of the hearings were unproductive.

6 See also the Report "Amnesty of criminality through the statute of limitation" of the Kosovo Law Institute, available at Amnistimi-i-kriminalitetit-permes-parashkrimit-2023-Pdf-anglisht.pdf (kli-ks.org) (last accessed on 20 September 2024).

7 For the purpose of this analysis, the announcements of judgements, although attended by the EULEX monitors, are not counted in the total number of hearings, nor counted as productive hearings. Once an announcement of judgment is scheduled, it usually takes place, and it cannot be marked as productive as this is not a hearing *per se*.

The two main reasons for unproductive or cancelled hearings remained unchanged in comparison to previous periods: the absence of a defendant or his/her request to adjourn the hearing without any proper justification (63 hearings, 27%), followed by the absence or request of defence counsels to adjourn the hearing (50 hearings, 22%), mostly claiming they needed more time for preparing the case or that they were ill. The last-minute absence of one (or more) of the judges in the panel caused the postponement of the hearing on 23 occasions (10%). Several hearings had to be adjourned due to prosecutors not attending the sessions or requesting adjournment (22 hearings, 10%), the absence of witnesses, experts, or other parties (21 hearings, 9%) and various court management issues or other reasons (51 sessions, 22%).



Furthermore, EULEX observed that in many cases, the reason for the absence of parties in unproductive or cancelled hearings was either not provided, or it was not justified by written evidence, an aspect that was often ignored by the courts. This trend was already observed in previous periods.

The CPC provides a range of measures to reprimand the parties who delay the procedures through their unjustified absence or for other reasons. For instance, fines can be issued[8] and, in case of the prosecutors and defence counsels, the Chief Prosecutor[9] and the Bar Association respectively can be notified[10] for further actions. Only on very few occasions did courts apply punitive measures against parties at fault for unjustified delays. For instance, in one case, the presiding judge announced that the Chief Prosecutor of the Basic Prosecution Office in Pristina would be notified of the prosecutor's absence.[11] In another monitored case,[12] the presiding judge fined three defence counsels in different court sessions because of their absence, while in a different one, both absent defence counsels were fined with EUR 500 each[13]. In cases of unjustified absence of the defendant, the court may impose harsher penalties, such as ordering

8 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 65, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024).
9 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 301, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024).
10 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 65, paragraph 2, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024).
11 Blackmail Case (PAKR 58/15 – BC Pristina).
12 Dragan Jablanović et al. Case (PPS 12/2016 – BC Pristina).
13 Olympus I Case (PKR 610/16 – BC Pristina).

his/her arrest,[14] a measure which has never been implemented. Nevertheless, there were rare occasions when the presiding judge mentioned the mandatory presence of the absent defendant at the following hearing, or otherwise the arrest would be ordered.[15]

Out of the total of 821 hearings monitored, 321 were in high-profile cases.[16] In this group, 56 hearings (18%) were unproductive and 52 (16%) were cancelled. Put together, this is a high ratio (34%) of hearings which end with no progress in the adjudication of the cases. This runs contrary to the recommendations issued by EULEX that high-profile cases should be adjudicated promptly due to the severity of the crimes or the profile of the defendants, as outlined in the KJC's *Strategic Plan for the Effective Solution of Cases of Corruption and Organised Crime 2022-2024*.

According to the information received from KJC on 12 September 2023, no track is being kept of cases in which punitive measures are applied. However, in mid-2024, the KJC confirmed to EULEX that a regulation on the organisation and internal activity of the courts was being drafted, which could potentially address this issue as well.

Conclusions

There was little progress made to enhance the productivity of hearings and the ratio of unproductive and cancelled sessions remained high. Additionally, the courts continue to be reluctant when it comes to applying the necessary sanctions and measures designed to deter conducts which lead to unnecessary delays. Considering the above, EULEX reiterates its recommendations and calls on relevant institutions to tackle this issue as a matter of urgency, due to its negative impact on the right to a fair trial, the efficiency of the proceedings and on the public's trust in the judicial system.

2.3. Functioning of the Special Department at the Basic Court and the Court of Appeals of Pristina

Background

The legal framework establishing the Special Departments is Law on Courts[17], which entered into force in January 2019. It regulates the establishment of the Special Department at the Basic Court (BC) of Pristina, which has the competence to examine the cases that fall under the jurisdiction of the Special Prosecution of Kosovo (SPRK), as well as the Special Department at the Court of Appeals (CoA). The Special Departments at the Basic Court of Pristina and at the Court of Appeals were operationalised by the Kosovo Judicial Council (KJC) on 1 July 2019, with six judges and three judges respectively.

The EULEX Justice Monitoring Report 2020 welcomed the inception of the Special Departments as it was expected that they would have a positive impact on the efficiency and quality of the judicial system. These two Special Departments exclusively handle cases under the jurisdiction of the SPRK, dealing with the most serious criminal offences. The challenges observed, or foreseen, in that report reflected EULEX's concern that these departments were understaffed with regard to judges, supporting assistants, professional associates and legal officers.

14 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 302, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024).
15 Olympus I case (PKR 610/16 – BC Pristina).
16 For definition of "high-profile cases", see Chapter 2.1.
17 Law on Courts No. 06/L - 054

Recommendations issued by EULEX

- ✓ Increase the number of judges in the Special Department at first instance and appeal level in line with legal provisions on ethnic diversity as foreseen in the law[18] and in the *Regulation on the Organisation and Functioning of the Special Department within the Basic Court of Pristina and Court of Appeals.*
- ✓ Recruit additional support staff, such as professional associates and legal officers.
- ✓ Set up the necessary equipment to allow for the examination of witnesses under protective measures at the Palace of Justice in Pristina.
- ✓ Increase the number of Albanian/Serbian translators.

Implementation

In January 2021, the Special Department at the BC of Pristina had 12 judges and the Special Department at the CoA had six judges. In 2023 however, the Special Department at the BC of Pristina was reduced to ten judges and at the CoA it went down to four. Later that year, the number of judges increased to 11 at the BC, while the CoA still had four, leaving both departments understaffed.

Additionally, the KJC authorized the presidents of the courts (both BC and CoA) to undertake all necessary actions for the reassignment of professional and support staff to the Special Department whenever necessary. On 16 June 2023, the KJC published three vacancies for judges in the Special Department, one in the BC and two in the CoA. The vacancies were subsequently filled.

In July 2022, the KJC decided to appoint additional six Professional Associates and 11 Legal Officers in the Special Department at the BC of Pristina.

EULEX experts studied the KJC statistics, as outlined in the tables below, in order to establish the extent to which the increased numbers of judges and supporting staff in the departments contributed to enhancing their efficiency and output. The efficiency figures are based on the KJC standardised average assessments of the time needed for trials which is calculated by comparing the number of cases received compared to the number of cases adjudicated each year, without taking into account cases inherited from a previous year and cases transferred to the next year. Calculated this way, an efficiency level of less than 100% means that the backlog increased. It should be noted that this data, including the system of establishing the level of efficiency, originates from the KJC and could not be verified by EULEX.

Cases received and adjudicated by the Special Department at the Basic Court of Pristina – Main Trial			
	2021	*2022*	*2023*
Cases received	72	81	82
Cases pending from previous period	66	82	103
Adjudicated (completed)	37	42	60
Pending (moved to next year)	101	121	125
Efficiency	51%	52%	73%

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Cases received and adjudicated by the Special Department at the Court of Appeals – Main Trial			
	2021	*2022*	*2023*
Cases received	36	50	55
Cases pending from previous period	5	5	12
Adjudicated (completed)	36	43	57
Pending (moved to next year)	5	12	10
Efficiency	100%	86%	104%

These figures reveal an overall growing number of cases transferred to the following year in both Special Departments, despite a general increase of annually adjudicated cases In the Special Department at the Basic Court of Pristina, these numbers increased constantly, which indicates an inability of the panels to deal with the increased allocation of cases, in particular in the main trial stage. The Special Department at the CoA did not experience the same increase in cases as seen in the BC, but there was a notable increase from 2021 to 2023 of cases transferred to the next year in the main trial stage. In conclusion, due to a continuous increase in the volume of allocated cases each year, it seems that even the current structure of the Special Departments might prove insufficient for dealing with the current and expected future caseload.

The EULEX Justice Monitoring Report 2020 included a recommendation to set up the necessary equipment to allow for the examination of witnesses under protective measures at the BC of Pristina. Currently, a project for the installation of video and audio recording equipment, including equipment for questioning witnesses under protective measures, is in the final stage of implementation.

Regarding the recommendation to increase the number of Albanian/Serbian translators, EULEX established that the current number of translators employed with the Special Departments was sufficient. This said, EULEX monitoring observed that translations of court documents into Serbian were often delayed, an issue which needs to be addressed.

Conclusions

The increased workload of the Special Departments, coupled with a decrease, in 2023, of the number of judges for both courts (BC and CoA), resulted in a continued increase of the backlog of cases in main trial stage transferred from one year to the other, since 2021. However, based on EULEX's monitoring of several cases tried before the Special Department at the BC of Pristina, an additional factor which also contributed to this increase in the backlog is that several cases tried before the Special Department at the BC of Pristina were not dealt with efficiently. EULEX observed a general slow pace in the proceedings, which is the result of a high number of unproductive hearings and long breaks between court sessions. Some of these cases include the murder case of Oliver Ivanović and several other former EULEX high-profile cases which are still pending before the Special Department at the BC of Pristina more than six years after they were transferred to the Kosovo judiciary. Examples are the *Land 4 Case*, the *Fahredin Gashi Case* and the *Bill Clinton Case*, as highlighted in the previous section.

2.4. Retrial policy within the Kosovo justice system

Background

The EULEX Justice Monitoring Report 2020 flagged the common practice in the Court of Appeals (CoA) of sending a high percentage of cases back to the respective basic court for retrial, despite the general legal principle that the instrument of retrial should only be ordered in exceptional cases. This practice is of concern as it hampers the right of the accused to a trial within a reasonable time and it places an additional burden on the basic courts, which already face significant backlogs. In addition, the many retrials often result in exceptionally long detention periods.

Recommendations issued by EULEX

- ✓ The Court of Appeals should make better use of the possibility as provided for in the Criminal Procedure Code (CPC) to hold hearings, take new evidence or confirm the existing evidence, in order to properly determine and assess the material fact, aimed at avoiding the unnecessary annulling of judgements and returning cases for retrial.
- ✓ The new draft CPC defines the procedure of retrial as an exceptional one, only to be used in specific cases. This should be a further incentive for the appellate courts to refrain from the unnecessary returning of cases for retrial.
- ✓ The quality of judgments should be improved, with a specific focus on the need to better harmonize the enacting clauses and the reasoning of the judgments.

Implementation

The amended CPC, which entered into force on 17 February 2022, introduced a new provision aimed at addressing the aforementioned concern. It stipulates that a retrial may be ordered by the CoA in exceptional cases, when there is a substantial violation of provisions of criminal procedure or if it is necessary due to an erroneous or incomplete determination of the factual situation, and the CoA deems it cannot modify the judgment.[19] Such provisions hold the potential to significantly streamline judicial proceedings, while concurrently safeguarding against the manipulation of facts and the issuance of unfair judgments. Furthermore, in cases that receive public attention, delayed trials can wane the public's interest, and the new provision can mitigate the risk of retrial procedures being used to that effect. The fact that the amended CPC defines the procedure of retrial as an exceptional one, only to be used in specific cases, should be a further incentive for the appellate courts to refrain from returning cases to retrial.

The table below is based on statistics provided to EULEX by the Kosovo Judicial Council (KJC). The data indicates the number of cases the CoA returned to the basic courts for retrial, broken down to the court's departments, in 2022 and 2023.

19 Criminal Procedure Code, 08/L-032, 17 August 2022, Articles 402 and 403 of the https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024).

Department	Cases returned for retrial		Cases tried		% of cases returned for retrial		
	2022	2023	2022	2023	2022	2023	
Special Department	9	8	43	56	21%	14%	↓
Serious Crimes Department	98	89	653	663	15%	13%	↓
Criminal Juvenile	8	11	131	142	6%	8%	↑
Criminal General	135	122	1684	1718	8%	7%	↓

Even though three of the four departments mentioned in the table above recorded decreases in the percentage of cases returned for retrial, the data shows that the new legal provisions in the CPC regarding the conditions under which a retrial can be ordered did not lead to a significant decrease in the number of cases returned to basic courts for retrial.

Conclusions

With the exception of the Juvenile Department, the rest of the Court Departments recorded a decrease in the percentage of returned cases for retrial in 2023 compared to 2022. This said, progress fell far short of expectations and EULEX's recommendations in this regard have not been implemented.

2.5. Case allocation in re-trial proceedings

Background

The EULEX Justice Monitoring Report 2020 highlighted that the practice of the courts in regard to the allocation of cases which were returned for retiral to the same panel that had adjudicated the case in the first instance might raise some controversy. The report identified a positive aspect of this practice: the retrial proceedings are considerably more efficient when the court is familiar with the case. On the other hand, judges who need to adjudicate the same case again, based on the same, or only slightly changed factual evidence, often face an ethical dilemma. Additionally, this situation may raise concerns regarding their impartiality.

In its jurisprudence on article 6 (1) of the European Convention on Human Rights (ECHR), which is particularly relevant for an assessment of this practice against human rights standards, the European Court of Human Rights (ECtHR) advises against the allocation of cases within a court based on subjective criteria as opposed to objective, pre-established criteria. As referenced in the EULEX Justice Monitoring Report 2020, according to the ECtHR jurisprudence, lack of judicial impartiality can arise when a judge has already expressed an opinion on the guilt of the accused.[20]

20 *Gómes de Liaño y Botella v. Spain*, §§ 67-72.

Recommendation issued by EULEX

- ✓ The Kosovo Judicial Council (KJC) should evaluate the current judicial practice and its implications and if deemed appropriate, decide to issue a guidance decision or interpretation, or otherwise undertake the necessary legal action with a view to providing a consistent interpretation and application of the relevant provisions, in order to ensure that the impartiality and independence of the judiciary is preserved and consolidated.

Implementation

The provisions of articles 38 and 39 of the Criminal Procedure Code (CPC) are intended to ensure a new, objective and unbiased approach to a trial procedure that was found flawed by the appeal instance. In practice, cases are being returned for retrial manually, and not through the Case Management Information system (CMIS) [21] to the same judges or panels who had adjudicated the case initially. The current court practice disregards the provision of assigning cases through the CMIS. The CMIS has an automatic case allocation tool which is used to ensure random allocation of court cases. The use of this tool would ensure that a case sent back to the basic court for retrial would not be allocated to the same panel or judge who had adjudicated the case in the first instance. This would also increase the perceived objectivity of the court in regard to the returned case. The current manual allocation practice is a breach of the provisions of article 38, paragraph 2 of the CPC, which prohibits a judge from serving as presiding trial judge, single trial judge or panel member, if he/she had participated in previous proceedings in the same criminal case.

In documenting the current practice of the basic courts and inquiring whether the recommendation made in the previous report was considered, EULEX held meetings with the registry offices in basic courts and with the KJC Legal Department. The general conception embraced in the registry offices and in the KJC Legal Department is that the provisions of article 38, paragraph 2 of the CPC did not apply to the situation in which cases are returned to basic courts for retrial, arguing that the practice of appointing the same panel was more efficient for the courts as it saved time and resources. EULEX counterparts were of opinion that, when adjudicating the retrial, the panel only had to deal with the instructions of the appellate court, as it was already familiar with case, and that it would not be influenced by its own previous judgement. Moreover, article 402 of the CPC labelled the retrial practice as exceptional, which should have reduced the volume of cases affected by this procedure. However, as outlined in chapter 2.4 in this report, EULEX established that despite this legislative change, the number of retrials has barely decreased. In addition to acknowledging the retrial procedure as being exceptional and only applicable in specific situations, the counterparts consulted by EULEX expressed the opinion that if a suspicion of bias or lack of impartiality, even a possible suspected undue influence or lack of professional experience on behalf of the judges or panel arose, the CoA had the legal instrument to address these aspects. The provisions of article 398, paragraph 2 of the CPC provided the CoA with the possibility to assign, under certain conditions, a new trial judge, presiding trial judge or trial panel.[22] EULEX counterparts considered this provision sufficient for providing the CoA panel with the instrument to decide on adjustments in the basic court panel composition in situations in which the conditions are met.

21 The Case Management Information System (CMIS) is an electronic system which stores a variety of information regarding cases, facilitating a faster access to court files and case updates.

22 Criminal Procedure Code, 08/L-032, Article 398: '*The Court of Appeals may direct the basic court to assign, based on an objective and transparent case allocation system, a new single trial judge, presiding trial judge or trial panel if the Court of Appeals determines that the assigned single trial judge, presiding trial judge or trial panel has consistently failed to apply the law correctly, grossly mischaracterized evidence or the failure to reassign the judge or panel would result in a miscarriage of justice or conflict of interest.*'

During discussions with the KJC Legal Department, an additional argument was put forward in favour of maintaining the same court practice when dealing with retrials. The department's officials mentioned that the department was in the process of preparing new regulations on the professional evaluation of judges. One indicator for the professional evaluation of judges and their possible promotion will reportedly be the percentage of cases returned by the CoA. This should encourage judges to pay additional attention to aspects related to drafting of the judgement, evaluation of evidence and correct application of the law in order to prevent retrials.

The KJC Legal Department further informed EULEX that it was engaged in revising the instructions regarding the use and implementation of CMIS in allocation of retrial cases and, given EULEX's comments, would give due attention to this issue in order to amend the system to allow the allocation of cases though CMIS. However, in a meeting with the CoA President, yet another argument in favour of the current practice was raised. It was argued that first instance judges would have more incentive to draft a well-reasoned judgment since they are aware that the case would be returned to them in case of a re-trial.

Conclusions

The KJC has, as recommended by EULEX, evaluated the case allocation practice and is paying attention to the issue while revising the CMIS instructions. Still, the practice of manual allocation continues. The current practice adopted by the registry offices and endorsed by the KJC Legal Department, while not fully in line with the regulations regarding case allocation, nor with the provisions of the CPC, still ensures an efficient and effective method of adjudicating cases returned for retrials. However, regarding compliance with human rights standards, specifically the right to a fair trial in article 6 (1) of the ECHR, this practice remains questionable.

2.6. Record of court proceedings

Background

In its Justice Monitoring Report 2021, EULEX observed that court proceedings in monitored trial hearings were never video or audio recorded. In addition, the written recording was mostly *verbatim*. This practice considerably slowed down the hearings and prolonged the trials. Moreover, this practice puts an additional strain on parties and witnesses giving their testimonies, because the *verbatim* recording forces the judge, the parties and the witnesses to adjust the way they speak. Additionally, they were often interrupted or asked to repeat their statements. In view of this, EULEX assessed that this practice might put at risk the quality of the testimony, especially in sensitive cases like war crimes and Gender-Based Violence (GBV) cases, in which testimonies are a particularly crucial part of the evidence. Ensuring that courts were adequately equipped to audio record court sessions would therefore increase both the efficiency and the quality of trial proceedings.

Recommendations issued by EULEX

- ✓ All courts should be provided with the technical equipment to be able to audio record the court proceedings.
- ✓ When the equipment is available, the courts should use it to at least audio record the testimonies of the parties, witnesses and expert witnesses and only keep a written record of the essentials of the court session.

Implementation

In February 2023, the new Criminal Procedure Code (CPC) came into force. According to article 311, paragraph 2 of the CPC, the main trial shall be recorded by either audio or video in addition to a record made in writing. However, most of the main trial hearings are still not being recorded, mainly due to lack of technical equipment.

The project of the Kosovo Judicial Council (KJC), funded by the U.S. Bureau of International Narcotics and Law Enforcement Affairs, to install recording equipment in 27 first-instance courts is now finalized in all seven basic courts and all 22 branches. In addition to recording the hearings, the equipment should also be used to create adequate conditions for testimonies of protected witnesses.

One courtroom in each basic court will be equipped with both audio and video recording equipment, whereas all other courtrooms will be equipped with audio recording equipment. Additionally, two video conference rooms were equipped in the Court of Appeals (CoA) and video and audio equipment was installed in the KJC facility.

A KJC working group is in the process of drafting the regulation on the use of audio and video recording during court hearings, which the KJC is expected to endorse later this year.

Two judges were assigned to test the technical equipment in the Basic Court (BC) of Gjilan/Gnjilane. As part of the testing, proceedings are being recorded in writing and by audio recording and a transcript of the latter is prepared afterwards. While no time efficiency is gained through this double recording at this stage, the quality of the records of the hearings has improved. In cases of disputes regarding the accuracy of the written records, they can be settled by referring to the audio recording.

In one of the courtrooms in the BC of Prizren, all hearings in serious criminal cases have been audio recorded for quite some time already, yet no transcripts of these recordings were being produced. Parties challenging the accuracy of the written minutes are granted access to the audio-recording.

The KJC informed EULEX that some courts have already begun using the equipment for recording although the regulation on the procedure of using it has still not been finalised.

Conclusions

While not all courts have installed the technical equipment for audio and video recording yet, the installation is ongoing and testing has started. The first recommendation can therefore be regarded as implemented by the end of 2024.

Regarding the second recommendation, there is no possibility to only audio record the testimonies of the parties, witnesses, and expert witnesses, as article 311 of the CPC stipulates that the record of the main trial should be in writing, whereas the audio or video recording can only be done *in addition* to the written one. Since the written recording in *verbatim* is still being done as before, this recording will not significantly increase the effectiveness of the trial proceedings. However, it is safe to assume that audio and video recording will increase the quality of the proceedings. According to article 311, paragraph 1 of the CPC, it is possible to restrict the written recordings (minutes of the session) to "essentials" (which, according to article 314 of the CPC, are technical information such as name of the court, present parties, identification of the indictment, motions and rulings etc, in addition to the essential content of the testimonies). Especially the changing of the practice of recording testimonies *in verbatim* to recording only essential content in writing could improve the effectiveness of the recording and, in combination with audio and video recording, could reduce arguments about the content

of the minutes. When the equipment is installed and put into use, it remains to be seen whether the judges will use the possibility to limit the written recording and rely on audio and video as the main record of trials.

