

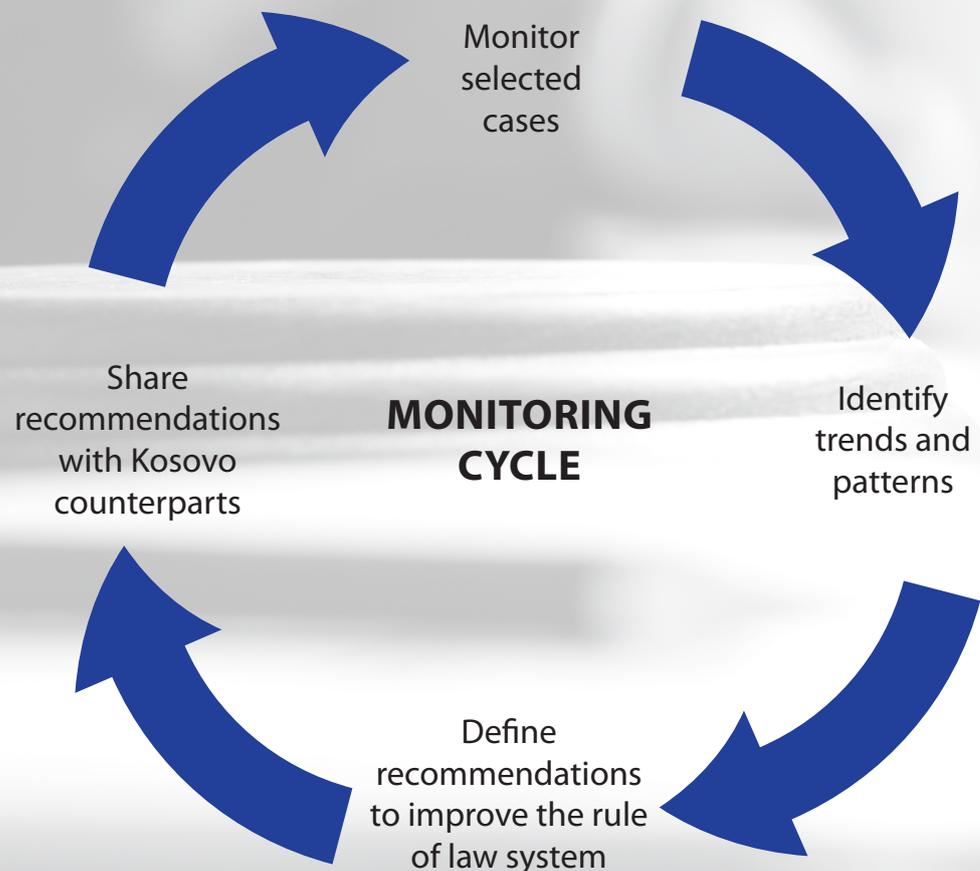


FACTSHEET

The EU Rule of Law Mission (EULEX) Case Monitoring Unit assesses the functioning of the Kosovo judiciary and police in terms of **procedural, legal** and **human rights** compliance. The assessment is carried out through **systemic** and **thematic** monitoring of selected **criminal** and **civil** cases, including cases previously dealt with by EULEX until June 2018 under its past executive mandate.

The monitoring covers the entire chain of criminal justice (the **police, prosecution** and **courts**), as well as aspects of the civil justice system. From January 2019 – after concluding in December 2018 the handover of police, prosecutorial and judicial case files to the Kosovo authorities – to September 2020, EULEX's justice monitors attended **686 hearings**, including on high-profile cases, war crimes cases, gender-based violence cases, hate crimes, corruption cases, and cases previously dealt with by EULEX.

This resulted in four reports with findings and recommendations for the Kosovo authorities aiming at addressing identified shortcomings to improve the justice system.