2.7. Announcement of criminal judgements in first instance

Background

The EULEX Justice Monitoring Report 2020 identified irregularities in almost 50% of the announcements of judgements in first instance. The irregularities found were that the criminal charge was not read out, parties were not given instructions regarding legal remedies, insufficient reasoning for the verdict was provided, and the announcement could not be properly heard. According to the new Criminal Procedure Code (CPC), there is no longer a requirement to provide a brief account of the grounds for the judgment when a judgment of guilt is issued, as was required in the previous CPC.[23] The new CPC stipulates that such a brief account is to be delivered at the time of the announcement of the verdict in court only if a judgment of acquittal is rendered.[24] EULEX has not been able to determine the reasons behind the removal of this requirement and based on its monitoring of announcements it can be concluded that a brief account of the grounds is still being provided in most cases, including in cases of guilty verdicts. Providing the grounds for the given verdict is important for both the defendants and the injured parties, as it informs them, already at an early stage, about the reasons and the evidence the guilty or acquittal verdict was based on. The new CPC stipulates that a written judgment is to be delivered within 30 days from the announcement (15 days if the defendant is in detention on remand), with the possibility to extend the deadline to 60 days in complex cases.

Recommendation issued by EULEX

- ✓ There is a need for a more effective training of the judges. Professional forum discussions between judges of various instances may also effectively address this concern.

Implementation

Between April and September 2023, EULEX monitored 16 announcements of judgments[25] and specifically focused on the aspects of the announcement where irregularities were identified. Based on the previous irregularities as explained above, EULEX identified irregularities in two out of the 16 announcements.

In one case no reasoning was given and in the second case the criminal act was not read out properly, no reasoning was given, and the announcement could not be properly heard and understood.

In the second case, the judge omitted to provide reasoning at the suggestion of the defence counsel, even though it was an acquittal judgment, and the injured party was present at the announcement. Although all announcements except one could be heard and understood, they were usually read in a fast manner. EULEX also observed that in most cases, the prosecutor was absent at the announcement.[26] According to article 365, paragraph 2 of the CPC, the judgment is

23 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 366, paragraph 2, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024).
24 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 365, paragraph 2, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024).
25 Out of the 16 judgments, there were nine guilty judgments (with guilty pleas in two cases), five acquittal judgments and two judgments where one defendant was found guilty while one defendant was acquitted.
26 The prosecutor was absent at 12 out of the 16 announcements while the defence counsel/s were present at all the announcements.

announced in the presence of the parties, while paragraph 4 states that the judgment is announced even in the absence of a party. Although the presence of the prosecutor is not required by law, EULEX encourages the prosecutors, either the case prosecutor or a replacement, to be present at the announcement, given that this is an important part of the proceedings and considering the prosecutor's role as representative of a public authority and the initiator of the proceedings.

The recommendation for more effective training and/or forum discussions has not been implemented. However, announcement of judgements is a topic covered by the training module *Legal Writing and Reasoning,* offered by the Justice Academy for more than 10 years within the Initial Training Programme, which is mandatory for newly appointed judges and prosecutors,[27] as well as in the Continuous Training Programme, which is voluntary.[28] The Justice Academy also offers other training modules where topics related to the announcement of judgment are covered.

Conclusions

Based on the overall positive findings and the fact that the topic is covered by training modules within the Justice Academy programmes, EULEX considers that the issued recommendation has been sufficiently implemented. EULEX encourages the judiciary to continue giving clear announcements and providing reasoning, regardless of the outcome of the specific case, as well as to read the announcements in a slower pace in order to make sure that the parties are able to comprehend the entire content and implications of the announcement. Clear and complete announcements of judgments are important elements in ensuring transparency and accountability in the justice system.

2.8. Use of detention on remand during criminal proceedings

Background

The detention on remand is the most severe measure provided by the Criminal Procedure Code (CPC) to ensure the presence of the defendant at the trial, to prevent re-offending and to ensure the successful conduct of the criminal proceedings.[29] Since detention on remand implies a severe limitation on the right to liberty, the CPC provides that it should be used as a measure of last resort and be imposed for the shortest possible time.[30] Moreover, in line with international human rights standards on the right to liberty,[31] which aim to ensure that individuals are not deprived of their liberty in an arbitrary fashion, the legal conditions under which this measure can be imposed are provided by the CPC and they are mandatory.[32] It is important to highlight

27 Law on Academy of Justice, No. 05/L-095, 8 February 2017, Article 19 of the ActDocumentDetail.aspx (rks-gov.net) (last accessed on 20 September 2024).

28 Depending on work performance the training can be made mandatory, according to the article 20 paragraph 2 of the Law No. 05/L-095 on Academy of Justice, ActDocumentDetail.aspx (rks-gov.net) (last accessed on 20 September 2024).

29 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 171, paragraph 1.8, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024). The other measures are the following: summons, order for arrest, promise of the defendant not to leave his place of current residence, prohibition on approaching a specific place or person, attendance at a police station, bail and house detention.

30 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 5, paragraph 3, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024): '*Any deprivation of liberty and in particular detention on remand in criminal proceedings shall be reduced to the shortest time possible*'.

31 For example, European Convention on Human Rights (ECHR), Article 5, and International Covenant on Civil and Political Rights (ICCPR), Article 9.

32 Criminal Procedure Code, 17 August 2022, Article 184, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024): '*The court may order detention on remand against a person only after it explicitly finds that:*
1.1. there is a grounded suspicion that such person has committed a criminal offence;
1.2. one of the following conditions is met:
1.2.1. he is in hiding; his identity cannot be established or other circumstances indicate that there is a danger of flight;

that when the reasons justifying its use cease to exist, the detention on remand should be terminated or replaced with a more lenient measure.[33]

In the EULEX Justice Monitoring Reports 2020 and 2021, EULEX found that detention on remand was often being applied systematically, without proper substantiation and carried a punitive effect, whether intended or not. EULEX also noted that there were cases where defendants had been in detention on remand for years without a final decision. Following these, EULEX has continued paying close attention to the use of the detention on remand measure in the criminal justice system, in particular with regard to its overuse and excessive length.

Recommendations issued by EULEX

- ✓ When issuing rulings on detention on remand, in relation to possible risk of flight, influencing witnesses or repeating the criminal offence, judges should strictly adhere to the legal prerequisites[34] and provide an explanation of all material facts which dictated detention on remand, including the reasons for the grounded suspicion that the person committed a criminal offence.
- ✓ Judges imposing detention on remand should justify this measure based on facts and by providing sufficient proof of the specific risks.
- ✓ In case the conditions for imposing security measures are met, the most lenient one should be ordered and detention on remand should be the last resort.
- ✓ Judges should calculate the length of detention on remand in accordance with article 187, paragraph 1 of the Criminal Procedure Code.[35]
- ✓ Kosovo courts should ensure that their decision meet the criteria of necessity and proportionality to determine the justified length of detention on remand in relation to the length of the trial.
- ✓ In cases where it is assessed that detention on remand is not necessary and proportionate any longer, the defendant should be released from detention.

1.2.2. there are grounds to believe that he will destroy, hide, change or forge evidence of a criminal offense or specific circumstances indicate that he will obstruct the progress of the criminal proceedings by influencing witnesses, injured parties or accomplices; or

1.2.3. the seriousness of the criminal offence, or the manner or circumstances in which it was committed and his personal characteristics, past conduct, the environment and conditions in which he lives or other personal circumstances indicate a risk that he will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he has threatened to commit; and

1.3. the lesser measures to ensure the presence of defendant listed in Article 171 of this Code would be insufficient to ensure the presence of such person, to prevent reoffending and to ensure the successful conduct of the criminal proceedings.'

33 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 182, paragraphs 2 and 3, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024): '*2. Detention on remand shall last the shortest possible time (…). 3. Detention on remand shall, at any stage of the proceedings, be terminated and the detainee released as soon as the reasons for it cease to exist.*'

34 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 186, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (accessed 25 September 2023): '*Detention on remand shall be ordered by a written ruling including (…) an explanation of all material facts which dictated detention on remand, including the reasons for the grounded suspicion that the person committed a criminal offence and the material facts under Article 184, paragraph 1., sub-paragraph 1.2. of this Code.*'

35 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 187, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (accessed 25 September 2023): '*The detainee may be held in detention on remand on the initial ruling under Article 186 of this Code for a maximum period of one (1) month from the day he was arrested. After that time period he may be held in detention on remand only under a ruling of the pretrial judge ordering an extension of detention on remand.*'

Implementation

To follow up on these recommendations, EULEX analysed a sample of 67 random detention on remand rulings issued in the period December 2021 – August 2023, as received from the Kosovo basic courts.[36] Breaking down all the legal criteria to be fulfilled[37] when imposing detention on remand, EULEX observed the following:

- The first element to be fulfilled when imposing detention on remand is a grounded suspicion that the criminal offence was committed. Out of 67 rulings, 39 described (most of them only partially) the reasons for grounded suspicion, the rest only referred to the evidence collected, without providing any proper justification.
- The second mandatory element is one of the following: risk of flight, risk of destroying evidence or obstructing in any way the criminal proceedings, or risk of re-offending due to the circumstances of the criminal offence or other personal circumstances. From the rulings analysed, EULEX observed that in 44 cases (out of 67), the court properly justified the existence of one of these circumstances. For instance, the risk of flight was correctly justified in several cases by the foreign citizenship of the defendants and their strong ties with other countries.[38] However, in 23 rulings, the existence of one of the above risks was briefly mentioned without a concrete justification supported by evidence.
- The third element is related to the existence of 'articulable grounds'[39] to believe that lesser measures to ensure the presence of the defendant at the criminal proceedings are insufficient. An articulable ground is a reason that is obvious from the circumstances of the case and of the defendant and can be easily shown/explained by the court. Only in 10 of the rulings this was explicitly described by the court, in the other 57 no grounds being provided for not imposing a more lenient measure. Out of the 10, only seven rulings included and sufficiently described all the necessary legal elements for imposing detention on remand.

The calculation of the duration of detention continued to vary from case to case, contrary to EULEX's recommendations. For example, in some of the rulings analysed the length of detention was calculated as one month, while in others as 30 days, which are not necessarily equivalent.

EULEX followed up on the high-profile cases with on-going trials in which the defendants were in detention on remand for a long duration. In the former EULEX *Olympia Case*, the defendant had been in detention for more than six years, which poses serious human rights concerns. On the other hand, an improvement was observed in the former EULEX *Olympus I Case,* where two of the defendants were released to house arrest in June 2022 after seven and six years respectively of detention on remand, a measure that was replaced later for one of them with

36 The rulings are issued in cases of e.g., domestic violence, theft, murder, corruption etc., as follows: BC of Ferizaj/Uroševac (four rulings from the General Department and five rulings from the Serious Crimes Department), BC of Prizren (five rulings from the General Department and five rulings from the Serious Crimes Department), BC of Mitrovica (three rulings from the General Department and four rulings from the Serious Crimes Department), BC of Pejë/Peć (five rulings from the General Department and five rulings from the Serious Crimes Department), BC of Pristina (five rulings from the General Department, five rulings from the Serious Crimes Department and four rulings from the Special Department), BC of Gjakovë/Đakovica (three rulings from the General Department and four rulings from the Serious Crimes Department), BC of Gjilan/Gnjilane (five rulings from the General Department and five rulings from the Serious Crimes Department).

37 Criminal Procedure Code, 17 August 2022, Article 184, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759/, and Article 187, paragraph 1 of the Criminal Procedure Code, 04/L-123, 28 December 2012 https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2861 (last accessed on 20 September 2024).

38 Exemplary: Ruling no. 2022: 001142, issued on 06 January 2022 by BC Gjilan/Gnjilane, Serious Crimes Department considers the Albanian citizenship of the defendant and his current employment in Germany as risks of flight from the criminal responsibility.

39 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 19, paragraph 1.31, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024): '*when information or evidence must be articulable, the party offering the information or evidence must specify in detail the information or evidence being relied upon*'. For example, a suspect possessing also the passport of a foreign country and having strong ties with it or having previously tried to elude investigative actions might be considered by the court as articulable grounds to assess that only the detention on remand and not a lesser measure can ensure his/her presence in the trial.

reporting to the police. Another defendant in the same case, a Kosovo Serb, was released in April 2024 after two-and-a-half years of detention on remand. In the *Oliver Ivanović Murder Case*, three defendants, in detention since 2018, were released to house arrest on 3 June 2022, the court assessing that the conditions for the existence of the detention measure had ceased to exist and a more lenient measure would be sufficient.

As of September 2023, out of a total of 601[40] detainees on remand, EULEX identified 61 persons who were detained for a longer duration, including one female who had been in detention for almost seven years, according to the data provided by the Kosovo Correctional Service (KCS). The table below depicts the number of persons detained on remand for a longer period (in total: 61 detainees).

Length of detention	*More than two years*	*More than three years*	*More than four years*	*More than five years*	*Six years or more*
Number of detainees	36	9	3	3	10

Conclusions

Only a very small number of rulings (seven out of 67) were issued in accordance with all the legal prerequisites. EULEX therefore finds that there was very little progress in implementing its recommendations regarding the overuse of detention on remand.

In relation to the excessive length of detention on remand, the number of detainees for a longer duration (for more than two years) increased from 37 in 2021 to 61 in 2023 and it can be concluded that there is still a considerable number of detainees in protracted trials for a very long duration. However, as described above, there was some progress when it comes to the excessive length of the detention on remand and its replacement with more lenient measures in some of the high-profile cases, but steps still need to be taken to ensure the proportionality of the detention throughout the criminal proceedings.

2.9. Enforcement of final criminal sanctions

Background

The enforcement of criminal sanctions is the final step in the criminal chain. In its Justice Monitoring Report 2021, EULEX underlined that this aspect was often overlooked in the assessment of the functioning of the criminal justice system. A proper enforcement of criminal sanctions is essential to ensure the credibility of the judicial system. In its aforementioned report, EULEX observed some inconsistencies and lack of homogeneous practices in the enforcement of final criminal sentences throughout the different basic courts. EULEX noted that the position and functioning of the Execution Officer for Criminal Sanctions was not clearly defined in the different basic courts' internal regulations. This position is categorised differently in each basic court, sometimes as clerk, in other cases as senior clerk. The Execution Officer for Criminal Sanctions usually reports directly to the president of the basic court.

Also, the Case Management Information System (CMIS), an electronic system which stores a variety of information regarding court cases (including the judgments containing the criminal sanctions applied), was not used to the best extent concerning the execution of criminal sanctions. EULEX also monitored difficulties posed by the absence of a specific reference in

40 490 Kosovo Albanians, 33 Kosovo Serbs, 4 Kosovo Bosniaks, 1 Kosovo Turk, 9 Kosovo Ashkali, 3 Kosovo Egyptians, 8 Kosovo Roma, 0 Kosovo Gorani, and 53 foreigners. Out of this total number, 11 detainees were females and the rest males.

some judgments to the manner of substituting a fine when it could not be collected by means of compulsion, as required by both the former and the new Criminal Procedure Code (CPC).[41] At the time, EULEX found that these cases were dealt by different officials in each basic court, either by the court's president, the Execution Officer for Criminal Sanctions or by other staff, leading to inconsistencies and lack of homogenous practices.

Recommendations issued by EULEX

- ✓ The Kosovo Judicial Council (KJC) should ensure that the CMIS is fully implemented at all levels of the execution procedures. To facilitate the transition from using their own databases or manual registers to a unified system, the Execution Officers for Criminal Sanctions should be fully trained.
- ✓ The KJC should ensure that the position of Execution Officer for Criminal Sanctions is better regulated with specific terms of reference, job requirements, defined category and retributions.
- ✓ Judges should include a specific reference in their judgements to the manner of substituting a fine when it cannot be collected by means of compulsion, as required by article 365, paragraph 2 of the CPC and article 43 of the CPC (meaning that when the convicted person is unwilling or unable to pay the fine, the court will establish the manner to replace the fine, either with the punishment of imprisonment or with community service work with the consent of the convicted person).

Implementation

In some courts, the CMIS is still not being used systematically by the Execution Officers for Criminal Sanctions, whereas in others, the Execution Officers have not yet been fully trained to use this function. As an example, the regular tasking of cases for enforcement to the Execution Officers for Criminal Sanctions through CMIS only started in July 2023 in the Basic Court (BC) of Pristina. Similar to the initial findings, several Execution Officers for Criminal Sanctions in different basic courts stated they would still prefer to continue using their own databases and manual registers as a back-up tool, regardless of the additional workload, implying that not in all cases the Execution Officers for Criminal Sanctions have transitioned from using their own databases or manual registers to a unified system.

EULEX had previously noted that the position of Execution Officer for Criminal Sanctions was not specifically regulated. Article 11 of the KJC *Regulation on Internal Organisation of the Court* of the year 2020, as well as article 4 of the one of 2013, establishes, among the responsibilities of the president of the court, the following generic obligation (point 6): 'organising, supervising and exerting direct control of the execution of penal sanctions on a monthly basis'. Hence, the position of Execution Officer for Criminal Sanctions was, and continues to be at this stage, categorised differently in each basic court, sometimes as clerk, in other cases as senior clerk. They usually report directly to the president of the basic court. Arguably, a more specific definition of the position of Execution Officer for Criminal Sanctions is still needed, including job requirements, terms of reference, category, and retributions.

Finally, EULEX again examined the difficulties posed by the absence of a specific reference in some judgements to the manner of substituting a fine when it cannot be collected by means of compulsion, as required by Article 364, paragraph 2.4. of the CPC. Once more it was established

41 Criminal Procedural Code, 08/L-032, 17 August 2022, Article 364, paragraph 2.4: *'If the accused is punished by a fine, the judgement states the time within which he must pay the fine and the manner of substituting the fine if the fine cannot be collected by means of compulsion',* https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last accessed on 20 September 2024).

that these cases are being treated differently in each basic court. Mostly it is the president of the basic court who decides on the manner of conversion, at times it is the Execution Officer for Criminal Sanctions, and in some basic courts these decisions are taken by other employees, or it is considered that the decision cannot be adopted and it is sent back to the judge to amend the decision by including specifically the manner of conversion. An aspect that was also observed by EULEX is that in some cases the possibility offered by Article 43, paragraph 2 of the Criminal Code (CC) to establish the payment by instalments was very seldom applied by the judges in their sentencing and occasionally Execution Officers for Criminal Sanctions offered this option at their own initiative, given the dire economic situation of those fined.

Conclusions

While some progress was observed concerning the implementation of the CMIS at the level of the Execution Officers for Criminal Sanctions, all recommendations issued by EULEX remain relevant. A more specific definition of the position of Execution Officer for Criminal Sanctions would be beneficial, and judges should include a specific reference in their judgements to the manner of substituting a fine when it cannot be collected by means of compulsion, which should lead to a more consistent practice in the enforcement of criminal sentences.

2.10. Enforcement of accessory punishments

Background

In its Justice Monitoring Report 2022, EULEX assessed the enforcement of accessory punishments. Accessory punishments are aimed at strengthening the effect of the main punishments (both principal and alternative ones) and can only be imposed in conjunction with them. According to article 40 of the Criminal Code (CC), the principal punishments are 1) punishment of lifelong imprisonment, 2) punishment of imprisonment and 3) punishment of a fine. The list of alternative punishments, as set out in article 41 of the CC, are: 1) suspended sentence, 2) semi-liberty sentence and 3) an order for community service work.

Article 59 of the CC[42] establishes a list of eight different types of accessory punishments, including the *prohibition on exercising public administration or public service functions* (paragraph 2.3.) and the *prohibition on exercising a profession, activity or duty* (paragraph 2.4.). Articles 62 and 63 further regulate these two accessory punishments. For example, these articles specify whether the accessory punishment is mandatory and determine the range of the period a person is prohibited from exercising public functions, depending on the type of crime and on whether the perpetrator was given an imprisonment sentence, a suspended sentence, or a fine. In the Criminal Code of 2019, new provisions were introduced in articles 62[43]

42 Criminal Code, 06/L-074, 14 January 2019, Article 59, paragraph 2, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last accessed on 20 September 2024): *'The accessory punishments are:1) deprivation of the right to be elected, 2) order to pay compensation for loss or damage, 3) prohibition on exercising public administration or public service functions, 4) prohibition on exercising a profession, activity or duty, 5) prohibition on driving a motor vehicle, 6) confiscation of a driver license, 7) order to publish a judgment and 8) expulsion of a foreigner from Kosovo.'*

43 Criminal Code, 06/L-074, 14 January 2019, Article 62, paragraph 3, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last accessed on 20 September 2024): *'The court shall prohibit an official person from exercising his/her function in public administration or public service functions for one (1) to ten (10) years after serving the imprisonment, if the person was convicted of any of the offenses covered in Chapter XXXIII (Corruption and criminal offences against official duty) of this Code'*. Article 62, paragraph 4 of the Criminal Code, 06/L-074, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last accessed on 20 September 2024): *'The court shall prohibit an official person from exercising his/her function in public administration or public service for one (1) to five (5) years, if the same person was convicted for domestic violence according to Article 248 of this Code'.*

and 63[44], which made it mandatory to impose the two mentioned accessory punishments in, *inter alia,* corruption cases.

Considering the importance of this category of crimes, EULEX focused its monitoring on the application and enforcement of accessory punishments imposed in conjunction with corruption-related judgments.

As an overarching finding, in 2022, EULEX observed inconsistencies and a lack of standardised practices in the enforcement of these two categories of accessory punishments. Staff in all basic courts mostly lacked understanding of this concept and their responsibilities in relation to the implementation. EULEX furthermore established that the enforcement of criminal sanctions was not consistently treated as a responsibility of the Execution Officer for Criminal Sanctions across the basic courts (see also the findings regarding the position of Execution Officer for Criminal Sanctions in Chapter 2.9, 'Enforcement of final criminal sanctions'). Furthermore, most courts failed to apply two specific provisions in the *Law on Execution of Penal Sanctions* (LEPS)[45], which addresses the implementation of the two aforementioned accessory punishments: *prohibition on exercising public administration or public service functions* and *prohibition on exercising a profession, activity or duty.* This law stipulates that judgments concerning the *prohibition on exercising public administration or public service functions* should be immediately sent by the court to the Ministry of Public Administration[46] as the institution mandated to oversee the execution of this accessory punishment.

Judgments concerning the *prohibition on exercising a profession, activity or duty* should be immediately sent by the court to the public or private enterprise where the convicted person was employed and to the Ministry of Labour and Social Welfare[47], which should supervise the execution of this specific type of accessory punishment. However, EULEX observed at the time that courts communicated the sentence only to the public or private institution in which the convicted person was employed, but not to the respective Ministry. Both Ministries informed EULEX that they had never received any judgment from the courts tasking them with the supervision of the execution of accessory punishments in their respective area of competence. EULEX also noted at the time that accessory punishments were often inaccurately registered in the Central Criminal Record System.

EULEX also observed that there was no system in place to collect and store the relevant statistical data on the application and enforcement of accessory punishments by the Kosovo Judicial Council (KJC) at central level or by the basic courts. As this kind of data was not available, EULEX opted to assess the issue by identifying judgments of cases where the accessory punishment prohibition on exercising public administration or public service functions should have been imposed in relation to corruption-related judgments. It was then observed that judges did not always apply the mandatory accessory punishments, while in many sentences courts tended to convert the imprisonment sentences to fines; apart from avoiding imprisonment sentences, the conversion to fines results in avoiding the application of accessory punishments, which would have been mandatory in case of an imprisonment sentence.

44 Criminal Code, 06/L-074, 14 January 2019, Article 63, paragraph 4, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last accessed on 20 September 2024): *'The court shall prohibit an official person from exercising a profession, independent activity, managerial or administrative duty of one (1) to ten (10) years, if the person was convicted of any of the offenses in Chapter XXXIII (Corruption and criminal offences against official duty) of this Code'.*

45 The name of the law was changed from LEPS to LECS (Law on Execution of Criminal Sanctions). Article 161 of the LEPS is since August 2022 Article 156 of the LECS.

46 The Ministry of Public Administration was merged with the Ministry of Internal Affairs in 2020

47 The Ministry of Labour and Social Welfare is now called The Ministry of Finance, Labour and Transfers.

Recommendations issued by EULEX

- ✓ The KJC should ensure that there is a unified system in place for the enforcement of accessory punishments. To this end, the KJC should clarify all relevant aspects through sub-legal acts, in which the responsibilities of each actor are clearly specified.
- ✓ The KJC should establish an automated system of data collection for the accessory punishments and their enforcement through the Case Management Information System (CMIS). To this end, a specific data field in the CMIS should be created containing all relevant information such as the respective date of communication of the accessory punishment, the names of the institutions it was communicated to and that of the issuing officer.
- ✓ The KJC should ensure that the Central Criminal Record System contains the complete data related to accessory punishments. To facilitate this, a specific data field in this system should be created in order to include mandatory information about the existence of an accessory punishment, its nature and specific duration.
- ✓ The KJC should instruct the courts to timely communicate the accessory punishments to the respective institutions in compliance with articles 160 and 161 of the LEPS (now articles 155 and 156 of the new LECS) and should regularly follow the effective implementation of articles 62 and 63 of the Criminal Code.
- ✓ The KJC should establish a monitoring mechanism to assess whether judges apply the mandatory accessory punishments pursuant to article 62 and 63 of the CC and ascertain whether in corruption cases courts tend to convert imprisonment sentences to fines, leading not only to the avoidance of imprisonment sentences but also to the avoidance of the mandatory application of accessory punishments.

Implementation

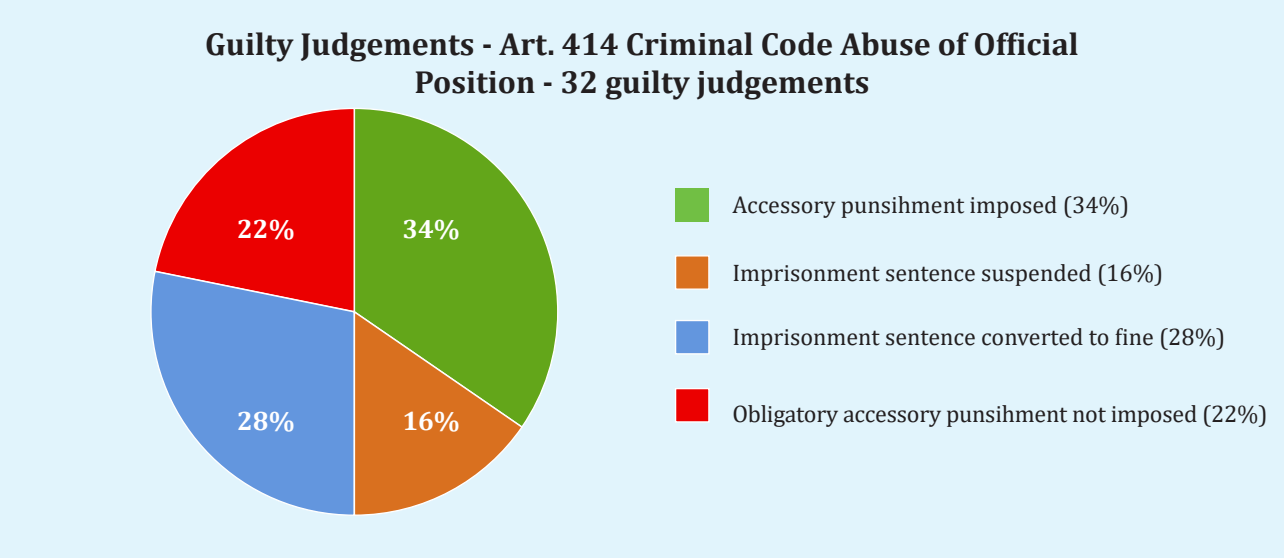
Since the publication of the EULEX Justice Monitoring Report 2022, no changes were observed in any of the basic courts and a general lack of understanding persists among the basic courts' staff concerning the concept of accessory punishments and the staff's responsibilities in relation to their implementation. In this sense, EULEX found that the enforcement of criminal sanctions is not consistently treated as a responsibility of the Execution Officer for Criminal Sanctions in most of the basic courts and that this task continued to be often dispersed among different offices or staff. Already in its Justice Monitoring Report 2021, EULEX had underlined the need to better define the role and responsibilities of the Execution Officer for Criminal Sanctions in enforcing final criminal sanctions, including the accessory punishments.

EULEX also noted that most courts still failed to apply the two specific provisions in the *Law on Execution of Criminal Sanctions* (LECS), previously known as LEPS, which address the implementation of the two aforementioned accessory punishments.

EULEX assessed that basic courts staff was still not sufficiently informed about these legal provisions. Still, in June 2024, none of the ministries had yet received any judgment from the courts for the supervision of the execution of accessory punishments. EULEX likewise again determined that in some cases, accessory punishments were not duly, or inaccurately, registered in the Central Criminal Record System, despite efforts made in this regard. EULEX also observed no progress in the setting up of a system to collect and store the relevant statistical data on the application and enforcement of accessory punishments by the KJC at central level or by the basic courts. In addition, EULEX again identified judgments of cases where the accessory punishment prohibition on exercising public administration or public service functions should have been imposed pursuant to article 62, paragraph 3 of the Criminal Code in corruption-related judgments. As in the Justice Monitoring Report 2022, EULEX then verified whether the accessory punishments, mandatory in such corruption convictions in case of punishment by imprisonment, had indeed been imposed as required by law.

➢ Abuse of official position

Based on the assessment of 32 guilty judgments pursuant to article 414 of the CC (abuse of official position), EULEX identified that accessory punishments were imposed in eleven judgments, while in five judgments the imprisonment sentence was suspended and in nine judgments the imprisonment sentence was converted to a fine by which the mandatory accessory punishment was avoided. Moreover, there were seven judgments where there was an obligation to impose an accessory punishment, which was nevertheless not imposed by the court, in violation of the law. It is noteworthy that the range of imprisonment for this offence is one to eight years (six months to five years in the previous Criminal Code), implying that the minimum punishment, and even below the minimum punishment, was imposed in numerous judgments. Also, a six-month imprisonment is the maximum period for which a conversion to a fine is allowed. In conclusion, in many judgments, minimum prison sentences were imposed, and nine of them were later converted to fines, thus avoiding a mandatory application of an accessory punishment.



➢ Conflict of Interest

Based on the assessment of one guilty judgment pursuant to article 417 of the Criminal Code (Conflict of interest), EULEX identified that despite the suspension of the imprisonment sentence, the mandatory accessory punishment was imposed in accordance with the law, while in another guilty judgment pursuant to article 420 of the Criminal Code (Unauthorised use of property), one accessory punishment was imposed in a judgement in which the three-month imprisonment sentence was converted into a fine.

➢ Accepting Bribes

Based on the assessment of four guilty judgments pursuant to article 421 of the Criminal Code (Accepting bribes), the court imposed three accessory punishments in cases with imprisonment sentence, in one of which the imprisonment was suspended. In the fourth case, the imprisonment sentence was converted to a fine.

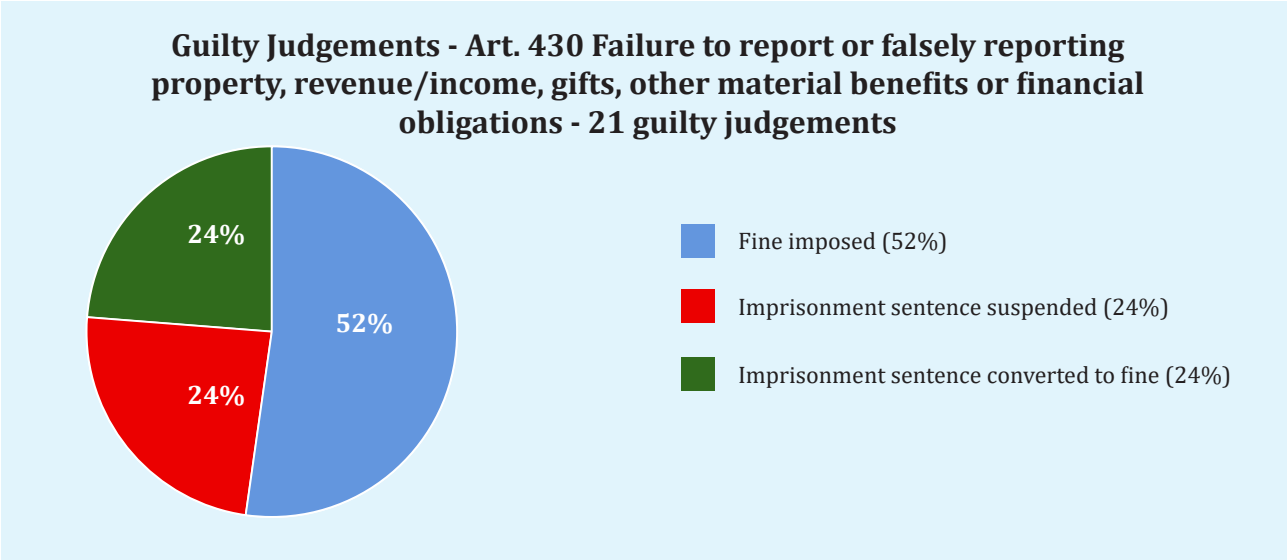
➢ Trading in Influence

Based on the assessment of three guilty judgments pursuant to article 424 of the Criminal Code (Trading in influence), EULEX identified that initially there was no accessory punishment imposed in one of the cases. The conversion of this six-month imprisonment

avoided the mandatory application of an accessory punishment. However, the Court of Appeals (CoA) later amended it and established an accessory punishment. In another case, the basic court established an accessory punishment and in the third one the imprisonment of six months was converted into a fine.

- Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations

  Based on the assessment of 21 guilty judgments pursuant to Article 430 of the Criminal Code (Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations), EULEX identified that in no judgments accessory punishments were imposed, while in 11 judgments there was only a fine imposed as punishment. In ten judgments, the imprisonment sentence was suspended (five cases) or converted to a fine (other five cases), by which the mandatory accessory punishment was avoided. In conclusion, in most judgments, minimum prison sentences were imposed, and half of them were suspended or converted into fines.



Conclusions

EULEX assessed that the findings of its Justice Monitoring Report 2022 were still valid as it continued observing, in 2023 and 2024, similar inconsistencies and lack of standardised practices in the application and enforcement of the two assessed categories of accessory punishments. All recommendations are still applicable and the KJC should take a leading role in addressing them. Currently, there is no monitoring mechanism in place to assess whether judges apply the mandatory accessory punishments. Both the CMIS and the Central Criminal Record System could be utilized to put in place a unified and comprehensive system for the enforcement of accessory punishments. Such a monitoring mechanism would provide a far better overview of data to establish whether in corruption cases courts apply the mandatory accessory punishments and whether courts still tend to convert many imprisonment sentences, leading not only to the avoidance of imprisonment sentences but also to the avoidance of the mandatory application of accessory punishments.

2.11. Scheduling of Court Sessions

Background

In its Justice Monitoring Report 2022, EULEX addressed the recurrent practice of excessive length of court proceedings and its impact on the right to a trial within a reasonable time as guaranteed under article 6 of the European Convention on Human Rights (ECHR).

The procedure of scheduling court sessions is an important element within this context, as it considerably impacts on the progress of court proceedings.

EULEX observed that it was common practice not to schedule all the hearings at the beginning of the trial. In most cases, the date of future hearings was scheduled after a court session, often one to two months after the session. In addition, it was not common to schedule several hearings on consecutive dates.

Recommendations issued by EULEX

- ✓ The courts should schedule the following court session within one month whenever this is possible.
- ✓ In trials concerning a high number of defendants, the courts should plan several hearings on consecutive days as this has proven to enhance efficiency in the conduct of such trials.
- ✓ The courts should adopt a plan to schedule the entire main trial at an early stage of the proceedings.
- ✓ The Kosovo Judicial Council (KJC) should oversee and monitor court performances and regard the court's capability to plan and schedule trial sessions as an efficiency indicator.

Implementation

EULEX tracked the scheduling of court sessions monitored by EULEX experts during the period September 2022 to September 2023 (12 Months). Out of 271 hearings at which a next court session was scheduled, the following session was set within one month on 133 occasions (49 %), within two months on 103 occasions (38%) and within more than two months on 35 occasions (13%).

EULEX conducted a similar tracking while preparing its Justice Monitoring Report 2022, examining the period November 2021 to July 2022 (9 months). Follow up hearings were scheduled within one month in 44% of the cases, within two months in 45% of the cases, and within three months or more in 11% of the cases.

The comparison indicates a slight improvement in the percentage of following court sessions scheduled within one month.

The KJC *Strategic Plan for Efficient Solution of Corruption and Organized Crime Cases 2022-2024*[48] suggests, as one of the measures intended to increase productivity and efficiency in handling cases, to schedule consecutive hearings whenever the circumstances permitted. In the Strategic Plan it is expected that once a court begins to apply the practice of holding consecutive hearings, it would continue to strictly adhere to such a plan and make changes to it only in exceptional situations.

In June 2023, the KJC approved the Work Plan 2023 of the Special Department at the Basic Court

48 KJC 'Strategic Plan for the Effective Solution of Cases of Corruption and Organised Crime 2022-2024', https://www.gjyqesori-rks.

(BC) of Pristina. One of the Work Plan's key objectives is to increase efficiency and effectiveness in handling cases and it outlines, among others, the following two measures aimed at achieving that goal: 'scheduling of preparatory meetings and status sessions for planning the course of the case' and 'the appointment of consecutive sessions'.

The developments outlined indicate that there is a growing awareness of the need to improve case management and a willingness to implement the necessary measures to achieve this objective, both in the KJC and among the judges.

EULEX tracked the practice of scheduling consecutive hearings and established that out of 271 hearings monitored from September 2022 to September 2023, on 163 occasions (60%), only one follow-up session was scheduled, and on 108 occasions (40%) two or more follow up sessions were scheduled. This is approximately the same result as in the period November 2021 to July 2022, during which only one follow up session was scheduled in 61% of the hearings.

In cases concerning a high number of defendants, some trial panels scheduled more than one and even more than two following sessions. In the high-profile *Stenta II Case,* with 43 defendants charged with several corruption-related criminal offences, the court regularly scheduled up to five following sessions, if not necessarily on consecutive days, which resulted in 20 hearings conducted in this case in the period from September 2022 to September 2023. In the former EULEX high-profile *Grande II Case*, in which 15 defendants are charged with criminal activities related to smuggling of migrants, the new presiding judge, who restarted the case in April 2022, regularly scheduled two or three following sessions. This said, it should be borne in mind that, in most cases, not all scheduled consecutive hearings take place as planned.

Conclusions

Both the KJC and the Special Department at the BC of Pristina have developed awareness for the importance of case management and of the practice of planning of future hearings as reflected in the adoption of the KJC *Strategic Plan for Efficient Solution of Corruption and Organized Crime Cases 2022-2024* and the Work Plan 2023 of the Special Department at the Basic Court of Pristina. While some improvement has been observed in several trials involving a high number of defendants, in general, no improvement could be established regarding the scheduling of following hearings within one month nor in the scheduling of consecutive hearings.

2.12. Confiscation and sequestration (temporary confiscation) of assets

Background

In its Justice Monitoring Report 2020, EULEX identified the need for improvements in enforcing the confiscation and temporary confiscation (sequestration) of assets, given that the prosecutors and courts were not using the legal framework at their disposal effectively. It was established that the amount of assets confiscated was much lower than the amount of sequestrated assets (likely due to the high number of acquittals in corruption cases), that the sale of assets already during the proceedings, as foreseen by the law, was rarely applied, and that the *Law on Extended Powers on Confiscation of Assets* was not being implemented.

Recommendation issued by EULEX

- ✓ To initiate the implementation of the *Law on Extended Powers on Confiscation of Assets* and to use more often the possibility of sales of assets.

org/wp-content/uploads/2022/11/KGJK_Plani_Strategjik_per_zgjidhjen_efikase_te_lendeve_te_korrupsionit_dhe_krimit_te_organizuar_2022_2024.pdf, KJC website only in Albanian version, KJC, October 2021 (last accessed on 20 September 2024).

Implementation

Despite the fact that the new Criminal Procedure Code (CPC) (which entered into force on 17 February 2022) amended some provisions regarding the sequestration and confiscation aiming at simplifying the procedure and harmonising the terminology[49], the concept of sequestration and confiscation is still not sufficiently applied and implemented in Kosovo.

Moreover, the *Law on Extended Powers on Confiscation of Assets*, which entered into force on 10 January 2019[50] and which enhances the possibilities to confiscate assets from convicted persons and also from third parties if they bought the assets in bad faith, is still hardly being implemented. EULEX monitored that the Special Prosecution of Kosovo (SPRK) initiated the application of this law in only two cases up until 2023, more than four years after it entered into force. At the level of Basic Prosecution Offices (BPOs), the law was applied only five times in total across Kosovo.

While these instances of the law being applied constitute some progress in the implementation, overall, this legal instrument is still not being used sufficiently and effectively by practitioners, despite the fact that there is common consensus that it should be more regularly applied.

According to article 262, paragraph 3.5 of the CPC[51] regarding temporary measures to secure specified property, the prosecutor can order the sale of specified property during the investigative phase of the case. This provision pertains to property which, for example, will require high costs to manage or which will quickly diminish in value. The sale is administered by the Agency for the Management of Sequestrated or Confiscated Assets.[52] However, it seems that the prosecutors are reluctant to sell valuable assets such as vehicles at the early stage of the investigative phase because they fear that the case is not solid enough to file an indictment. On the other hand, the judges often consider sequestered assets as evidence, which as such cannot be sold and must remain in temporary sequestration until the final judgement, regardless of the length of the criminal proceedings.

Furthermore, the Law on *Managing Sequestrated or Confiscated Assets* established the Agency for the Administration of Sequestrated and Confiscated Assets (AMSCA) in 2009.[53] AMSCA's role is to assist the prosecution and court in the execution of the sequestrated or confiscated assets and to enable the sale of sequestrated or confiscated assets. Nevertheless, the Agency is still trying to promote its competencies and its role in this complex framework and remains underused by the relevant legal entities.

This can be illustrated by the following statistics. From 2021 to mid-2023, according to the information provided by AMSCA, the agency received from courts only 164 orders for sequestration and 169 orders for confiscation. This averages to just over 100 cases per year, which is a relatively low number considering the total amount of court cases in Kosovo.

Conclusion

The existing legal framework is satisfactory and comprehensive, but the problem persists in the lack of sufficient and efficient implementation of the provisions. The recommendation tabled in

49 In the previous Criminal Procedure Code, the terminology used in different chapters related to sequestration and confiscation was not consistent. Some articles referred to temporary sequestration while others to temporary confiscation. In legal terms, the sequestration is the process of removing temporarily property from its owner, pending the outcome of a judicial decision. On the other hand, confiscation is a permanent forfeiture of property ordered by the final decision from a Court.

50 Law of Extended Powers on Confiscation of Assets, No. 06/L-087, 26 December 2018, ActDocumentDetail.aspx (rks-gov.net) (last accessed on 20 September 2024).

51 Criminal Procedure Code, 08/L-032, 17 August 2022, ActDetail.aspx (rks-gov.net) (last accessed on 20 September 2024).

52 Law on the Management of Sequestrated and Confiscated Assets, No. 05/L-049, 14 April 2016, Article 4 paragraph 1.3, 9D426AAD-DEB9-405D-8235-38FD1BC76C11.pdf (rks-gov.net) (last accessed on 20 September 2024).

53 Law on the Management of Sequestrated and Confiscated Assets, No. 05/L-049, A4 1pril 2016, 9D426AAD-DEB9-405D-8235-38FD1BC76C11.pdf (rks-gov.net) (last accessed on 20 September 2024). This law was amended in 2016 and in 2022.

the Justice Monitoring Report 2020 has not been sufficiently implemented.

2.13. Public, state and socially owned institutions as injured parties

Background

In corruption cases, the injured party is often a publicly owned, state owned or socially owned institution. Since this kind of crimes result in financial damages for these entities, an active presence of their representative during the criminal proceedings is important because, as injured parties, they are entitled to present evidence and call witnesses. Additionally, their presence would enable them to make use of their right to property claim or to file a complaint against court decisions. The inclusion in the criminal proceedings is a right of the injured party and must be guaranteed by all the parties of the proceedings (prosecution, courts). In its Justice Monitoring Report 2021, EULEX observed that in a large number of cases, the injured institution was either not identified as such in the indictment phase or that it refrained from participating in the proceedings in case it was identified.

Recommendations issued by EULEX

- ✓ Prosecutors should ensure that the injured party is identified in the indictment.
- ✓ State institutions identified as injured parties should be more active in that role during the main trial complementing the work of the prosecutor with the criminal charge and enabling the process of restitution. This should be done by their own legal representative or through the State Advocacy Office.
- ✓ The role of the State Advocacy Office in court proceedings should be enhanced.