EULEX is now monitoring 248 cases

A glimpse into EULEX's Justice Monitoring Report

Period: From September 2019 to mid-March 2020
EULEX staff monitored 107 cases and 312 hearings

SYSTEMIC MONITORING

Issues identified through the monitoring with a systemic dimension

Productive vs Unproductive hearings

Findings	Recommendations
<p>Continuous trend of less unproductive hearings. Out of 287 monitored hearings, 67 were unproductive, i.e. 23% compared to 29% in the previous reporting period. The main reason for unproductive hearings was the absence of the defendant (36%).</p>	<p>Prosecutors should be held accountable if they are unjustifiably absent or unprepared.</p> <p>Judges should report regularly on the number of unproductive hearings and the measures taken.</p> <p>Judges should apply punitive and disciplinary measures foreseen in the Criminal Procedure Code.</p>

Progress on high-profile cases

Findings	Recommendations
<p>Some progress made in the pace of adjudicating high-profile cases. However, several high-profile cases remained dormant.</p>	<p>The courts should ensure that trials are not unduly delayed.</p>

Prosecution of terrorism cases

Findings	Recommendations
<p>Continued efforts to prosecute citizens who were returned from war theatres in Syria.</p> <p>Swift dispensation of justice.</p> <p>Relatively low or suspended sentences.</p>	<p>As the burden of managing future potential risks associated with the returnees falls mainly on the police, the Kosovo rule of law institutions should closely monitor the outcome.</p>

Re-trial policy

Findings	Recommendations
<p>A relatively large number of cases is sent by the Court of Appeals to the respective basic courts for retrial.</p> <p>Instructions contained in the Court of Appeals rulings ordering the retrials are sometimes not precise enough and leave room for interpretation.</p> <p>There are large delays in drafting and serving rulings of the Court of Appeals ordering the retrial.</p> <p>Some retrial judgements issued by the Basic Courts do not sufficiently reflect the administration of evidence from the retrial, but mostly rely on the initial judgement.</p>	<p>Appellate courts should avoid the unnecessary annulling of judgements.</p> <p>Appellate Courts should refrain from the unnecessary returning of cases for retrial.</p> <p>Retrial should be of rare use as it affects the right of the accused to a fair trial within a reasonable time.</p> <p>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 judgements.</p>

Case allocation in re-trial proceedings

Findings	Recommendations
<p>Basic Courts allocate cases that are returned for retrial to the same presiding trial judge or trial panel. While this may be positive from an efficiency perspective, it raises concerns regarding judicial impartiality.</p>	<p>The Kosovo Judicial Council should evaluate the current judicial practice and its implications.</p>

Cross-examination practices in trials

Findings	Recommendations
<p>Inconsistent implementation of cross-examination principles.</p> <p>Parties in charge of cross-examination were inadequately prepared.</p> <p>Most of the questions asked by the parties were beyond the scope of cross-examination resulting in the prolongation of the criminal proceedings.</p> <p>The objections submitted by the opposing parties to cross-examination questions were often vague and/or unsubstantiated, resulting in unnecessary delays.</p> <p>Occasionally, several rounds of direct and cross-examination were allowed, contrary to the provisions.</p>	<p>Judges should safeguard the lawful application of the rules of cross-examination over the course of main trials.</p> <p>Parties have their own responsibility in the proper implementation of cross-examination.</p>

Announcement of criminal judgements in first instance

Findings	Recommendations
<p>There are some inconsistencies in the practice of announcing judgements. For example, sometimes the criminal act was not read out; the presentation of a brief justification was entirely omitted or was insufficient; the parties were not given instructions regarding legal remedies; the announcement was deficient due to the fact that the judge could not be heard or understood.</p>	<p>There is a need for a more effective training of the judges.</p>

Detention on remand

Findings	Recommendations
<p>There appears to be an overreliance on the security measure of detention on remand.</p> <p>In some cases the detention had the effect of replacing an eventual punishment, outside the scope of a main trial, which is of concern from a human rights perspective.</p>	<p>Prosecution requests for imposing detention on remand and respective Court rulings should be reasoned with concrete facts in a way that the defendant is able to comprehend the decision.</p> <p>In case the conditions for imposing a security measure are met, the most lenient one should be ordered and detention on remand should be the last resort.</p>