Implementation

EULEX assessed indictments filed during 2022 and 2023 concerning the criminal offence of *Abusing official position or authority.*[54] An element of this offence, which needs to be proven in court, is the intent of the defendant to acquire a benefit or to cause financial damage. When the offence is claimed to have caused damage, an injured party must be identified and specified in the indictment.[55]

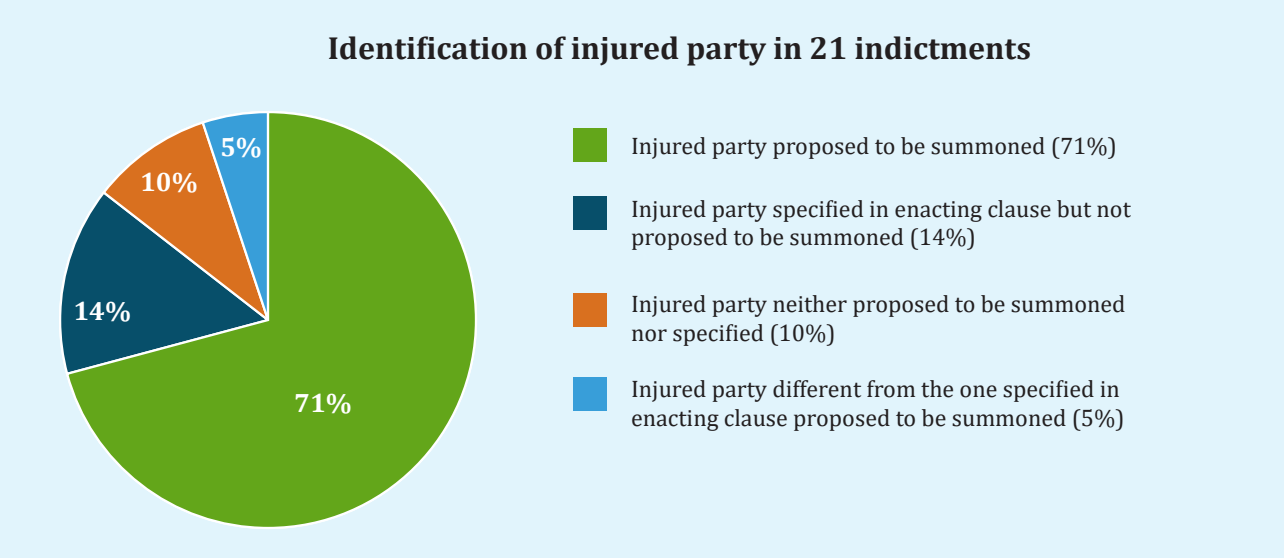
In order to ensure the injured party's right to take part in the court proceedings from the beginning of the main trial, the prosecutor should also propose that the injured party is summoned to the trial. Another essential element of a well-prepared indictment in these cases is that the value of the alleged damage is specified in the indictment.

EULEX assessed 37 indictments filed by different prosecution offices. In 16 indictments, the prosecutor did not claim that the offence caused damage to an institution; in some cases, a private company or physical person was identified as injured party and in other cases, it was only claimed that the intent of the defendant/s was to acquire a benefit. Out of the remaining 21 indictments, the injured party was specified and proposed to be summoned to the main trial in 15 cases. In three cases, the injured party was specified but not proposed to be summoned to the main trial. In one case, one injured party was specified in the indictment while another injured party, possibly due to a technical error, was proposed to be summoned to the main trial.

54 Criminal Code, 06/L-074, 14 January 2019, Article 414, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last accessed on 20 September 2024).

55 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 235, paragraph 1, subparagraph 1.8, ActDetail.aspx (rks-gov.net) (last accessed on 20 September 2024); Criminal Procedure Code, 04/L-123, 1 January 2013, Article 241, paragraph 1, subparagraph 1.5, CRIMINAL NO. 04/L-123 PROCEDURE CODE (rks-gov.net) (last accessed on 20 September 2024).

In two cases, the injured party was neither proposed to be summoned to the main trial, nor specified in the indictment, although the offence was claimed to have caused damage to the Kosovo budget. The value of the alleged damage to the Kosovo budget was specified in 14 out of the 21 indictments. In the remaining cases, the indictments stated that a damage was caused but not its value, or did not identify institutions as injured parties at all.



EULEX's year-long monitoring of a considerable number of corruption cases in which the injured parties were institutions established that, in most cases, these institutions and their representatives displayed a passive approach during the main trial. It is rare that any claim for damages was filed, and it is not unusual that no representative was present at court sessions. When a representative is present it is very seldom that he or she takes any actions, such as presenting evidence or questioning witnesses during examinations.

Conclusions

Only ten out of the 21 indictments were properly drafted with the injured party identified and the alleged damage specified, along with a proposal for the injured party to be summoned to the main trial, while shortcomings in one or both aspects were identified in the remaining 11 indictments. Moreover, even when properly identified and duly summoned, the injured parties and their representatives mostly refrained from undertaking any actions to protect their legitimate interests in the criminal proceedings.

EULEX therefore reiterates the recommendation that publicly owned, state owned and socially owned institutions should assume a more active role during the main trial in order to reduce as much as possible the damage caused by corruption to the Kosovo budget and other public assets.

3. Findings of Thematic Monitoring

3.1. Anti-corruption

Background

The EULEX Justice Monitoring Report 2020 highlighted the poor cooperation and coordination between police and prosecution in dealing with anti-corruption. It was observed that several complex investigations were completed without exploring all the leads for obtaining evidence, resulting in cases built on insufficient or unclear evidence. The 'follow the money' principle, which foresees investigation into financial trails and not only into concrete evidence of the crime, had been generally neglected.

EULEX assessed the Kosovo Police (KP) Anti-Corruption Task Force (ACTF), later renamed Special Investigation Unit (SIU), should play an essential role in detecting, conducting initial steps, and investigating corruption. EULEX observed that the SIU lacked a proper legal basis and called for this to be introduced. It was also observed that other entities within the KP did not feed the SIU with relevant information in a systemic manner and on a regular basis. In addition, EULEX established that SIU's access to information held by other agencies was limited and hampered by lack of cooperation.

EULEX also observed that verdicts in high-profile cases were often sent for retrial to the basic courts by the Court of Appeals (CoA), arguing that the experts' reports on which the first instance judgement relied on had either not been accurately drafted or not thoroughly considered by the court.

Recommendations issued by EULEX

- ✓ The SIU, supported by other law enforcement agencies, should enhance the 'follow the money' principle, as this is critical in the investigation of money laundering and other financial crimes.
- ✓ The Ministry of Interior, in coordination with the KP senior management, should take the lead in further clarifying and legalising the position of the SIU within the KP. This could be achieved by proposing amendments to the *Law on Police*.
- ✓ KP senior management should enhance SIU's intelligence-led policing and financial investigation capacities. The SIU should maintain direct communication lines with the Intelligence and Analysis Directorate and the Kosovo Intelligence Agency in order to be fed with relevant intelligence.
- ✓ KP senior management should enhance SIU's inter-agency cooperation by establishing formal lines of communications with bodies such as the Tax Administration, Customs and the Financial Intelligence Unit.
- ✓ The National Coordinator for Combatting Economic Crimes in cooperation with the Special Prosecution of Kosovo (SPRK) and all Basic Prosecution Offices (BPOs) should integrate the established data collection system concerning sequestration and confiscation as reflected in the 'Report on the activities and recommendations of the national coordinator for combatting economic crime' into a comparable data collection system. The system should also grant direct access to the National Coordinator for Combatting Economic Crimes.

- ✓ The Kosovo Judicial Council (KJC), in cooperation with the Kosovo Prosecutorial Council (KPC), the Office of the Chief Prosecutor and the Bar Association should take stock of the use of financial expertise in corruption cases in order to identify the reasons for expertise being inaccurately drafted or not being appropriately evaluated by courts, which often results in cases being sent back for retrial.

Implementation

While EULEX's recommendations were taken into consideration and some degree of progress in implementing them was observed, the overall outcome of the implementation is limited in scale and effectiveness.

Although the SIU is regarded as a key entity for anti-corruption and financial crimes investigations, there is little evidence that the Unit, in coordination with other law enforcement agencies and SPRK, is conducting complex financial and intelligence-led investigations. Moreover, several staffing decisions impacted negatively on the Unit's capacity.

Since 2023 (in connection with the ongoing reorganisation within the KP), staff figures have decreased and several staff members were replaced by more junior staff with less experience, skills, and competences to conduct complex corruption, financial and money laundering criminal investigations. These developments resulted in reduced cooperation between the SIU and the SPRK in 2024.

There are no indications that the SIU and the SPRK are currently applying the 'follow the money' principle, which is a critical approach in such investigations. In cases monitored by EULEX, there are little or no references in the investigative reports or indictments to indicate that investigations into financial trails had taken place.

In 2020, the SPRK adopted two strategies aimed at reorganising its internal structure and enhancing the prosecutorial system.[56] While these strategies supported a better understanding and an increased willingness to implement recommendations to improve cooperation with the SIU and law enforcement agencies, they have had limited effect on the manner in which investigations on organised crime, corruption and money laundering are being conducted.

In July 2022[57], the Anti-Corruption Agency (ACA) transitioned into the Agency for Prevention of Corruption (APC). While some progress could be observed, the agency still lacks capacity to complete the transition and operate in line with its mandate, which is broader and more strongly focused on prevention measures than that of the ACA. The new mandate includes, *inter alia*, the assessment of declaration of assets, the investigation of cases of conflict of interests, the review of the implementation of other anti-corruption laws, the assessment of the implementation of national anti-corruption policies, the drafting of anti-corruption risk assessments and the provision of assistance to and monitoring of the implementation of integrity public plans. While the APC maintains working relationships with the KP and the prosecutorial authorities, its investigation competence and mandate will require some further clarification, since an overlap of jurisdiction with other bodies, which existed already in the old ACA mandate, remained unresolved. For example, the APC was entrusted with initiating the investigation of corruption cases, that includes conducting preliminary administrative investigations, which overlaps with the investigative powers of the KP. Another potential concern which needs clarification relates to cases in which the APC imposes fines on a person or an entity; in line with the 'no bis in idem'[58]

56 The Reorganisation Strategy of SPRK and the Strategic Plan for Prosecutorial System 2022-2024

57 Law on the Agency for Prevention of Corruption, No. 08/l-017, 21 July 2022, ActDetail.aspx (rks-gov.net) (last accessed on 20 September 2024).

58 No legal action can be instituted twice for the same cause of action.

principle, this would imply that no criminal procedure could be initiated any longer against this person or entity for the same offence. It is furthermore of concern that while the APC is authorised to submit criminal charges to the prosecution, it cannot object or appeal the prosecution's decision in the matter, which means that if a prosecutor decides not to initiate criminal procedures, the APC has no power to change this decision.[59]

The KP restructuring plan 2023, which is currently being implemented, failed to clarify and formalise the position, role and function of the SIU within the KP. Moreover, while the *Law on Police* allows for the establishment of temporary units for specific duties, the omission of ratification of the SIU within the formal KP structures is not only jeopardizing the SIU as a specific unit within the KP, but is also compromising its organisational structure, designated objectives, and operational capabilities. Even though the SIU is mentioned as an entity in the recent *Law on the Special Prosecution Office*, this does not imply that the SIU has now been formally established as this law has no authority and bearing over the SIU that is considered to be an entity of the KP.

With its current capacity and existing framework, the SIU is not proficiently qualified to enhance its intelligence-led policing and financial investigation capabilities or to develop its inter-agency cooperation. Due to this, the SIU also faces problems with maintaining formal and direct communication lines with other bodies and entities, like the Kosovo Police Intelligence and Analysis Directorate, the Kosovo Intelligence Agency, Tax Administration, Customs, and the Financial Intelligence Unit.

With regard to the implementation of the recommendation on the use of financial experts, the problem seems to be two-fold. One, the unclarity with regard to the qualification and expertise of the assigned experts and two, the court's ability and willingness to appropriately evaluate these reports. While the selection and work methodology of experts is regulated by the Criminal Procedure Code (CPC) and was reviewed by the KJC in cooperation with the Office of the Chief Prosecutor and the Bar Association, the observed issues regarding the selection of experts are often related to aspects of conflict of interest, bias or requirements of expertise. In August 2023, the *Law on Court Experts* came into force, regulating the procedure for licensing experts. This could remedy to some extent the difficulties regarding the selection of experts.

Conclusions

EULEX observed a certain level of improvement in the implementation of its recommendations pertaining to anti-corruption. Although there is an expressed consent on the need to enhance the fight against corruption, there is no coherent approach to achieve these goals. The emphasis seems to be constrained to the establishment of regulations and structures with deficient attention to the actual implementation and application thereof. It can be observed that while regulations and policies are in place, a restrictive and formalistic approach and understanding is hampering the full utilisation of the available legal instruments.

3.2. Crimes under international law

Background

In its Justice Monitoring Reports 2020, 2021 and 2022, EULEX highlighted the challenges posed in investigating, prosecuting and adjudicating crimes under international law. These challenges are related to the large scale of the offences at stake, which may involve a high number of victims

59 According to the annual reports of the Agency for Prevention of Corruption in 2022, 267 cases and in 2023, 59 cases has been forwarded to prosecutor office or police for further proceedings.

and perpetrators, and the importance the accountability for these crimes carries in respect to transitional justice processes. The passing of time also significantly reduces the available evidence, as these types of cases are typically resolved based solely on testimonial evidence. Over time, the memories of the witnesses fade, some pass away, and others relocate, making it difficult for authorities to conduct follow-up interviews. In this dynamic landscape of addressing war crimes, EULEX issued several recommendations concerning the speed and quality of the investigations and case adjudication.

Recommendations issued by EULEX

- ✓ The Kosovo Police (KP) has to make efforts to continue the investigation and analysis of all categorised high-priority war crimes cases.
- ✓ Cooperation between the Special Prosecution of Kosovo (SPRK) War Crimes Department and the KP needs to be improved.
- ✓ The SPRK War Crimes Department should be expanded.
- ✓ Kosovo authorities are encouraged to seek ways to improve regional cooperation in the investigation of high priority war crimes cases, especially with Serbia, where many suspects and witnesses reside.
- ✓ The SPRK should prioritise the pre-trial investigations in cases where suspects are in detention.
- ✓ The Basic Court (BC) of Mitrovica should speed up the retrial of the *Drenica I Case* and the remaining *Vukotić Cases*, while the BC of Prizren should prioritise the retrial of the *Remzi Shala Case*.
- ✓ The Academy of Justice should provide training measures for judges on the specifics of reasoning of judgements concerning crimes under international law.

Implementation

The list of ten high-priority cases was compiled by the SPRK in the beginning of 2018. These cases are crimes involving many victims (like mass killings), significant violence, and coordinated, complex criminal activities. The KP advanced in the investigation of high-priority war crimes cases. As of the beginning of 2024, around half of the ten investigations were either finalised or were very close to conclusion, while one indictment was filed in December 2023. Trials in absentia can now be conducted according to the new Criminal Procedure Code (CPC), however only under certain conditions and after certain steps have been undertaken.[60] This resulted in an increase in the number of successfully finalised investigations. Nine indictments in absentia have been filed since the adoption of the new CPC. One important development during this period is the filing of the first indictment in one of the high priority cases (*the Mejë/Meja Case*) in early December 2023. The case involves 53 defendants and numerous criminal offences, including the complicated legal doctrine of command responsibility. For the first time, it also addresses the extermination of entire villages, adding to its complexity.

Both the KP War Crimes Investigation Unit (KP WCIU) and the SPRK War Crimes Department share the opinion that their cooperation has improved. In 2022, the KP WCIU faced significant understaffing, hindering a prompt response to prosecutors' requests. This was improved in March 2023, when, as part of the internal reconfiguration of the KP, the WCIU received a substantial boost in its capacity and status, including its upgrade to the level of Police Directorate.

60 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 303, ActDetail.aspx (rks-gov.net) (last accessed on 20 September 2024).

There are plans to increase the number of police officers in the WCIU to a total of 41. However, as of April 2024, the effective number stands at 31. Logistical issues, including limited office space due to the Unit's continued occupancy in its prior location, present a hurdle in accommodating additional staff members. Despite this, there has been an increase in the staff dedicated to war crimes, rising from 18 in July 2022 to the current 31, indicating a positive trajectory in bolstering the investigative capabilities of the Unit.

In 2022, the number of prosecutors in the SPRK War Crimes Department was slightly increased to four and went down to three in mid-December 2023, with the retirement of one of its most experienced prosecutors. At the beginning of June 2024, two additional prosecutors joined the Department. Some prosecutors are still engaged in trials concerning cases they managed before their transition to the War Crimes Department, rather than exclusively handling war crime cases. This indicates a shortfall in implementing the recommended changes. Despite operating with only three prosecutors for a long time, there has been an increase in the number of indictments,[61] underscoring the Department's resilience in achieving results even with limited resources. An additional dynamic in play is the occasional practice of prosecutors from other departments by exception issuing *ad hoc* indictments for international crimes. While unconventional, this flexibility might offer a pragmatic solution in navigating the resource constraints.

Kosovo authorities have been unsuccessful in improving the regional cooperation with Serbia. Despite the present challenges, prosecutors have made significant efforts in this regard. In a case involving proceedings *in absentia*, the prosecutor requested legal assistance from Serbian authorities to notify the indicted defendant, but without success. Another setback occurred in the beginning of 2023 when, in response to an extradition request sent from Kosovo to Hungary (within the framework of a bilateral agreement), the Hungarian authorities extradited the suspect to Serbia. This unforeseen turn of events significantly compromised the ongoing investigation.

Furthermore, Kosovo's extradition requests for individuals from Montenegro also faced difficulties. While cooperation had been good throughout the years, in late 2023, the Minister of Justice refused to implement a decision taken by a court in Montenegro to extradite a person to Kosovo, underscoring the influence of political considerations in such cases.

In the period preceding the publication of the EULEX Justice Monitoring Report 2022, detention on remand prior to the filing of indictments (which mark the finalisation of the pre-trial investigation) typically lasted around one year, with indictments often filed just before the 12 months deadline (set by article 187 of the CPC) expired. EULEX observed a slight improvement in prioritising pre-trial investigations for detained suspects. From November 2022 to June 2024, the average detention on remand period prior to the filing of the indictments decreased from around one year to between four and nine months and exceeded nine months only in a few exceptional cases. Overall, there are signs of progress in reducing detention times pending the filing of the indictment, but the improvement is not yet consistent across all cases.

EULEX issued recommendations in 2021, which were reiterated in 2022, aimed at expediting trials that had been prolonged. Specifically, the BC of Mitrovica was urged to accelerate proceedings in the *Drenica I Case* and the remaining *Vukotić Cases*, while the BC of Prizren was advised to prioritise the retrial of the *Remzi Shala Case*. The implementation of these recommendations encountered both challenges and successes. Initially, the retrial of the *Remzi Shala Case* concluded in the middle of 2023 at the first instance, and the judgment was confirmed by the Court of Appeals (CoA) in December 2023. This successful resolution marked a significant progress in addressing one of the longstanding cases regarding crimes under international law. However, the BC of Mitrovica did not expedite adjudication of the *Drenica I Case* and the

61 In 2023 the SPRK indicted approximately 70 people, which is a higher number than the years 2018-2022 combined.

numerous *Vukotić Cases*. Positively, as a result of this inertia, the Kosovo Judicial Council (KJC) intervened by transferring these, and other pending former EULEX cases, to the BC of Pristina.[62] This transfer was deemed necessary by the KJC to break the deadlock and allow for the commencement of trials that had been stagnant since 2018. The *Drenica I Case*, which was rescheduled for 12 April 2024, was concluded after just two sessions, with a judgment acquitting the defendants announced on 25 April 2024. This outcome, though controversial, represents a significant milestone in resolving a case that had lingered unresolved for an extended period. In contrast, the BC of Pristina has not scheduled any sessions in the *Vukotić Cases*, indicating ongoing challenges in achieving timely justice.

Efforts have been undertaken to enhance judicial competence in handling cases of war crimes, crimes against humanity, and related matters. The Academy of Justice and the Humanitarian Law Centre Kosovo jointly organised comprehensive training measures on international crimes in 2022 and 2023. These sessions were tailored for judges and prosecutors across different levels of the judiciary, including the basic courts and higher instances. The training curriculum focused on international crimes, providing information on the elements constituting these crimes, ensuring a thorough understanding necessary for adjudicating such complex cases, and offering in-depth analysis of war crimes and crimes against humanity. The topics such as trials *in absentia* and command responsibility were likewise covered comprehensively. By fostering a collaborative learning environment, judges and prosecutors were able to refine their understanding of legal principles and their application in practice.

Conclusions

Significant progress has been made, with notable advancements in the KP's investigative work and the restructuring of the WCIU into a dedicated Directorate. The problem with stagnated cases in the BC of Mitrovica has been addressed by transferring them to the BC of Pristina. Additionally, the Justice Academy has been organising training workshops on international crimes for judges and prosecutors, and investigations involving suspects in detentions have been sped up slightly, although not uniformly. However, substantial challenges remain. While the decrease of the average time defendants spend in detention is a positive development, it is too early to determine whether this represents a consistent trend. Noteworthy, it is impossible to see the same improvement in all cases, as some are factually and legally challenging. The goal is not to prioritise speed over quality but to find the right balance between ensuring that detention periods pending the filing of indictments last the shortest time possible and ensure that investigations are conducted thoroughly. Continuous monitoring and stricter adherence to the recommendation are necessary to ensure that the SPRK achieves the desired outcomes in reducing time spent in detention. Further expediting investigations and trials, especially those involving defendants in detention, is vital to ensure a fair trial within a reasonable time. Expanding the SPRK War Crimes Department and enhancing regional cooperation with Serbia are critical areas that still need attention.

The SPRK recently resolved the understaffing issue of the War Crimes Department by appointing two additional prosecutors. With the current number of five prosecutors, the Department is expected to bolster its capacity to handle war crimes cases more effectively.

Continued efforts are essential to sustaining the momentum and achieving further progress. The path forward requires not only addressing the immediate logistical and operational challenges but also fostering a broader environment of regional cooperation and political will.

62 KJC decision GJA no. 28/06.02.2024.

3.3. Gender-Based Violence

Background

Considerable efforts to push forward the combat against Gender-Based Violence (GBV) were undertaken by different institutions in Kosovo. The new Criminal Code (CC) entered into force in 2019. It categorises domestic violence as a standalone criminal offence and also rules that when an offense was committed within a domestic relationship, this is considered an aggravating circumstance for the sentencing.[63]

Furthermore, in 2019, an inter-agencies domestic violence database was created with the aim to enhance handling of domestic violence cases, improve data collection, and ensure accountability, given that the relevant institutions in Kosovo are obliged to feed the necessary information into the database. In 2019, the Constitutional Court granted the possibility to amend the Kosovo Constitution to recognise direct applicability of the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence*, known as the *Istanbul Convention*. In September 2020, after a unanimous vote by the Kosovo Assembly, the *Istanbul Convention* was included in article 22 of the Kosovo Constitution. Following this, the *National Strategy on Protection Against Domestic Violence and Violence Against Women 2022-2026* was adopted in January 2022 and the new *Law on Prevention and Protection from Domestic Violence, Violence*[64] *against Women and Gender-Based Violence* was enacted in 2023 with the intent to align the domestic legal framework with the requirements stipulated in the *Istanbul Convention*.

EULEX has been monitoring the implementation of the recommendations mentioned in its Justice Monitoring Reports 2020, 2021 and 2022. The recommendations can be divided into seven different categories: (1) legislation; (2) functioning of the inter-agencies domestic violence database; (3) cooperation between the police and prosecution on domestic violence cases/sexual violence cases;, (4) the issuance of a state protocol for sexual violence cases; (5) introducing an SOS helpline; (6) the handling of extramarital relationships cases; and (7) the use of a victim-based approach in GBV cases.

The follow-up of most of EULEX recommendations is based on the level of efficiency during GBV cases investigations, an assessment of the relevant legislation, standard operating procedures and through discussions with investigators and prosecutors.

Recommendations issued by EULEX

- ✓ All relevant institutions should contribute to the domestic violence cases database as foreseen; the technical and human resources needed for the accomplishment of this task should be made available.
- ✓ Communication and cooperation between police and prosecution should be improved.
- ✓ The Government of Kosovo and other relevant stakeholders (Kosovo Police, prosecution, courts, Victim Advocacy and Assistance Offices, Centres for Social Welfare) should continue with the implementation of the *National Strategy on Protection Against Domestic Violence and Violence Against Women 2022-2026*.

63 Criminal Code, 06/L-074, 14 January 2019, Article 248, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last accessed on 20 September 2024).

64 Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence, No. 08/L-185, 12 October 2023, https://gzk.rks-gov.net/ActDetail.aspx?ActID=2691&langid=2 (last accessed on 20 September 2024).

- ✓ The Working Group in charge of drafting the *Protocol for Referral of Sexual Violence Cases* should ensure its timely finalisation and all measures should be put in place by the relevant institutions (Kosovo Police, prosecutors, courts, Victim Advocacy and Assistance Offices, Centres for Social Welfare, Institute of Forensic Medicine, Ministry of Justice, Ministry of Health and Ministry of Internal Affairs) for its immediate implementation.
- ✓ Law enforcement and judicial authorities need to further mainstream the victim-based approach and minimise the number of interviews by different service providers of a victim of sexual integrity offences, which may reinforce the trauma experienced by the victims.
- ✓ Under the supervision of the Office of the National Coordinator for Domestic Violence, general and specialist service providers (Kosovo Police, Victim Advocacy and Assistance Offices and NGOs) should increase outreach of online services available to victims, like the current helpline.
- ✓ The Assembly of Kosovo Committee on Human Rights, Gender Equality, Victims of Sexual Violence During the War, Missing Persons and Petitions should finalise the draft of the *Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence*.
- ✓ The Ministry of Internal Affairs, the Ministry of Justice, the Office of the National Coordinator for Domestic Violence and the Centres for Social Welfare should organise outreach campaigns to tackle extramarital community with persons under the age of 16. The campaigns should target the younger population and their parents, especially in remote Kosovo regions and from communities with less access to information in order to raise awareness about the phenomenon and the possible consequences for both victims and perpetrators.
- ✓ The Kosovo Prosecutorial Council should develop and implement unified guidelines for Kosovo Police specifically for the investigation of the crime of extramarital cohabitation with persons under the age of 16.
- ✓ The Kosovo Police should investigate and pursue criminal liability of the parents involved in their children's extramarital community in line with the legal provisions.

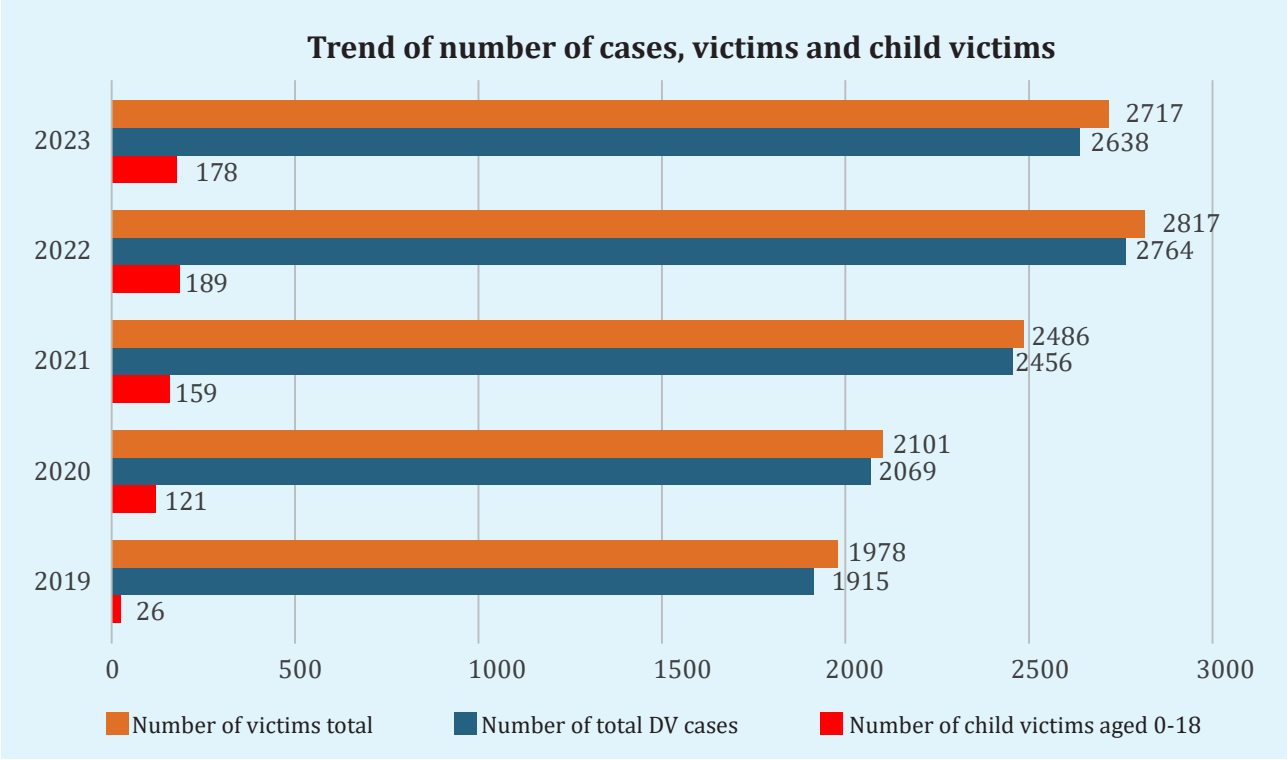
Implementation

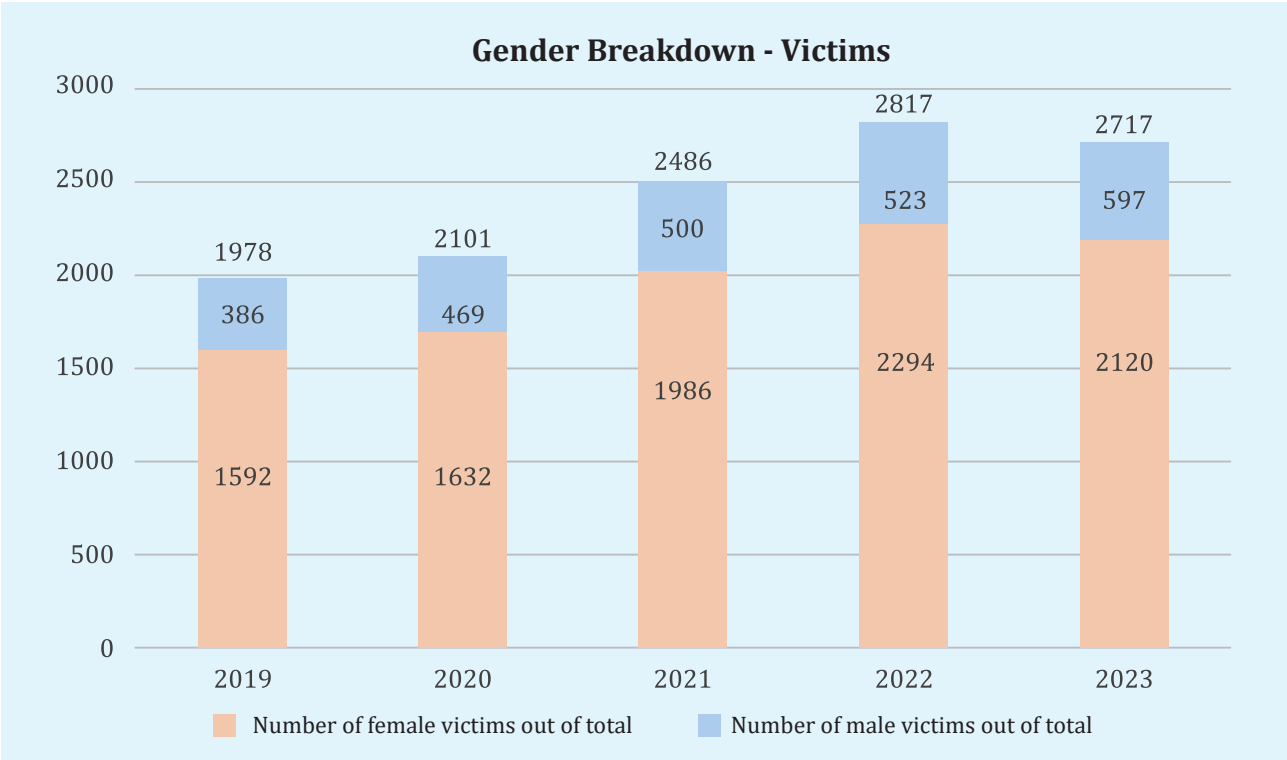
In many ways, the implementation of the *Istanbul Convention* has had a positive impact not only on respective legislation in Kosovo, but also on GBV cases investigations.

The *National Strategy on Protection Against Domestic Violence and Violence against Women 2022-2026* was adopted in January 2022, and the *Protocol for treatment of sexual violence cases* in November 2022. In October 2022, a draft of the *Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence* was proposed to the Assembly of Kosovo and was finally approved and entered into force in October 2023. It covers various aspects of the recommendations previously made by EULEX, and it does reflect the spirit of the *Istanbul Convention*. The next phase for the Government of Kosovo, which has already started at the time of writing this report with the drafting of the relevant by-laws, is to review relevant policies and standard operating procedures that need to be updated to be in line with the new Law.

The below statistics, provided to EULEX by the Kosovo Police (KP), illustrate the trend in domestic violence cases in Kosovo (the KP does not keep sex-disaggregated data for minor victims).The numbers show that the reported cases increased steadily from 2019 to 2022, to then witness a

decrease in 2023. This report includes data up to May 2024. In the period January – May 2024, the number of domestic violence victims was 1287, out of which 1010 were females and 277 males in a total of 1224 cases of domestic violence. Since domestic violence remains a type of crime underreported worldwide, it is difficult to form an opinion as to the exact reasons for these drifts. Increase or decrease of citizens' trust in police and other service-provider institutions can be one, as well as increased awareness as to existing reporting mechanisms, but also the possibility of a *de facto* decrease in the occurrence of domestic violence.





As flagged by EULEX in the past, feeding data into the inter-agencies Domestic Violence Database has not been fully effective. Previously, the request to upload data to the database was based on a Memorandum of Understanding among different actors.[65]The use of the database is regulated by Article 61 of the *Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence* and the Ministry of Justice has the obligation to fund, maintain and analyse the data. Although the inserted data has increased substantially thanks to numbers of users inserting data and training measures and activities organised following the adoption of the Strategy, not all relevant institutions are currently contributing data to it.[66] It is worth mentioning that throughout the existence of the database, the Kosovo Police has been the only institution fully inserting data as required.

On a positive note, EULEX acknowledges how the database has laid grounds for improving the cooperation and coordination between the police and the prosecution. According to article 71 of the Criminal Procedure Code (CPC),[67] as soon as the police receives a motion for prosecution by an injured party or is notified that a criminal offence that can be prosecuted *ex officio* (without motion from the injured party) has been committed, attempted, is occurring, or will soon be committed, it is required to notify the prosecution immediately and it has a duty to provide a police report within 72 hours, while marking this in the database. The investigators in the police regional domestic violence investigation units, which are the actual users of the database, confirmed to EULEX experts, during the robust monitoring of investigations, that the cooperation with the prosecution had become automatic and therefore direct, due to the database obligations.

65 The MoU was signed among the Minister of Justice, the Minister of Labour and Social Welfare, the Chair of the Kosovo Judicial Council, the Chair of the Kosovo Prosecutorial Council, and the Director of the Kosovo Police.

66 In its 2023 Annual Report on the Implementation of the National Strategy and Action Plan, the Ministry of Justice has stated that the number of users of the database has increased to 497 and that the Ministry is in the process of interconnecting the databases, in order to have the possibility of generating data on cases of domestic violence from the judicial system (CMIS).

67 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 71, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759 (last

In 2022, with EULEX support, the *Protocol on Treatment of Sexual Violence cases* was finalised and launched. The level of its implementation is still under assessment.

According to article 23 of the *Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence*[68] there should be an emergency telephone line which provides accurate, timely, confidential information on victim protection, services available to victims and telephone counselling for victims of domestic violence, GBV and violence against women at any time of the day. At the time of writing this report, EULEX is supporting the Working Group established by the Ministry of Justice for drafting the respective bylaw for the functionalisation of the emergency telephone line. At present, the resources available are the same as before the new law was adopted: both the KP and the Victim Advocacy and Assistance Office can be reached by telephone for free at any time.[69]

EULEX has in previous reports called for the police to be better trained and equipped to be able to implement a comprehensive victim-based approach. The EULEX Justice Monitoring Report 2021 established that law enforcement and judicial authorities needed to further mainstream the victim-based approach and minimise the number of interviews of victims of sexual-integrity offences by different service providers, since this may reinforce the trauma experienced by the victims (re-victimisation). Some improvement could be observed. More victim-centred interview rooms were established at police stations across Kosovo. Between 2022 and 2023, ten such rooms were set up by KFOR, pursuant to standards developed jointly by OSCE and EULEX. Following the establishment, joint training measures were provided to the KP by OSCE and EULEX on the effective utilization of these interview rooms. These rooms aim to provide a safe space for victims of intimate violence (GBV, child abuse, sexual offences, and domestic violence) enabling them to give their statements in private, within a non-threatening environment. By mid- October 2024, the overall number of victim-centred interview rooms rose to 28 (out of a total of 41 police stations across Kosovo). At the same time, however, the requirements of article 56(1)(i) of the *Istanbul Convention*[70] have not been put in practice in the Kosovo judicial system. Many, if not most, of the courts do not have sufficient equipment for this kind of proceedings. In its monitoring of court sessions, EULEX noticed that the victims, even juveniles, were being brought into the court to testify in the presence of perpetrator(s). This has often been justified by the lack of audio/video equipment.

In its Justice Monitoring Report 2022, EULEX addressed the issue of extramarital community in Kosovo. According to the Criminal Code (CC), extramarital community with a person under the age of 16 is considered a criminal act and the punishment is imprisonment of five to 20 years. If the victim is under the age of 14 years, the punishment is imprisonment of at least 10 years.[71] In addition to this, sexual relations with a person under the age of 16 is considered a rape; the age of consent to sexual relation is 16 years.[72] In the new CC of 2019, the article dealing with extramarital community was not modified significantly in comparison to previous versions.[73] According to both the old and new CC, parents who permit or induce the extramarital

accessed on 20 September 2024).

68 Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence, No. 08/L -185, 12 October 2023, Article 23, https://gzk.rks-gov.net/ActDetail.aspx?ActID=2691&langid=2 (last accessed on 20 September 2024).

69 KP's telephone number: 192. Victim Advocacy and Assistance Office's telephone number: 080011112

70 Victims should be protected by enabling them to 'testify, according to the rules provided by the national laws and regulations, in the courtroom without being present or at least without the presence of the alleged perpetrator, notably using appropriate communication technologies, where available'.

71 Criminal Code, 06/L-074, 14 January 2019, Article 240, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last accessed on 20 September 2024).

72 Criminal Code, 06/L-074, 14 January 2019, Article 225, paragraph 1 sub paragraph 1.1. and 1.2., A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net), (last accessed on 20 September 2024).

73 Criminal Code, 06/L-074, 14 January 2019, Article 240, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last accessed on 20 September 2024).

relationship with a minor are criminally liable. The only change introduced in the new CC relates to the sentencing: in the new CC, the minimum sentence for a parent or an adoptive parent, guardian or another person exercising parental authority who permits or induces a person under the age of 14 years of age to cohabit in extramarital community, is imprisonment of ten years,[74] compared to fifteen years in the previous Criminal Code.[75]

Both the old and the new CC determine that parents, adoptive parents, guardians or other persons exercising parental authority, who permit or induce a person under the age of 14 years to cohabit in extramarital community, are criminally liable. The only difference between the two CC versions in this field is the minimum sentence, which is ten years imprisonment in the new CC, compared to 15 years in the old CC.

EULEX recommended in previous Justice Monitoring Reports that unified guidelines should be created for the police to investigate the crime of extramarital cohabitation with persons under the age of 16. Another recommendation was to investigate and pursue criminal liability of the parents involved in their children's extramarital community in line with article 240 paragraph 2 of the CC. EULEX also recommended to conduct outreach campaigns to tackle extramarital community with a person under the age of 16 by raising awareness of the illegal nature of this phenomenon. These recommendations have not been implemented. There has been no outreach campaign, neither were any guidelines created in accordance with EULEX's recommendations Parents have been prosecuted in accordance with article 240, paragraph 2 of the CC only in very few cases.

Conclusions

Much has been done in Kosovo to fight violence against women and GBV since the EULEX Justice Monitoring Report 2020 was published. Kosovo has put considerable efforts to implement the requirements in line with the *Istanbul Convention*. A comprehensive legal framework has now been set up. The next phase is to introduce the necessary by-laws and standard operating procedures, as well as to allocate necessary funds and resources for the effective implementation of the *National Strategy on Protection against Domestic Violence and Violence against Women 2022-2026* and the new *Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-Based Violence*.

3.4. Privatisation and liquidation

Background

In its Justice Monitoring Reports 2020, 2021 and 2022, EULEX monitored the work of the Special Chamber of the Supreme Court (SCSC), which operates within the Supreme Court and has exclusive jurisdiction over all cases related to the decisions, activities and performance of the Privatisation Agency of Kosovo (PAK). The SCSC also has jurisdiction in the privatisation and liquidation process of enterprises or corporations, including claims of former employees and related to the properties under the administration of PAK. The core concern observed over the years was the backlog of cases pending before the SCSC, and all recommendations issued by EULEX were aimed at reducing this backlog. A specific concern which was reported in the Justice Monitoring Report 2021 related to the worrying fact that the SCSC was still dealing

74 Criminal Code, 06/L-074, 14 January 2019, Article 240 paragraph 3, A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (rks-gov.net) (last ac cessed on 20 September 2024).

75 Criminal Code, No. 04/L-082, 13 July 2012, Article 247, paragraph 3, 2. FAQET ANGLISHT.cdr (rks-gov.net) (last accessed on 20 September 2024).

with cases in which the PAK as claimant requested the annulment of final judgments of regular courts. This exposes the SCSC to an unnecessary burden, since these cases had already been adjudicated and may not be pursued further (*'res judicata'),* leading to the claims being rejected as ungrounded by the SCSC.

Recommendations issued by EULEX

- ✓ The Kosovo Judicial Council (KJC) should set up a norm defining the minimum number of cases that need to be finalised by each judge within a given time frame.
- ✓ The SCSC should adopt a long-term strategy to clear the backlog. The strategy should, for example, establish priority criteria and identify the resources needed for clearing the backlog.
- ✓ Recruitment of additional legal support officers should be considered.
- ✓ The KJC should strengthen the Serbian language translation and interpretation capacity of the SCSC, especially in light of the fact that most court cases concern Serbian parties.
- ✓ The SCSC should install, like all other courts in Kosovo, the Case Management Information System (CMIS) in order to make the SCSC more efficient.
- ✓ The PAK should discontinue the practice of requesting the annulment of final judgements of the regular courts, thereby disregarding the fact that such claims are ungrounded due the fact that they are *res judicata*.

Implementation

A norm defining the minimum number of cases that needs to be finalised by each judge within a given time frame serves to reduce the backlog and enhance the quality of planning and time planning in courts. It could also be used as a tool for the evaluation of judges.

Positively, the KJC issued in this regard Regulation No. 03/2023 on Caseload (Norms) for Judges, on 6 April 2023, which is applicable to judges in all Kosovo courts. The number values are 100 points per month or 1100 points annually, while points are given according to the complexity of the subject matter, considering, the nature of the case and the average time needed for solving it. While the system of awarding points raised some concerns by SCSC judges (for example, SCSC judges are allocated eight points for a property case, whereas judges in basic courts and in the Commercial Court receive 12 and 15 points respectively for the same kind of cases), it is, all in all, a good tool to stimulate judges to be more productive. In addition, it can be a useful tool for monitoring unreasonable delays in trials and, more generally, support the improvement of the functioning of the judicial administration and the perception of the judicial system as a whole. However, it was too early to assess the impact relatively shortly after the introduction of this regulation.

The recommendation to adopt a comprehensive long-term strategy to clear the backlog was not followed up. The SCSC still applies a very simple backlog clearing strategy by mainly prioritising old cases (any case submitted before 31 December 2014 is considered old). The prioritisation steps are verification of ownership, privatisation cases, and lastly status cases and cases returned for retrial. A comprehensive strategy should have incorporated more prioritisation criteria and also identified the resources needed for clearing the backlog.