Confiscation and temporary confiscation of assets

Findings	Recommendations
<p>The fact that the prosecution often uses temporary confiscation of assets is positively noted.</p> <p>The foreseen sale of assets during the proceedings, proposed by the prosecution to avoid the loss of value, is not widely approved by the courts.</p> <p>The 2019 Law on Extended Powers on Confiscation of Assets has not been implemented yet.</p>	<p>To initiate the implementation of the Law of Extended Powers on Confiscation of Assets.</p> <p>To use more often the possibility of sales of assets.</p>

Functioning of the Special Department in the Basic Court and Court of Appeals of Pristina

Findings	Recommendations
<p>The fact that it became operational had a positive impact on the efficiency of the judicial system.</p> <p>The decision not to organize judges in fixed panels of the same three judges is positive and in line with a previous EULEX recommendation.</p>	<p>To increase the number of judges in line with legal provisions on ethnic diversity.</p> <p>To recruit additional support staff and to increase the number of Albanian / Serbian translators.</p> <p>To put in place the necessary equipment to allow for the examination of witnesses under protective measures at the Palace of Justice in Pristina.</p>

THEMATIC MONITORING

Anti-Corruption

Findings	Recommendations
<p>The Kosovo Police Anti-Corruption Task Force was able to detect and take on high-profile investigations involving prominent and politically-exposed persons, as well as complex financial cases, such as cases of privatisations or public tenders.</p> <p>The SPRK reorganization resulted in a focused effort to tackle large-scale corruption.</p> <p>The level of cooperation and coordination between police and prosecution remains a concern.</p> <p>Some findings suggest insufficient transparency and accountability of the prosecution or reluctance to fulfill its supervisory role.</p> <p>Several cases involving high-profile officials had stalled or recorded setbacks.</p>	<p>Cooperation between police and prosecution in anti-corruption and serious financial crime cases of particular sensitivity needs to be improved.</p> <p>While many investigations were conducted professionally, complex financial investigations would benefit from a more vigorous investigation. Not all available leads are always explored, such as key financial schemes and corporate records.</p> <p>The “follow the money” principle needs to be strengthened when investigating money laundering and financial crimes.</p> <p>The Kosovo Police Anti-Corruption Task Force should be strengthened.</p>

Crimes under international law

Findings	Recommendations
<p>With EULEX's support, the Kosovo Police War Crimes Investigation Unit established a new database to better administer complex cases and enable a qualitative case analysis. Separate sections were created in the databases for conflict-related sexual violence, as well as for missing persons. The database enables cross-checking war-crimes files and missing-persons files, which substantially facilitates and accelerates the process of case building.</p> <p>The War Crimes Investigation Unit completed the investigations in most of the active war-crimes cases.</p> <p>There has not been sufficient progress with the investigation by the Kosovo Police of war-crimes cases which were categorised by the SPRK as high priority.</p> <p>The SPRK War Crimes Department, although understaffed, has also made significant progress and finalised almost all of its active war-crimes cases by either filing indictments or by terminating investigations.</p> <p>There are cases where the main trial has gone beyond any reasonable time limits.</p>	<p>The Kosovo Police has to make efforts to continue the investigation and analysis of all categorised high-priority war-crimes cases.</p> <p>While the cooperation between the SPRK War Crimes Department and the Kosovo Police has improved, it needs to improve further.</p> <p>The SPRK War Crimes Department should be expanded.</p> <p>Kosovo authorities are encouraged to seek ways to improve regional cooperation in the investigation of high-profile war-crimes cases, especially with Serbia, where many suspects and witnesses reside.</p>