Concerning the recommendation to recruit more legal support staff, the SCSC has been provided with more support staff in 2023 and therefore this recommendation can be considered as implemented. With support from the KJC, the SCSC was provided with 16 additional young legal officers. These legal officers are mostly deployed in the judges' offices, four are assigned to the

registry office. In addition, the KJC also approved the recruitment of more SCSC judges for 2024.

The recommendation to strengthen the Serbian language interpretation and translation capacity has not been implemented and the SCSC currently has only two translators/interpreters, which is insufficient.

As for the CMIS, the registration of the appellate panel cases has begun, whilst the registration of first instance cases is going well. It is still too early to assess the level of implementation nor draw conclusions as to the extent to which SCSC's efficiency has improved as a result of these measures.

Concerning the recommendation that the PAK should discontinue the practice of requesting the annulment of final judgements of the regular courts, EULEX observed that such cases still occur, which was confirmed by the SCSC registry and by several SCSC judges.

Conclusions

Positively, the SCSC received the requested support from the KJC in terms of the recruitment of more legal support staff. In addition, the CMIS has been introduced in the SCSC and started functioning. However, it is too early to assess its impact yet. Another positive development has been the introduction of a norm for judges which is applicable for all judges and courts, not only for the SCSC. However, no long-term backlog clearing strategy has been developed and the SCSC still lacks the needed translation/interpretation resources. It is of concern that the PAK still applies practices which create unnecessary burden on the SCSC.

3.5. Property rights – Non-execution of final and binding decisions in violation of property rights

Background

In its Justice Monitoring Report 2021, EULEX reported on the issue of non-execution of decisions and judgments delivered by (1) the Kosovo Property Claims Commission (KPCC); (2) the former Kosovo Property Agency (KPA) Appeals Panel of the Supreme Court and (3) the Constitutional Court of Kosovo. These cases concerned claimants who were entitled to request the Kosovo Property Comparison and Verification Agency (KPCVA) to demolish unlawful structures which were built on their land, after they had obtained confirmation of their legal titles to immovable properties.

In 2016, the Constitutional Court concluded that the non-execution by the KPA of decisions issued by the KPCC and KPA Appeal Panel constituted a violation of article 31 of the Constitution of Kosovo, in conjunction with article 6.1 of the European Convention on Human Rights (ECHR). Both the Constitution and the ECHR recognise the right to a fair trial, which was not provided, given that the non-execution of these decisions constituted a failure to execute final and binding decisions.[76] Therefore, the Constitutional Court held at the time that all pending decisions were to be executed by the KPA, the predecessor of the KPCVA. At the time of the reporting, in 2021, the KPCVA managed to finalise successfully only one case in which demolition was requested. In this case, it took 11 years from the start of the execution procedure to the final execution of the judgement. Other 54 cases, mainly related to land owned by Kosovo Serbs, were still awaiting demolition in 2021. The KPVCA informed EULEX at the time that one of the main reasons for this delay was the lack of budget to perform the demolitions and that KPVCA's entire budget for demolition purposes was absorbed by the aforementioned single demolition in 2021.

76 Judgment in case No. K 165/15 of 25 October 2016.

Recommendation issued by EULEX

- ✓ More funds should be assigned to the KPVCA for the purpose of demolition of illegal constructions, which pose the main obstacle for property rights holders to enjoy their rights.

Implementation

EULEX was informed that no more funds were allocated to KPCVA for the purpose of demolition and that subsequently no demolitions have taken place at all in all these years apart from one in Prizren. At the time of the publishing of the EULEX Justice Monitoring Report 2021, there were still 54 demolitions pending. Currently there are still 53 demolitions pending. According to KPCVA, in addition to lack of dedicated funds, other reasons are that the parties are still in the mediation procedure or that the applicants for demolition have not fulfilled their legal obligation pursuant to the Administrative Instruction for determining procedures for the destruction of illegal structures.

Conclusions

It is of concern that so many individuals who have secured, through final and binding decisions, the right to their property, are still not able to enjoy their property due to ongoing delays in the demolishing of unlawful structures on their land. Unfortunately, the concern of non-execution of final and binding court decisions is still applicable in 2024.

3.6. Juvenile justice: application of 'diversion measures' for juvenile offenders

Background

The EULEX Justice Monitoring Report 2022 assessed the application of 'diversion measures' to juvenile offenders. The Juvenile Justice Code (JJC) offers a variety of 'diversion measures' to be selected by the prosecutor.[77] The report highlighted that the use of 'diversion measures' had steadily decreased from 2019 to 2022. Based on sex-disaggregated data provided by the Kosovo Probation Service (KPS), EULEX could assess the measures imposed on girls and boys. Based on the findings, EULEX made the recommendations set out below.

Recommendations issued by EULEX

- ✓ To hinder the negative effects of subsequent proceedings in juvenile justice administration (for example, the stigma of conviction and sentence), prosecutors and police should make maximum use of 'diversion measures' as provided for by the law.
- ✓ The 'diversion measure' of 'police warning' should be applied more frequently in cases which fulfil the necessary criteria.
- ✓ Considering the good results achieved in the past years, the existing complementary work of juvenile prosecutors and the Kosovo Probation Service (KPS) should continue to develop.
- ✓ In order to mainstream gender in the juvenile justice system, including with regard to the application of 'diversion measures', the Kosovo Prosecutorial Council (KPC) should follow

77 According to article 20 of the Juvenile Justice Code the diversion measures that may be imposed on a juvenile offender are reconciliation, compensation for damage, regular school attendance, acceptance of employment or training, performance of unpaid community service work, education in traffic regulations, counselling, charity activities or payment, engagement in sport and recreation activities, to refrain from any contact with certain individuals, to refrain from frequenting certain places, to abstain from the use of drugs and alcohol or police warning. See Juvenile Justice Code, No. 06/L –006, 18 October 2018, B5AFE545-3908-4F63-98E0-0A8DD593B499.pdf (rks-gov.net) (last accessed on 20 September 2024).

the example set by the KPS and include sex-disaggregated data in its annual reports.

Implementation

EULEX notes positively that several training measures on juvenile justice and specificality on diversion measures were organised by the Academy of Justice. In addition, EULEX organised several workshops for juvenile prosecutors, in which exchange of experience and discussions regarding different aspects of 'diversion measures' featured as a main topic.[78]

While one of the major amendments introduced in the new JJC consisted of extending the range of available 'diversion measures', the additional eight measures have not had the planned effect on the imposition of 'diversion measures'. As established in the Justice Monitoring Report 2022, the figures on application of 'diversion measures' had decreased over the years, a trend which continued in 2022 and 2023. According to the KPS Annual Reports, 387 'diversion measures' were applied by prosecutors to juvenile offenders in 2022, compared to only 181 in 2023.

EULEX has observed that the preferred measure applied by juvenile prosecutors was mediation.[79] Therefore, the decreasing number of 'diversion measures' does not mean that juvenile prosecutors do not use alternatives measures to impose on juveniles, but rather that they often opt for another effective tool available in the JJC in order to avoid court proceedings.

In order to promote the use of the measure 'police warnings' in line with the recommendations outlined in the Justice Monitoring Report 2022, EULEX has worked with juvenile prosecutors to develop a standard template. One of the reasons this specific measure was not applied was concerns voiced by practitioners regarding the allegedly insufficient legal skills and lack of training of police officers to impose the measure. To address this, a working group composed of juvenile prosecutors from different juvenile departments was established in order to produce a template that can be used by the police. This project, led by the juvenile department of the Basic Prosecution Office of Mitrovica and EULEX, was interrupted for a period of time due to the massive wave of resignations of Kosovo Serb judges and prosecutors in 2022. The project has since recommenced and is still ongoing. It has so far resulted in a set of templates, produced by juvenile prosecutors in Pejë/Peć A template has only been used by the Kosovo Police in Deçan/Dečane, upon their agreement with the prosecution in Pejë/Peć, as no consensus on the templates was reached yet in the working group.

EULEX has observed that the cooperation between the KPS and juvenile prosecutors is working well and that in most cases, prosecutors follow the measures recommended by the KPS.

On a less positive note, there is inconsistency in the annual reports of the KPS. While the latter started including sex-disaggregated data in 2020, which continued in 2021, the information is no longer available in the annual reports of 2022 and mid-2023. Therefore, it is difficult to use and analyse the data to make relevant comparisons or assessments on the gender perspective.

Conclusions

The trend of decreasing use of 'diversion measures', noted in the EULEX Justice Monitoring Report 2022, continued in 2022 and 2023. While it is positively noted that mediation is often used in juvenile justice, EULEX urges the police and prosecutors to make full use of the available 'diversion measures'. In order not to overlook the gender perspective within juvenile justice, both KPC and KPS should include sex-disaggregated data in their respective annual reports.

78 In 2023, the following activities were held: Roundtable: Harmonization of the new amendments of the Criminal Procedure Code with the provisions of the Juvenile Justice Code, Workshop: Application of diversion measures. Challenges and obstacles in their implementation, Roundtable: Police notice, procedure and templates, handling of cases by police.

79 Juvenile Justice Code, No. 06/L–006, 18 October 2018, Chapter II 'Mediation', B5AFE545-3908-4F63-98E0-0A8DD593B499.pdf (rks-gov.net) (last accessed on 20 September 2024).

3.7. Court administration – Case Management Information System (CMIS)

Background

Without the Case Management Information System (CMIS), there is no proper functioning of justice administration in Kosovo. CMIS has become an integral part of daily court operations, and the administration has become accustomed to working with the CMIS on a daily basis. All local and international stakeholders have worked hard during the last years to have the CMIS operational at all levels. Police, prosecution, basic courts, as well as all higher justice institutions, including the Commercial Court, which was only recently connected to CMIS, played a crucial role in this process, substantially supported by EULEX. In order to further develop and improve the implementation of the system, EULEX issued the following recommendations in its Justice Monitoring Reports 2021 and 2022.

Recommendations issued by EULEX

- ✓ The Kosovo Judicial Council (KJC) should ensure a more stable internet connection in all courts and branches.
- ✓ The KJC, through the CMIS team, should provide additional tailored CMIS training for certain users.
- ✓ The KJC should consider the creation and a system of oversight of minimum performance norms for judges by utilising CMIS.
- ✓ With the support of the KJC, the basic courts should ensure an on-call system during weekends with staff able to use the CMIS.
- ✓ The KJC and courts should ensure that translation and interpretation services are better organised and available for parties in all courts.
- ✓ The KJC should improve the recruitment processes for courts, including a timely planning of replacing the retiring judges.

Implementation

The functioning of the CMIS depends on a stable internet connection. An inadequate connection makes it difficult for this system to function and causes considerable delays when uploading documents. This is the main challenge to the correct functioning of CMIS as any internet network complications directly affect the work with CMIS of both judges and administrative staff. The KJC oversees the provision of the connection to basic courts via available providers on the market.[80] In some cases, internet in basic courts is secured by the KJC from two service providers[81] and the backup links are provided through wireless technology, according to KJC in 80 % of the courts. Most of the basic courts also have an uninterruptible power supply (UPS) system in place in case power failures occur.

EULEX has observed a trend of improvement, with the KJC taking actions to diminish network problems. A systemic issue could be noted only in the Civil Division of the Basic Court (BC) of Prizren, where internet connection is often disrupted, at times over days. The KJC continuously provides support to enhance the internet connection and courts can rely on constant assistance from the IT staff and CMIS trainers. However, internet access ultimately depends on the internet service providers.

80 The main one is Kosovo Telekom.

81 The Basic Court of Gjakovë/Đakovica obtains internet connections from two sources, Kosovo Post and Art Motion. The Basic Court of Pristina and Basic Court of Pejë/Peć had also backup with IPKO operator.

In the beginning of the implementation of CMIS, court staff were trained on a daily basis by permanent KJC trainers on how to operate the CMIS. In some courts, the use of CMIS started only months later and a part of the staff had mostly forgotten how to operate the system. These trainers are no longer available and more experienced court staff provides support when needed. In some courts, additional training was offered to new staff and those who wished to attend. Such additional tailored training measures were designed in line with the staff's needs and requests and usually lasted one to two days. The number of participants varied from ten in the BC of Pejë/Peć, 19 in the BC of Gjilan/Gnjilane and 90 in the BC of Pristina. The assistance provided by IT staff was satisfactory and appropriate.

In the first part of 2023, the KJC conducted a training needs assessment (TNA) on the use of the CMIS. Out of the 1,139 administrative employees who participated in the TNA, 234 were identified for full training, 460 needed retraining, and 445 turned out not to need any training because they were already independent users of the CMIS. Additionally, 34 judges, who had joined the Kosovo judicial system shortly before, were trained in the usage of CMIS.

CMIS offers the opportunity to obtain information on the progress of cases and the daily work of judges. It helps the presidents of the basic courts, as it allows them to monitor the work of all judges continuously and it provides a quick overview of various reports and data, as well as reliable statistics and an overview of the status of cases.

In April 2023, the KJC issued a regulation[82] on the work norm criteria of judges, which established guidelines and criteria for judges' workload. The data for determining the work norm of judges is extracted directly from the CMIS. The aim of the regulation is to motivate the judges to deliver results and increase efficiency. It is still too early to assess to what extent this will increase the judges' performance and work quality and whether it will be effective in reducing the backlog of cases in courts.

Most courts have a regular on-call system during weekends, which includes an on-call judge and assigned court staff. Usually both are trained in the use of the CMIS and insertion of cases is done in a regular manner during the weekend. Only in cases of technical system hindrances during on-call days, documents are entered on the following day. The on-call practice is not used in all courts, for example the BC of Pristina has no on-call staff to receive the documents during weekends or official holidays. Instead, the on-call-prosecutor brings the physical case file to the hearing and the cases are registered in CMIS on the following working day. Similarly, in the BC of Prizren, cases are being recorded manually in the registry book during weekends or official holidays, and then registered in CMIS on the first working day. According to court officials, this has not caused any impediments and no problems were observed regarding the registration of cases or other procedures.

There is an insufficient number of translators/interpreters in Kosovo courts. EULEX counterparts in basic courts argued that the reason was often lack of candidates for the positions, given the low salary offered. Due to the lack of sufficient applicants for the translator/interpreter positions in the basic courts, the KJC is planning to reduce the criteria for candidates' recruitments. One of the changes discussed is to remove the requirement of a university degree. The KJC will further initiate discussions and address this issue, however lack of a university degree could possibly diminish the linguistic proficiency of translators/interpreters. This said, basic court presidents and court administration describe the quality of written translations, including into non-majority languages, as satisfactory in most courts. The KJC should still pay special attention to the BC of Pristina, as the number of translators/interpreters is insufficient, likewise in the BC of Prizren, where the overall number is insufficient and the lack of a Turkish translator/interpreter needs

82 Regulation on Work Norm of Judges, No. 03/2023, published in Albanian language, Scanned Image (gjyqesori-rks.org) (last accessed on 20 September 2024).

to be addressed.[83] In the spring of 2023, the KJC started a project for developing a centralised system for translation, which aims to optimise the use of translation resources in the courts and decrease delays caused by lack of timely translation by distributing translation tasks between courts according to needs.

All recruitment processes in the courts are under the supervision and authority of the KJC, which aims to carry out staff replacements in the courts, particularly to replace judges who retire. The basic court presidents inform the KJC about the retirement of judges or the remaining vacant positions, as well as make proposals for filling the vacant positions with the current staff. It is observed that the processes of recruiting judges' professional associates have advanced and are not as lengthy as before. The Human Resources Office of the KJC plans all the replacements in a timelier manner, but problems remain in recruitment due to bureaucratic and ineffective appeal procedures. Thirteen new judges joined the BC of Pristina, and another group of judges is undergoing training. There have been ongoing recruitment processes of professional associates where efforts have been made for each judge to have an associate in the office. This has not been implemented yet, due to lack of candidates.

The KJC has compiled special regulations for the recruitment of judges[84] and associates,[85] which foresee deadlines for each stage of the recruitment process, so that the processes are not extended indefinitely. This facilitates the planning for the presidents of the courts.

Conclusions

The CMIS is the core element of a properly functioning justice administration in Kosovo. Most of EULEX's previous recommendations were well addressed by the respective authorities. In particular, the KJC has acted to secure network connections and has made the recruitment process of judges more efficient. In some areas, such as CMIS training, the number of court translators/interpreters and the use of the CMIS as a performance tool, there is still room for improvement. The progress that has been made needs to be continued and coordination between all stakeholders should be secured.

83 Currently, the recruitment process of a Turkish translator is ongoing.

84 Regulation Recruitment, Examination, Appointment, and Reappointment of Judges, No. 03/2021, published in Albanian language 66244_Rregullore_Nr_03_2021_per_rekrutimin_provimin_emerimin_dhe_riemerimin_gjyqtareve.pdf (gjyqesori-rks.org) (last accessed on 20 September 2024).

85 Regulation on Recruitment and Selection Procedure of Professional Associates, No. 04/2021, published in Albanian language, https://www.gjyqesori-rks.org/wp-content/uploads/lgsl/92220_Rregullore_nr_04_2021_per_proceduren_rekrutimit_dhe_perzgjedhjes_se_bashkepunetoreve_profesioanl.pdf (last accessed on 20 September 2024).

Annex – List of monitored and referenced cases

Following its establishment in 2008, EULEX was given an executive mandate in the justice area, meaning that EULEX international prosecutors and judges were leading the investigation, prosecution and adjudication of cases of war crimes, organised crime, corruption and other serious crimes. Since June 2018, EULEX no longer has this mandate and by December 2018, EULEX completed the transfer of relevant case files to local police, prosecutorial and judicial authorities. Cases mentioned in this report, which were dealt with by EULEX during its executive mandate, are referred to as Former EULEX Cases.

Former EULEX Cases[86]

Olympia Case (PKR 236/2017)

On 21 July 2017, the prosecution filed an indictment before the Basic Court (BC) of Pristina against Alban Dezdari (in detention on remand since 7 July 2017) and Bedri Krasniqi (serving sentence in another case), charging them for aggravated murder. They allegedly took part in the killing of one UNMIK and one Kosovo Police (KP) officer in Podujevë/Podujevo in March 2004, together with four other perpetrators, including witness Shkumbin Mehmeti, who had already been sentenced to 30 years of imprisonment in another trial for this murder on 09 November 2007. From April 2019 on, the court regularly conducted sessions until the COVID-19 related lockdown in mid-March 2020. The case has been inactive ever since. The presiding judge retired in May 2021 and the case was reassigned. The case was transferred to Special Department of Basic Court (BC) of Pristina and in spring 2022 another presiding judge was assigned. Since summer 2022 there were regular hearings. The verdict was announced on 13 September 2023. Bedri Krasniqi was acquitted and Alban Dezdari was sentenced to eight years of imprisonment for providing assistance in the commission of the criminal offence. He was acquitted of attempted aggravated murder.

Enver Sekiraqa Case (PKR 170/2020)

In this former EULEX case, the accused was sentenced (by a EULEX majority trial panel, i.e. the majority of judges in the panel were international EULEX judges) in the first instance for the incitement of the murder of police officer Triumf Riza in August 2007. The indictment was filed on 24 April 2014 in front of the Basic Court (BC) of Pristina. The judgment was issued by the BC of Pristina on 17 May 2016, which found him guilty of incitement to commit aggravated murder and extortion and sentenced him to an aggregated imprisonment punishment of 37 years. The Court of Appeals (CoA) decided, on 19 October 2017, to return the case for retrial because of the circumstantial nature of the evidence against the defendant and the difficulties in proving the incitement to commit murder. After a retrial before a Kosovo panel, on 16 September 2019, the BC of Pristina once again found the defendant guilty of aggravated murder and sentenced him to 30 years of imprisonment.

On 6 March 2020, the Court of Appeals (CoA) once again quashed the judgment of the BC of Pristina and sent the case for a second retrial. This started on 12 January 2021 and was concluded on 3 May 2024 with the sentencing of the defendant to 25 years of imprisonment, having been found guilty of inciting the murder of the police officer Triumf Riza. Following the announcement of the sentence, the presiding judge released the defendant from house

86 Other than war crimes cases, covered in the following section.

arrest, a measure that was appealed by the Special Prosecution of Kosovo's (SPRK) prosecutor. Following the ruling of the CoA to approve the appeal filed by the prosecution and the decision to impose detention on remand until the defendant will start serving the sentence, KP officers proceeded to enforce the ruling only to determine that the defendant had left Kosovo to seek medical treatment abroad, as stated by his defence counsel.

City Club Case (P 100/2018- P 253/2016 - PAKR 434/2018 - PKR 191/2020)

On 21 July 2017, the prosecution filed an indictment before the Basic Court (BC) of Pejë/Peć against Granit Elshani (in detention since October 2016). He was accused of having killed, in January 2010, in the City Club in Pejë/Peć, one person and injured two persons, including Valdet Kelmendi, the actual target. This attack was seen as related to a blood feud between the Elshani and Kelmendi families, which had been going on for 15 years and in the course of which around two dozen persons from both families had been killed. On 30 May 2018, the BC of Pejë/Peć (P 253/2016) sentenced the defendant to an aggregated punishment of 25 years in prison for aggravated murder, attempted aggravated murder, causing general danger and illegal possession and use of weapons. The defendant appealed against the verdict and on 16 October 2018, the Court of Appeals (CoA) (PAKR 434/2018) annulled the first-instance judgement. The retrial commenced in January 2019. The announcement of the judgement was scheduled for 21 September 2020, but instead of doing so, the presiding judge reopened the main trial, reasoning that the evidentiary procedure had not been exhausted. He retired in October 2020, and thereafter the BC of Pejë/Peć transferred the case to the Basic Court (BC) of Gjakovë/Đakovica, as the former did not have enough judges at the Serious Crimes Department. The case had to recommence in November 2020 (PKR 191/2020) and sessions were conducted regularly. The retrial was concluded with the judgment being announced on 14 March 2022. The defendant was sentenced to an aggregated punishment of 24 years in prison for aggravated murder, causing general danger and illegal possession of weapon. Both parties appealed the verdict, and the CoA upheld the judgment. In July 2023, the Supreme Court (SC) dismissed the charge of illegal possession of weapon, and concerning the remaining charges, annulled the judgment and sent the case back to the BC of Gjakovë/Đakovica for another retrial. The trial commenced in September the same year, and the judgment was announced on 30 November 2023. Granit Elshani was acquitted of all remaining charges. The judgment was appealed by the prosecutor and the case is pending before the CoA.

Medicus Case (PKR 315/2018)

On 15 October and on 20 October 2010, the prosecution filed two indictments before the Basic Court (BC) of Pristina (joined into a single indictment in November 2010) against seven individuals charged with trafficking in human organs, organised crime and other serious crimes. The indictment claims that dozens of illegal kidney transplants took place at the Medicus Clinic during 2008. The main defendants were urologist Lutfi Dervishi, who owned the clinic, and his son, Arban Dervishi, who managed it. On 29 April 2013, the BC Pristina (EULEX majority panel, i.e. the majority of judges in the panel were international EULEX judges) found the defendants guilty of trafficking in persons and organised crime and sentenced Lutfi Dervishi to imprisonment of eight years and Arban Dervishi to seven years and three months. Another defendant in the case, Sokol Hajdini, the clinic's chief anaesthesiologist, was sentenced to imprisonment of three years. On 6 November 2015, the Court of Appeals (CoA) (EULEX majority panel) confirmed the verdict.

On 8 March 2016, Arban Dervishi and on 5 April 2016, Lutfi Dervishi filed requests for the protection of legality against the CoA verdict. On 7 March 2016, Sokol Hajdini also filed an appeal against the same CoA judgement. On 20 September 2016, the Supreme Court (SC) (EULEX

majority panel) acquitted the defendant Sokol Hajdini of charges of organised crime and found him guilty of the criminal offence of grievous bodily harm. On 15 December 2016, the SC, with a panel now composed of a majority of local judges, issued the decision on the requests for protection of legality filed by Arban and Lutfi Dervishi. The decision annulled the convictions concerning Lutfi and Arban Dervishi and Sokol Hajdini and sent the case back to the BC for retrial. The other defendants had either been previously acquitted or the charges had been rejected. On 11 January 2017, the BC of Pristina imposed detention on remand against Lutfi Dervishi, and issued an international arrest warrant against Arban Dervishi, who was at large.

On 24 May 2018, the BC of Pristina (EULEX majority panel) found Lutfi Dervishi guilty of trafficking in persons and of organised crime and imposed a sentence of seven years and six months of imprisonment, a fine of EUR 8,000, and a prohibition of exercising the profession of urologist for a period of two years starting from the day the prison sentence was fully served. Sokol Hajdini was found guilty of grievous bodily harm and sentenced to one year of imprisonment.

After Lufti Dervishi and Sokol Hajdini appealed the verdict of the BC of Pristina of 24 May 2018, the CoA, on 6 November 2018, annulled the verdict and sent the case anew for a second retrial. The judgement of Sokol Hajdini was annulled since the crime had reached the absolute statutory limitation. Arban Dervishi returned to Kosovo in 2019 and the international arrest warrant against him was suspended.

On 20 January 2020, the first session in the second retrial against Lutfi and Arban Dervishi was postponed. The hearing was scheduled on 2 March 2020 but was not held due to pandemic-related restrictions. The following hearing took place on 27 October 2020, after which the trial was postponed for an indefinite period of time in order to provide for time for locating witnesses/injured parties. After more than a year of inactivity due to the difficulty in locating the considerable number of the latter, a hearing was supposed to take place on 1 March 2022, but it was cancelled due to the strike of the administration staff at the court. Additionally, the judge had made several requests to be excluded from the case for different reasons, all rejected by the President of the BC of Pristina. A new hearing was scheduled for 9 September 2022, when the retrial had to start from the beginning due to the last productive session having taken place in 2020. On 16 June 2023, BC of Pristina rendered its judgment in the second retrial acquitting both defendants. The appeal is currently pending before the CoA.

Grande I Case (PKR 305/2016) and Grande II Case (PKR 254/19)

On 16 December 2016, the prosecution filed an indictment before the Basic Court (BC) of Pristina against a group of 20 defendants, including Ukë Rugova, former President Rugova's son. The defendants were accused of organising and participating in a criminal group, smuggling of migrants, and unauthorised ownership, control or possession of weapons. The indictment alleges that the defendants used fraudulent means to obtain Schengen visas for Kosovo citizens from the Embassy of Italy in Kosovo, thus acquiring considerable material profit for themselves.

The judge severed the case in July 2019 in two separate ones in order to make the case manageable. *Grande I* concerns five defendants, including Ukë Rugova, whereas the remaining 15 defendants were grouped in *Grande II*. The court regularly conducted sessions in *Grande I*, until the COVID-19 related lockdown in mid-March 2020. *Grande I* was almost at the end of the evidentiary procedure of the main trial as almost all witnesses (dozens) had been heard. *Grande II* was progressing at a reasonable pace starting in January 2020 until the lockdown.

Both cases had been conducted by the same presiding judge, who was demoted from the Serious Crimes Department in September 2020, thus both cases needed to recommence and were

reassigned to a new presiding judge. *Grande I* recommenced on 16 April 2021, with hearings taking place regularly. In the last hearing on 10 May 2022, the defendants gave their final statements and one of them informed that he had been acquitted by an Italian court for the same criminal offences. The judgment delivered later to the BC of Pristina. On 30 June 2023, the BC of Pristina issued the acquittal verdict for all the defendants. However, this case is still pending in front of the CoA for the adjudication of the appeal filed by the prosecution. In *Grande II*, the BC of Pristina issued the judgment on 16 November 2023. All 15 defendants were acquitted of charges of organised crime and migrant smuggling. Three of them were however convicted of illegal possession of weapons. On 31 July 2024, the CoA ordered the retrial in this case, which is now ongoing before the BC of Pristina.

Land 4 Case (PKR 130/2016)

On 3 March 2016, the prosecution filed an indictment before the Basic Court (BC) of Pristina against 24 persons, including a number of judges. The case concerns the unlawful gaining of ownership of a large amount of socially owned land. The charges were organised crime, money laundering, issuing unlawful judicial decisions and abuse of official position in connection with the re-registering of socially owned land. Already on 27 November 2014, the pre-trial judge had ordered the temporary confiscation of land parcels worth approximately EUR 20 million. On 26 October 2017, the first initial hearing took place followed by two further sessions in April and May 2019. The case is now at the main trial stage, however no hearings were scheduled until 20 May 2022, when several participants, including one of the judges, were not present and the hearing was postponed. The hearing scheduled on 20 July 2022 was cancelled because the presiding judge was ill. The trial is now at the last evidentiary stage and moving forward very slowly, with the next hearing being scheduled for October 2024.

Olympus I Case (PKR 610/2016)

On 24 October 2016, the prosecution filed an indictment before the Basic Court (BC) of Pristina against Azem Syla et al. It concerns 19 remaining defendants that are currently standing trial. The case is about the unlawful ownership of a large amount of socially owned property in the period since 2006 up until now. The group allegedly managed to register the ownership of properties in their favour through corruptive actions making use of persons in key positions at courts, the cadastral office and the Kosovo Privatisation Agency (KPA). The estimated overall market value of the properties is over EUR 25 million. From November 2018, the BC of Pristina regularly conducted sessions until the COVID-19 related lockdown in mid-March 2020. After the presiding judge moved to the Court of Appeals (CoA) at the end of 2020, the case was assigned to a new presiding judge at the beginning of 2021 and the trial had to start from the beginning due to the time lapse that passed since the previous hearing. Two defendants had been on pre-trial detention for a long time, until they were finally released to house arrest in June 2022. Another defendant was indicted and placed in detention on remand in august 2022. After two and a half years in detention he was finally released to house arrest and, in August 2024, he was released from house arrest and obliged to report to the police once a week. The next step to be expected is the closing statements This case has had a very slow pace, which the Mission reported on several occasions.

Olympus II Case (PKR 611/2016)

On 24 October 2016, the prosecution filed two indictments before the Basic Court (BC) of Pristina regarding the cases *Olympus I* and *Olympus II* in relation to an alleged large organised criminal group having unlawfully gained ownership of a large amount of socially owned

property in the period 2006 to 2016. The charges of the indictment of the *Olympus II* Case against Baki Abdullahu, Hali Hyseni and other 15 defendants were limited to money laundering. On 3 February 2020, the court attempted to hold the first hearing, but the legal conditions were not met due to the absence of five defendants, with one of them allegedly living abroad. The hearing of 17 March 2020 was suspended due to the pandemic. After long delays, the initial hearing in this case was finally held on 31 May 2021. Following the second hearing, the judge issued a ruling to dismiss the indictment, on 22 July 2021. This ruling was appealed by the Special Prosecution of Kosovo (SPRK) and overturned by the Court of Appeals (CoA) on 20 October 2021, which sent the case back to the court of first instance. On 7 November 2022, the BC of Pristina acquitted all defendants of all charges and ordered all seized properties to be released. On 25 September 2023, the CoA upheld the judgment of the basic court. On 25 March 2024, the Supreme Court (SC) rejected the protection of legality filed by the prosecution against the acquittal of the remaining 16 defendants (one of them had passed away in the meantime).

Naser Kelmendi Case (PPS 42/2013, PKR 32/19, APS 30/2023)

On 4 July 2014, the prosecution filed an indictment before the Basic Court (BC) of Pristina against Naser Kelmendi for organised crime, aggravated murder, unauthorised possession, distribution or sale of narcotics and unauthorised production and processing of narcotics. On 1 February 2018, the court found the defendant guilty of the criminal offence of unauthorised possession, distribution or sale of narcotics and sentenced him to six years of imprisonment and acquitted him of all other charges. Both parties appealed the verdict. On 2 August 2018, the Court of Appeals (CoA) sent the case for retrial limited to the criminal offence of unauthorised possession, distribution or sale of narcotics, upheld the acquittal by the BC of Pristina of the other charges and ordered the termination of the detention of Naser Kelmendi. On 6 November 2019, more than one year after this decision by the CoA, the initial hearing of the retrial took place with the second hearing conducted on 29 December 2019. The case was transferred from the Serious Crimes Department to the Special Department of the BC of Pristina and a new hearing eventually took place on 26 January 2022, the first since 29 December 2019. Since then, the trial progressed, after having been dormant for almost three years, and on 18 May 2023, the defendant was found guilty and sentenced by the BC of Pristina to four years and eight months of imprisonment. The verdict was appealed and on 3 October 2023, the CoA overturned the first-instance verdict and acquitted the defendant.

Salih Qitaku et al. Case (PKR 591/16)

On 15 September 2014, the prosecution filed an indictment before the Basic Court (BC) of Pristina against Salih Qitaku, Fatmir Kastrati, Luan Miftari and Sahit Sadriu for 'participation in or organisation of an organised criminal group' and 'smuggling of migrants'. On 15 October 2015, the BC of Pristina sentenced Salih Qitaku, Fatmir Kastrati and Luan Miftari to four years of imprisonment and a fine of EUR 1,000 each, and Sahir Sadriu to three years of imprisonment and a fine of EUR 500. On 9 September 2016, the Court of Appeals (CoA) annulled the first-instance verdict and sent the case for retrial. On 12 July 2017, the initial hearing of the retrial took place but was postponed without a new date being set. Since then, the case has been dormant due to the backlog of cases assigned to the judge, who eventually retired in May 2021. The new judge assigned to the case recently filed an international arrest warrant against three of the defendants who are abroad, so far to no avail. In July 2024, the BC of Pristina informed the Ministry of Justice that it had not yet managed to complete the translation of some documents relevant to the case.

Touareg Case (P 176/2015)

On 23 October 2015, the prosecution filed an indictment before the Basic Court (BC) of Mitrovica against the three brothers Albert, Mentor and Arianit Beqiri and Vesat Imeri, charging them with tax evasion in the amount of around EUR 1.69 million. Between 2011 and 2012, the brothers, owners of the business NTP Oil Kosova, had allegedly provided false information to the Tax Administration regarding the revenues generated by their business in order to avoid partially or completely the payment of taxes, fees or contributions provided by law. Within this context, all four defendants were allegedly involved in money laundering. This case has been inactive since July 2017, after the parties' request to dismiss the indictment was rejected by the BC of Mitrovica. The presiding judge retired in May 2021 and the case was reassigned to another judge, who has not undertaken any action since. The case was transferred to the BC of Pristina in 2024. One attempt to hold a hearing failed and t no hearing has taken place since.

Bill Clinton I Case (P. Nr. 459/2009) & Bill Clinton II Case (PKR 139/17)

On 12 August 2008, the prosecution filed an indictment before the then District Court of Pristina against three defendants for aggravated murder and attempted aggravated murder (*Bill Clinton I Case*). On 30 September 2013, the prosecution filed an indictment before the Basic Court (BC) of Pristina against five defendants for aggravated murder, attempted aggravated murder and causing general danger, and on 13 December 2013, another indictment was filed against additional two defendants for the same charges. On 20 February 2014, the two cases were joined (*Bill Clinton II Case*). Both cases*, Bill Clinton I and II*, are related to the *Enver Sekiraqa Case*. Immediately after Kosovo Police Officer Triumf Riza was murdered, in August 2007, the KP suspected Enver Sekiraqa of orchestrating the killing. In September 2007, Riza's police colleagues in an act of revenge, allegedly placed a bomb in the building where a bar owned by Enver Sekiraqa was located, which killed two people and injured several others. In the *Bill Clinton I Case*, two defendants (Shpend Qerimi and Besnik Hasani) were convicted and sentenced to imprisonment of 25 years, while the third one (Nysret Cena) was acquitted by the BC of Pristina on 22 September 2009. In the *Bill Clinton II Case* against further seven defendants, namely Bejtullah Mehmeti et al, in June 2016, the BC of Pristina rejected all the charges based on lack of evidence. The Special Prosecution of Kosovo (SPRK) appealed the decision, and in April 2017, the Court of Appeals (CoA) sent the case back for retrial. This case has not seen progress for a long time. Several sessions were scheduled in the beginning of 2020, but the proceedings were halted due to the pandemic, and the case remained inactive throughout the rest of 2020, which continued into the year 2021. There was a change in the composition of the trial panel, on 26 March 2021, and a new presiding judge was appointed. After a long period of inactivity, a hearing was scheduled in September 2024, but was unproductive. The case is still ongoing.

Blue Case (Murder of Audrius Šenavičius) (PPP12/2016)

On 19 September 2013, unknown perpetrators opened fire on a convoy headed to the Common Crossing Point Rudnica/Jarinje, killing EULEX staff member Audrius Šenavičius. The case was initially investigated exclusively by EULEX prosecutors, and transferred to the Kosovo judiciary in 2018, following the changes in the mandate of EULEX. The case is still being investigated, and no new developments have been recorded.

Former EULEX War Crimes Cases

Drenica I Case (PPS 88/11, PKR 74/2018, PS nr.12/2024)

On 6 November 2013, the prosecution filed an indictment before the Basic Court (BC) of Mitrovica against seven defendants (Sabit Geci, Ismet Haxha, Sahit Jashari, Avni Zabeli, Sami Lushtaku, Sylejman Selimi and Jahir Demaku).charged with having committed war crimes against civilian population between June and September 1998 in connection with the Kosovo Liberation Army (KLA) Likoc/Likovac Detention Centre in Skenderaj/Srbica. On 27 May 2015, the first instance court acquitted the defendants Sabit Geci, Ismet Haxha, Sahit Jashari, Avni Zabeli and Jahir Demaku.. The prosecution appealed to the Court of Appeals (CoA), which found Jahir Demaku guilty and confirmed the acquittal verdicts of the first-instance court in the remaining four cases on 15 September 2016. Sami Lushtaku was found guilty in the first instance judgement for aggravated murder and command responsibility for violating the bodily integrity and health of an unidentified number of civilians and appealed against this judgement. He was acquitted of the charges of murder in second instance by the aforementioned judgement of the CoA of 15 September 2016. Later, together with Sylejman Selimi, he was also acquitted on the remaining count of command responsibility by the Supreme Court (SC) judgement of 3 July 2017, after which he was released. That SC judgement confirmed the conviction by the CoA, delivered on 15 September 2016, of Jahir Demaku and Sylejman Selimi for violation of the bodily integrity and the health of an unidentified male from the Shipol area in Mitrovica by repeatedly beating him.

On 11 June 2018, the SC sent the case for retrial to the BC of Mitrovica and both convicted defendants (Jahir Demaku and Sylejman Selimi) were released from serving the punishment, but remained in prison to serve the punishment imposed in relation to the *Drenica II* verdict, until they were conditionally released by decisions of the Conditional Release Panel of 24 October 2018 and 25 January 2019. Following the creation of the Special Department at the BC of Pristina, the BC of Mitrovica sent the case to the Special Department of the BC of Pristina, considering that it was no longer under its jurisdiction. In April 2019, the Special Department returned the case to the BC of Mitrovica, arguing that the latter had already started the adjudication of this case and should therefore complete it. On 6 November 2019, two panel members of the trial panel in the BC of Mitrovica were appointed but the initial hearing scheduled for 26 December 2019 was postponed until 25 March 2020, following a request of the prosecutor. Due to the pandemic-related restrictions, the hearing of 25 March 2020 did not take place. The hearing scheduled for 7 December 2020 was cancelled as well once it was confirmed that the Presiding Judge had been infected with COVID-19. The judge's retirement, at the end of April 2021, caused additional delays. The case remained dormant until it was eventually transferred, in February 2024, from the BC of Mitrovica to the BC of Pristina, together with other cases, after judges in the BC of Mitrovica had requested for years that these cases be transferred. On 25 April 2024, both defendants in this retrial, Sylejman Selimi and Jahir Demaku, were acquitted by the first instance court.

Fahredin Gashi et al. Case (PKR 143/15)

On 5 November 2010, the prosecution filed an indictment before the then District Court of Pristina against Fahredin Gashi for allegedly committing the criminal offence of war crimes against the civilian population, and against Hysri Rama for providing assistance to perpetrators after the commission of criminal offences. The assigned judge informed EULEX at the time that the case had been put on hold , like other Special Prosecution of Kosovo (SPRK) cases, until it could be transferred to the jurisdiction of the Special Department. The case was transferred from EULEX to the local judiciary in August 2015 and was thereafter dormant for a long

period, until finally the proceedings resumed in 2022, when the case was allocated to a Special Department panel. The trial panel scheduled several court sessions attended by the defendant. Local experts were heard before the court, and they stated that the defendant Fahredin Gashi was no longer able to stand trial. The presiding judge has been analysing the possibility to hear also an international expert. Currently, the case is dormant, pending a decision to terminate the main trial based on the inability of the defendant to stand trial.

Non-EULEX Cases[87]

Oliver Ivanović Murder Case (PS 54/2019)

On 16 January 2018, the leader of the 'Civic Initiative Serbia, Democracy, Justice (GI SDP)', Oliver Ivanović, was murdered outside the party premises in Mitrovica. The perpetrator was not identified. On 3 December 2019, the Special Prosecution of Kosovo (SPRK) filed an indictment before the Basic Court (BC) of Pristina against six defendants. The indictment alleges that the murderer was assisted by three KP officers, Nedeljko Spasojević, Marko Rošić (both in detention on remand) and Silvana Arsović (under obligation to report to the police) and that two other KP officers, Dragiša Marković and Žarko Jovanović (both under obligation to report to the police), had tampered with evidence following the murder. The indictment additionally claims to have revealed an organised criminal network, which had been operating since 2014 and which KP officers Spasojević and Rošić, alongside with the sixth defendant, Rade Basara (in detention on remand), were allegedly part of. In April 2021, the presiding judge rejected the requests to dismiss the indictment and the objections filed by the defence against the evidence proposed by the prosecution after which the defendants appealed to the Court of Appeals (CoA). On 6 July 2021, the CoA rejected the request, and the main trial started. On 28 June 2024, the court announced the verdict. Nedeljko Spasojević was sentenced to four years and six months in prison for abusing official duties and fined EUR 4,500 for illegal possession of weapons. Marko Rošić was sentenced to ten years imprisonment and a EUR 10,000 fine for 'participation in or organisation of a criminal joint enterprise' related to the murder. The presiding judge announced that Rošić will be remanded in custody (apprehended), yet it later became clear that he had left Kosovo. A domestic and international warrant was issued. Dragiša Marković was found guilty of 'abuse of official duty' and sentenced to four years imprisonment, but was found not guilty of revealing confidential information. Žarko Jovanović was found guilty of complicity in abuse of official duty and sentenced to four years imprisonment and fined EUR 1,500 for illegal possession of weapons. Silvana Arsović, a former secretary of Ivanović, was acquitted. The prosecutor terminated the criminal investigation against Rade Basara. The judgement has not yet been drafted.

3 % Case (P. 2022/17)

On 28 April 2017, the prosecution filed an indictment before the Basic Court (BC) of Pristina against Bujar Bukoshi (former Prime Minister of Kosovo), Naser Osmani (former MP of LDK) and Atdhe Gashi (former advisor to Bujar Bukoshi). The defendants allegedly embezzled money related to the budget concerning the '3% donations' for Kosovo (a voluntary contribution, mainly provided by the diaspora in support of Kosovo during the 1990s) during the period 2006-2015 (Bujar Bukoshi allegedly around EUR 91,000; Naser Osmani and Atdhe Gashi together around allegedly EUR 154,000). The case against Bujar Bukoshi was later separated due to a serious

87 Other than war crimes cases, covered in the following section.

medical condition, as he was being treated abroad. On 3 December 2018, the court dismissed Naser Osmani's and Atdhe Gashi's request to dismiss the indictment. The Court of Appels (CoA) rejected their appeals on 17 January 2019. On 15 August 2019, the trial commenced with regular sessions until the end of October 2019. The case continued with delays, on 31 January 2020, and proceeded only in July 2020, due to the delay in a report being produced by a financial expert. The case then experienced another delay because of the COVID-19 situation at the BC of Pristina and the COVID-19 related absence of the prosecutor for a while. On 11 November 2020, the court announced the judgment, finding Naser Osmani and Atdhe Gashi guilty of the criminal offense of embezzlement of money. The defendants were each sentenced to three years of imprisonment and were obliged to return the amount of EUR 154,132.47 to the Kosovo budget. As to the criminal offence of tax evasion, the judge rejected to issue a judgment due to the absolute statutory limitations of the criminal offence. On 15 September 2021, the CoA sent the case back for retrial following the defence's appeal. The retrial started in January 2022 and moved forward with regular sessions. In its verdict of 13 July 2023, the court found the defendants guilty and sentenced them to three years of imprisonment. The CoA reduced the prison sentences of both defendants to 18 months imprisonment in a verdict announced on 19 December 2023. Finally, the Supreme Court (SC) decided, on 30 May 2024, that the criminal offences had reached absolute statute of limitation already on 20 May 2022. Hence, the criminal case against the two defendants should have terminated on that date with the result that there was no longer a criminal case against the defendants.