Hate crimes

Findings	Recommendations
<p>The implementation of the Cooperation Agreement on Addressing Hate Crimes in Kosovo is far from satisfactory.</p> <p>Changes to the police incident report have been introduced so that it contains a specific 'hate crime box' to identify potential cases in this area.</p> <p>Discrimination and violence against minorities in Kosovo continued to be an issue of concern, especially for the Roma, Ashkali and Egyptian communities, and women in particular.</p> <p>Intolerance towards Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons is still widely spread and many LGBTI persons remain at risk of discrimination and violence.</p> <p>Two encouraging developments in relation to transgender persons were observed:</p> <ul style="list-style-type: none">- On 24 October 2019, the Basic Court of Pristina granted the change of name of Blert Morina.- On 2 August 2019, the Kosovo Court of Appeals, officially approved the request of a transgender citizen to change the name and gender marker in the Civil Status Registry. <p>Incidents concerning religious sites, graveyards and insulting graffiti are often reported against unknown perpetrators and in most cases remain as such as the investigation of such incidents is not prioritised.</p>	<p>The parties to the Cooperation Agreement should undertake efforts to implement the provisions and establish the mechanisms foreseen in the Agreement in order to ensure inter-institutional cooperation and coordination in this field.</p> <p>More awareness is needed of the possibility of a crime being motivated by hate or bias.</p> <p>More efforts are needed to counter intolerance towards LGBTI persons, as many remain at risk of discrimination and violence.</p> <p>Incidents involving religious sites, graveyards and insulting graffiti should be investigated more vigorously.</p>

Gender-based violence

Findings	Recommendations
<p>The creation of the domestic-violence cases database is positive. While Kosovo Police has been leading the process of inserting data in the database, other institutions are still lagging behind.</p> <p>At police level, significant improvements have been noticed in the correct referral of alleged sexual violence cases to the chain of service providers, particularly to the Institute of Forensic Medicine for timely preservation of biological evidence.</p> <p>The level of communication and cooperation between police and prosecution and the lack of sufficiently trained personnel remains problematic.</p> <p>While long sentences were imposed in aggravated murder cases, the other aggravated offences received either low sentences, sometimes even below the foreseen range, or suspended sentences with the minimum verification period of one year.</p>	<p>Efforts should be undertaken to adopt the amended Law on Protection from Domestic Violence.</p> <p>All relevant institutions should contribute to the domestic-violence cases database as foreseen.</p> <p>Communication and cooperation between police and prosecution should be improved.</p> <p>Police should be better trained and equipped to be able to implement a comprehensive victim-based approach in victim interviewing and perform adequate collection of technical evidence.</p> <p>The provisions in the new Criminal Code pertaining to domestic violence should be fully taken into consideration by the courts; this applies in particular to the aggravated factor of criminal offences when conducted in domestic environments and to the provision of a detailed reasoning for sentences in which the aggravated factors are outbalanced by mitigating ones.</p>

Privatisation and liquidation

Findings	Recommendations
<p>The number of legal officers remains insufficient to tackle the backlog of more than 22.000 cases.</p> <p>Not many hearings were held in the Special Chamber of the Supreme Court (SCSC).</p> <p>Available special tools in relation to mass claims were hardly used.</p> <p>The decision of the supervising judge to re-allocate two employees from the Registry to assist especially in privatisation cases concerning socially-owned enterprises with a large number of mass claims is positive.</p>	<p>The SCSC should adopt a long-term strategy to clear the backlog.</p> <p>The SCSC should initiate using templates for dealing with mass claims and appoint legal officers to conduct the relevant preparatory work.</p> <p>Recruitment of additional legal support officers should be considered.</p>

Kosovo Property Agency Appeals Panel / property rights

Findings	Recommendations
<p>The main problem in civil cases related to property rights is the excessive length of procedure due to different reasons.</p>	<p>The court management should take necessary steps in order to tackle the problem of backlog of civil cases and the assignment of cases to judges.</p> <p>Civil judges should be made aware that unreasonable length of proceedings affect the right to a fair trial and that there are provisions in the law on contested procedure that could be applied in order to reduce the length of proceedings.</p>