Turkish Deportees Case (PPS 33/2019, PS nr 8/21, APS 50/2023)

In this case six Turkish citizens were deported overnight to Turkey at the end of March 2018 based on a request by the Turkish Ministry of Justice, which was forwarded to the Kosovo Ministry of Justice via the Turkish Embassy in Kosovo. On 21 October 2019, the Special Prosecution of Kosovo (SPRK) opened an official investigation against 22 (low-ranking) police officers and three civilians on the suspicion of involvement in the deportation of the six Turkish nationals. On 23 February 2021, the SPRK issued an indictment before the Basic Court (BC) of Pristina against the former Head of the Kosovo Intelligence Agency (KIA), Driton Gashi, the Director of the Department of Citizenship, Asylum and Migration at the Ministry of Internal Affairs, Valon Krasniqi, and the Director of the Directorate of Migration and Foreigners of the Border Police, Rrahman Sylejmani. The defendants Driton Gashi and Valon Krasniqi were charged with the criminal offence of abuse of official position or authority, while the defendant Rrahman Sylejmani with the criminal offence of abuse of official position or authority and the criminal offence of illegal deprivation of liberty. The initial hearing was conducted on 24 March 2021, and the indictment was confirmed on 21 May 2021. However, following the appeal of the defence, on 11 August the Court of Appeals (CoA) decided to annul this decision and return this case to the Basic Court for reconsideration on the grounds that there had been an essential violation of the criminal procedure. The Basic Court refused to dismiss the indictment, leading to the case being reviewed again by the CoA, which eventually confirmed the indictment ,on 18 December 2021. The verdict was announced on 19 July 2023 The court found the former Head of the Kosovo Intelligence Agency (KIA), Driton Gashi, guilty and sentenced him to four years and eight months of imprisonment, and imposed the accessory punishment of prohibition on exercising public administration or public service functions for the duration of four years after his release from prison. Valon Krasniqi and Rrahman Sylejmani were acquitted. Currently the case is pending before the CoA following the defence's appeal.

People's Eye Case (PKR 46/2018)

On 27 February 2018, the prosecution filed an indictment before the Basic Court (BC) of Pristina against Sadri Ramabaja, Murat Jashari, Ragip Sallova, Avni Llumnica, Sabit Berisha, Bexhet Luzha, Halim Halimi, Bajrush Konjusha, Lirije Luzha and Rexhep Topllana. They were charged with retaliation, preparation of terrorist or criminal offences against the constitutional order and security of Kosovo, with aggravated attempted murder and other criminal offenses. This group had allegedly issued a list of Kosovo Albanians who should be executed as traitors. The former high-level communist official, Azem Vllasi, survived an assassination attempt by the alleged member of the group, Murat Jashari, in March 2017. Three defendants were in detention, while one was under house arrest. Defendant Jashari was in detention at the medical facility due to his severe mental health problems. At the end of the trial in the basic court, the prosecutor withdrew the charges against the defendants Sabit Berisha and Lirije Luzha. In January 2020, all but two defendants were found guilty. The key defendants received the following imprisonment sentences: Avni Llumnica 12 years; Sadri Ramabaja five years; Murat Jashari 10 years. On 21 July 2020, the Court of Appeals (CoA) annulled the judgment of the first instance court and returned the case to the BC of Pristina for retrial, and also instructed the Special Prosecution of Kosovo (SPRK) to amend the indictment related to the defendant Murat Jashari with a proposal for compulsory psychiatric treatment. After the case was severed, the BC of Pristina, on 11 November 2022, announced its judgment in the retrial regarding the two remaining defendants, sentencing Avni Llumnica to four years and six months imprisonment and acquitting Sadri Ramabaja. In the appeal, the judgment was amended and Avni Llumnica was sentenced to four years imprisonment.

Judge Sali Berisha Case (PS.nr.10/20, APS nr.45/2023)

On 5 February 2020, the Special Prosecution of Kosovo (SPRK) filed an indictment before the Basic Court (BC) of Pristina against Sali Berisha for two counts of receiving bribes and unauthorised ownership, control or possession of weapons. The BC of Pejë/Peć judge Sali Berisha had been arrested initially for abuse of official position or authority, and unauthorised ownership, control or possession of weapons. He was charged in connection with a case in which the defendant had been leniently punished. Allegedly the defendant in question, charged with two counts of smuggling of migrants, an offence punishable with up to 12 years of imprisonment, had obtained a conditional sentence of three years of imprisonment in exchange of the payment of EUR 10,000.

The initial hearing, scheduled on 23 March 2020, was postponed due to the pandemic. and eventually took place on 18 September 2020. Sali Berisha requested that the indictment be dismissed, which the BC rejected, and on 23 September 2021, the first hearing took place. On 28 April 2023, the BC of Pristina found him guilty of both charges and sentenced him to two years and six months imprisonment and a fine of EUR 5,000. He was also prohibited from exercising public administration or public service functions for three years. On 29 February 2024, the Court of Appeals (CoA) confirmed the guilty judgement but changed the sentence regarding imprisonment and fine to two years and EUR 3,500 respectively.

Skopje Highway Case (PPS 40/2019)

On 4 February 2022, the Special Prosecution of Kosovo (SPRK) filed an indictment before the Basic Court (BC) of Pristina against three defendants charged with abuse of official position or authority. The defendants were Pal Lekaj, the former Minister of Infrastructure, his former chief of cabinet, Eset Berisha, and Nebih Shatri, the former Secretary-General of the Ministry of

Infrastructure. The SPRK had launched an investigation against the three defendants in August 2019 in connection with a request issued by the Bechtel-Enka consortium, demanding from the Government of Kosovo the payment of additional EUR 53 million for construction works on the Skopje highway. An external consultancy, tasked with overseeing the execution of the construction contract, issued a report stating that the Government should not pay more than EUR 14 million, assessing that the consortium's request for being paid EUR 53 million was not legitimate. The three defendants allegedly ignored this report and ensured that the Government decided to pay to Bechtel-Enka the entire amount it had demanded (EUR 53 million). Later, the court extended the indictment, adding another defendant, Besim Tahiri, an employee within the Procurement Department of the Ministry of Infrastructure. The main trial started on 16 December 2022, after the court had rejected the defendants' objections against the evidence proposed by the prosecution in support of the indictment and their requests to dismiss the indictment. On 31 January 2024, the BC of Pristina announced its judgement which found all the defendants guilty. They were sentenced to imprisonment as follows: Pal Lekaj - three years and eight months, Nebih Shatri – one year and eight months, Eset Berisha – three years and three months, and Besim Tahiri – one year and eight months. The defence appealed the judgement and the case is currently pending the appeal before the Court of Appeals (CoA).

Gjilan/Gnjilane Highway Case (PPS 34/2019)

In January 2021, the prosecution filed an indictment against several officials of the Ministry of Infrastructure before the Basic Court (BC) of Pristina for wrongdoings in relation to a tender process for the construction of the Pristina-Gjilan/Gnjilane highway. The defendants were Betim Reçica (former Secretary of the Ministry of Infrastructure), Isa Berisha, Leonora Limani and Mirdit Emini (officials at the Ministry of Infrastructure). Betim Reçica was charged with several criminal offences, including trading in influence, abusing official position or authority and money laundering. The other three defendants were charged with abusing official position or authority. In August 2021, the Court of Appeals (CoA) confirmed the indictment issued by the BC of Pristina and the main trial started. On 7 May 2024, the BC of Pristina rendered its judgement and acquitted all the defendants. The prosecution appealed the verdict and the case is currently pending before the CoA.

Hydropower Case (PS 17/2020)

On 10 April 2020, the prosecution filed an indictment before the Basic Court (BC) of Pristina against 19 defendants, including the four former ministers Besim Beqaj, Mimoza Kusari-Lila, Dardan Gashi and Nenad Rašić. The defendants are charged with the criminal offence of abusing official position or authority in relation to the allegedly wrongful transfer, in 2013, of four hydropower plants from the Kosovo Energy Corporation (KEK) to the Kosovo Power Distribution Company (KEDS) in order for these hydropower plants to be included in the privatisation process of KEDS to a Turkish consortium, Limak-Calik. The value of the hydropower plants is estimated at EUR 12 million. The initial hearing took place on 28 October 2020, and, on 4 March 2021, the BC of Pristina decided to dismiss the indictment against 13 of the indicted defendants. The main trial against the remaining six defendants, including the four former ministers, started on 1 July 2021. On 7 November 2023, the BC of Pristina announced the verdict in this case, all defendants being acquitted of all charges.

Infrakos Case (PP / I no.60 / 2018)

On 31 December 2019, the prosecution filed an indictment before the Basic Court (BC) of Pristina against Sadik Paqarizi, Nijazi Kryeziu and Visar Islamaj, officials in the Directorate of Urbanism and Spatial Planning in the Municipality of Prizren, against Bujar Nerjovaj, Director of Inspection in the Municipality of Prizren, and against Bashkim Krasniqi, construction inspector at the Directorate for Inspection in the Municipality of Prizren, for having abused their official duties or exceeding their official competencies in order to obtain material benefit for another person (in the amount of EUR 104,674.61). The beneficiaries were the owners of the buildings constructed around the railway without respecting the railway infrastructure. Agron Thaqi, CEO of Infrakos – Kosovo Railways, and Naim Avdyli, professional associate at Infrakos – Kosovo Railways, were suspected of having caused damage to Infrakos because they had not fulfilled their official duties to supervise and manage the railway properties. They were all charged with the criminal offense of abuse of official position. On 20 January 2023, all the defendants were acquitted by the BC of Prizren. The appeal is currently pending before the CoA.

Stenta Cases (PKR 40/2018)

The prosecution filed an indictment on 14 June 2016 before the Basic Court (BC) of Pristina against 60 defendants and two legal entities for the criminal offences of abuse of official position or authority, accepting and giving bribes, irresponsible medical treatment, unlawful exercise of medical or pharmaceutical activity and tax evasion.

The BC of Pristina decided to severe the case due to the large number of defendants involved.

Ferid Agani, former Minister of Health, and Gani Shabani, former General Secretary of the Ministry, were indicted in the *Stenta I Case* for abuse of official position. They had received 2,5 years and 2 years prison sentences respectively with the first instance judgment of 24 April 2019. However, following the defence's appeal, the Court of Appeals (CoA) remanded the case to the BC of Pristina for a retrial. In 2020, there were no scheduled hearings, but in June 2021, the case commenced with a rather efficient pace until the end of July, when the retrial was concluded. Before presenting her closing statement, the prosecutor amended the indictment, notable being that the alleged damage to the Kosovo budget was reduced from around EUR 4.5 million to EUR 11,000. On 1 August 2022 the judgment was announced and both defendants were acquitted of the charges. The CoA confirmed the judgment on 23 June 2023.

In the *Stenta II Case*, 45 defendants, almost exclusively medical doctors, were indicted for abuse of official position in co-perpetration and for accepting bribes. Subsequently, this case was severed in two parts: *Stenta II.1 Case*, with most of the defendants, and *Stenta II.2 Case*, with only six defendants who, in the course of the trial, were partly absent due to health issues. The *Stenta II.1 Case* recommenced with a productive session in December 2021 and was moving forward until May 2022, albeit in a slow pace with numerous hearings being postponed due to the absence of defendants. Additionally, a new presiding judge had to be assigned to the case due to health issues of the former one, which caused further delays. The case finally concluded in first instance in September 2023, when all defendants were acquitted. In the *Stenta II.2 Case,* the hearings were continuously postponed for a long time, mainly since defendants were absent due to health reasons. The trial recommenced in spring of 2024, and the judgment was announced on 24 July All defendants were acquitted.

Finally, the *Stenta III Case* is related to 14 defendants (natural persons and legal entities). They are facing charges of giving bribes, irresponsible medical treatment, unlawful exercise of medical activity and tax evasion, individually and in co-perpetration. Some of the defendants are foreign citizens (e.g., Turkey and North Macedonia). After a lengthy period for the confirmation

of the indictment, the opening session of the main trial was supposed to take place in October 2020, but it was adjourned and postponed because the defence claimed the lack of access to the case file. In November 2021, sessions were again scheduled but were adjourned due to issues pertaining to the translation of the case documents for the foreign defendants. The main trial restarted in 2024 and is still ongoing, making slow progress.

Veterans Case (PKR 230/2018)

In September 2018, the prosecution filed an indictment before the Basic Court (BC) of Pristina against 12 persons in the case known to the public as "Veterans", on charges of abusing official position or authority. The defendants were Agim Çeku, Nuredin Lushtaku, Sadik Halitjaha, Shkumbin Demaliaj, Qelë Gashi, Shukri Buja, Ahmet Daku, Rrustem Berisha, Faik Fazliu, Smajl Elezaj, Fadil Shurdhaj and Xhavit Jashari. They were accused of abusing their positions as members of a State Commission by enabling almost 20,000 persons to receive veteran benefits they were not entitled to, causing a damage to the Kosovo budget in the amount of over EUR 68 million. The main trial was postponed due to the pandemic. On 19 January 2021, the BC of Pristina announced its judgement, acquitting all 12 defendants of all charges. The prosecution appealed to the Court of Appeals (CoA), which, in April 2022, annulled the judgment and sent the case back to the Basic Court of Pristina for retrial. After five failed attempts, the first hearing of the retrial took place on 31 October 2023. The main trial is still ongoing and is making slow progress.

Avanci Case (PPS 19/19)

On 6 October 2020, the Special Prosecution of Kosovo (SPRK) filed an indictment before the Basic Court (BC) of Pristina against two defendants, one official of the Kosovo Agency for Medicinal Products (KAMP), the other an employee of the Ministry of Health (MoH), for the alleged criminal offences of misappropriation in office and intrusion into computer systems. According to the prosecutor, the alleged damage to the budget amounts to over EUR one million obtained through wrongful handling of advance payments for official duty trips abroad. The main trial is currently in the phase of administration of evidence and currently the case is at a standstill since 21 May 2024, when the main trial was adjourned indefinitely until the expert who was ordered by the court to perform an additional expertise finalizes it and provides his/her conclusions. Until the reporting date, numerous hearings took place, where many witnesses were summoned to testify, most of them having been suspects at the beginning of the investigation but later cleared of the charges since no evidence was found against them.

Brezovicë/Brezovica I Case (PP/I 99/17– PKR 160/20)

On 6 November 2020, the prosecution filed an indictment before the Basic Court (BC) of Ferizaj/Uroševac against three defendants for abusing official position or authority and eight defendants for polluting, degrading, or destroying the environment within the Brezovicë/Brezovica National Park. After 12 failed initial hearings, the initial hearing eventually took place on 26 June 2023. On 9 August 2023, the prosecutor withdrew the charges against two defendants (Dimitrije Racicević and Sanije Geci), and on 1 February 2024, three defendants (Blerim Imeri, Naser Kelmendi and Arian Idrizaj) were sentenced to a total fine of EUR 55,000 together for the criminal offence of pollution, degradation and destruction of the environment, after their plea agreements. On 6 February 2024, and also as a consequence of a plea agreement, another defendant (Riad Hasani) was also sentenced to a EUR 15,000 fine for this criminal offence plus EUR 10,000 as compensation damages. Similarly, on 15 February 2024, another defendant

(Fatmir Grainc) was also sentenced to a EUR 15,000 fine and EUR 10,000 as compensation for damages for the same criminal offence. On 4 July 2024, the BC of Ferizaj/Uroševac sentenced two more defendants (Dragomir Milosavljević and Hysni Bajrami) to one year imprisonment and a EUR 500 fine for misuse of official position or authority, while Labinot Vitija was sentenced to one year of conditional imprisonment and a EUR 20,000 fine. On 19 July 2024, the BC of Ferizaj/Uroševac acquitted Gentian Sulo, an Albanian citizen charged for degradation of environment, for whom the case had been severed, on 6 September 2023, due to injuries he had sustained in an accident, allowing him to attend the sessions through video conference. Currently, the case is pending the appeal before the CoA following the prosecutor's appeal.

Brezovicë/Brezovica II Case (PP/I.nr.138/20, PKR 239/22)

On 9 December 2022, the prosecution filed an indictment before the Basic Court (BC) of Pejë/Peć against 12 defendants, including the former mayor of the municipality of Štrpce/Shtërpcë, the municipality's former Director of the Department of Urbanism, two municipal inspectors, the Chief of the Municipal Cadastre, the former Secretary-General of the Ministry of Environment and Spatial Planning (MESP) and the Chief Inspector of MESP, together with several private investors. On 3 April 2023, after several failed attempts, the initial hearing eventually took place. The defendants were charged with abuse of official position, receiving bribes, trading in influence and unlawful possession of weapons. On 2 November 2023, the main trial was scheduled to start, but three defendants were absent and it was postponed until 13, 14 and 18 December 2023. However, on 13 December 2023, the start of the main trial was postponed once again due to the absence of one of the defendants, due to his health condition. The hearings of 14 and 18 December 2023 and 24 January 2024 were also cancelled. On 15 May 2024, a new postponement of the main trial took place. The trial started anew with a new presiding judge, after the transfer of the previous presiding judge to the Supreme Court (SC). The case prosecutor submitted a request for the dismissal of the new presiding judge of the case, based on the fact that one of the defence lawyers was also the lawyer of her son in a different case, but the President of the BC of Pejë/Peć rejected his request, which the prosecutor appealed. More than one year and eight months after the issuance of the indictment, the case is still ongoing.

Transport Case (PKR 147/2016)

On 11 November 2016, the prosecution filed an indictment before the Basic Court (BC) of Mitrovica against 21 defendants charged with leadership and participation in an organised criminal group, avoiding payment of mandatory customs fees, smuggling of goods (mostly fuel and cigarettes between Kosovo and Serbia), prohibited trade, and tax evasion, all in co-perpetration. Seven defendants out of 21 were also indicted for illegal possession of weapons. Several defendants are owners of gas stations in northern Kosovo. The main trial started in mid-2018 and experienced long delays, with no hearings having been held after the pandemic. Due to the caseload at the BC of Mitrovica, this case, alongside 12 other complex cases with indictments filed by EULEX prosecutors at the time when EULEX had an executive mandate, was transferred to the Special Department at the BC of Pristina in February 2024. The BC of Pristina attempted to start the trial, but no productive hearings have taken place as yet.

Non-EULEX War Crimes Cases

Remzi Shala Case (P 181/2016), also known as the 'Molla Kuqe Case'

In October 2016, the prosecution filed an indictment before the Basic Court (BC) of Prizren against Remzi Shala for war crimes against the civilian population. The defendant was member of the KLA and had allegedly, together with five or six other unidentified KLA members, abducted and killed a person on 26 June 1998. On 3 July 2019, the BC of Prizren found the defendant guilty of the criminal offence of war crimes against civilians and sentenced him to 14 years of imprisonment. The defendant appealed the verdict and, on 26 November 2019, the Court of Appeals (CoA) partially approved the appeal and amended the judgement, changing the sentence to ten years of imprisonment. The appeal of the injured party was rejected as ungrounded. The defendant's defence counsel filed a request for protection of legality against this verdict on the basis of violation of the criminal law and essential violations of the provisions of the criminal procedure. On 2 March 2020, the Supreme Court (SC) followed the request and annulled both verdicts and sent the case back for retrial at the BC of Prizren. On 27 June 2023, the trial panel announced the judgment, finding the defendant guilty. Remzi Shala was convicted to nine years and six months of imprisonment. The judgment of the BC of Prizren was upheld by the CoA with a judgment rendered on 5 December 2023.

Vukotić Cases (PPS 35/2020, P 57/2019 and P 86/2017)

On 4 October 2023, the Special Prosecution of Kosovo (SPRK) filed an indictment against Zoran Vukotić, alleging that on 4 May 1999, in a village in the municipality of Vushtrri/Vučitrn, and in co-perpetration with three other persons, raped a girl from the civilian Albanian population - war crime against the civilian population according to Article 142 Criminal Code of Yugoslavia (CCSFRY) (*Zoran Vukotić V Case*). Shortly thereafter, the former EULEX cases that were pending for many years in the Basic Court (BC) of Mitrovica were transferred to the BC of Pristina. Amongst them were the *Zoran Vukotić I Case* and the *Zoran Vukotić III Case* (more details on these cases can be found below). There were also two other cases against the same defendant, *Zoran Vukotić II* and *Zoran Vukotić IV*, which ended with a guilty verdict after the finalization of the appeals in 2019 and 2023, respectively, therefore they are not detailed in this report.

In the *Zoran Vukotić I Case*, the defendant was indicted, on 20 April 2017, for having allegedly participated, as a member of the Serbian police forces and as a prison guard, in co-perpetration with other unidentified members of the Serbian police, in the illegal detention of a large number of civilians, Kosovo Albanians, in the Smrekovnica prison in the Mitrovica region, from May to early June 1999, where he had reportedly submitted them to torture and other inhumane treatment. On 25 May 2018, the BC of Mitrovica rendered the judgement finding the defendant guilty and imposed a punishment of six years and six months of imprisonment. The judgement was appealed by the defendant, and on 30 January 2019, the Court of Appeals (CoA) partially annulled the judgement of the BC of Mitrovica, and the case was sent to the basic court for a partial retrial.

In the *Zoran Vukotić III Case*, the prosecution filed an indictment against Zoran Vukotić before the BC of Mitrovica on 23 June 2017,. He was accused that on 17 April 1999, in Vushtrri/Vučitrn, he had allegedly, as member of the Serbian police force and in co-perpetration with other unidentified members of that force, taken part in looting the Kosovo Albanian civilian population and murdered a 13-year-old Kosovo Albanian boy. The initial hearing was held on 15 December 2017. No sessions were held after this date.

The court decided to merge the remaining three cases (*Zoran Vukotić I, III,* and *V*) into one and adjudicate them together. Currently that merged case is pending at the BC of Pristina.

Mejë/Meja Case (PPS 60/2010)

On 7 December 2023, the Special Prosecution of Kosovo (SPRK) filed an indictment *in absentia* before the Basic Court (BC) of Pristina against 53 members of the Serbian army, police and paramilitary forces who had allegedly committed multiple war crimes against the civilian population and crimes against humanity by creating and later executing a plan for a widespread and systematic attack against the Albanian civilian population in the villages of Mejë/Meja, Korenicë/Korenica, Junik/Junik and others (altogether 33 villages), by committing over 370 killings and many expulsions of the civilian Albanian population. The indictment was returned to SPRK for amendment.

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