EULEX
European Union Rule of Law Mission
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EU Rule of Law Mission in Kosovo – EULEX

Justice Monitoring Report

Findings and Recommendations

November 2025

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List of abbreviations

BC	Basic Court
BPO	Basic Prosecution Office
CC	Criminal Code
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CMIS	Case Management Information System
CoA	Court of Appeals
CPC	Criminal Procedure Code
CPT	Council of Europe Committee for the Prevention of Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
IID	Internal Investigation Division
JJC	Juvenile Justice Code
KBA	Kosovo Bar Association
KIA	Kosovo Intelligence Agency
KJC	Kosovo Judicial Council
KP	Kosovo Police
KPC	Kosovo Prosecutorial Council
KPIS	Kosovo Police Information System
LECS	Law on Execution of Criminal Sanctions
LEPS	Law on Execution of Penal Sanctions
PIK	Police Inspectorate of Kosovo
SC	Supreme Court
SOP	Standard Operating Procedure
VAO	Victim's Advocacy and Assistance Office

Foreword

I am pleased to present the 2025 Justice Monitoring Report of the European Union Rule of Law Mission in Kosovo (EULEX).

This is the eighth report EULEX has produced since 2018, the year it phased out of its executive mandate in the justice system. Like the previous four Justice Monitoring Reports issued since 2020, this edition is also public. This confirms our aim to enhancing institutional accountability and promoting a deeper understanding of the rule of law implementation in Kosovo.

While the previous Justice Monitoring Report, published in 2024, focused on assessing the progress made in implementing recommendations from earlier reports, this one reverts to examining specific aspects of the functioning of the entire chain of criminal justice, in line with the reports published in 2020, 2021 and 2022.

This Justice Monitoring Report's key findings derive from both systemic and thematic monitoring. Some of these findings repeat issues identified in prior EULEX reports; others refer to new areas the Mission began monitoring in recent years. Specifically, EULEX deemed it important to examine the functioning of the accountability process for allegations of ill-treatment by the Kosovo Police, the effective judicial oversight in specific types of deprivation of liberty, and the application of criminal legislation on inciting discord and intolerance.

The report also analyses the concerns raised by cases of threats or intimidations against justice system practitioners – particularly prosecutors – in some instances originating from institutional and political representatives. Given the deep connection of these issues to Kosovo's rule of law and democratic values, they deserve a strong, concerted commitment from all institutional angles.

This year's Justice Monitoring Report presents numerous recommendations to the Kosovo rule of law institutions, based on the monitoring of approximately 400 cases and the collection of data and information from police, prosecution, judicial officials, members of the bar associations, and civil society. The focus is deliberately placed on areas where shortcomings persist, and improvement is required. While acknowledging the efforts and progress achieved by the Kosovo rule of law institutions since the Mission's deployment in 2008, our recommendations are intended to promote further progress and support Kosovo in a constructive way, in line with a long and productive partnership built and developed between our Mission and these institutions.

Based on its findings from systemic monitoring, EULEX assesses that since the publication of the 2024 Justice Monitoring Report, significant changes have not materialised despite institutional efforts. This limited progress is evident in the handling of high-profile cases, the *ratio* of productive hearings, and the inconsistent application of accessory punishments. On a positive note, however, the practice of scheduling more than one future session – and even more than two – has substantially increased, particularly in complicated cases and those with many defendants. This demonstrates a positive development in trial planning, in accordance with EULEX previous recommendations. Nevertheless, sentencing disparity continues to persist despite the existence of the Supreme Court Sentencing Guidelines, designed to overcome the issue.

Regarding the findings of thematic monitoring, EULEX assesses that Kosovo has established a comprehensive legal and institutional framework for ensuring accountability for ill-treatment by the Kosovo Police. Nevertheless, it should ensure this framework is applied fully and in practice across all cases where an arguable allegation is raised, regardless of the police officer's rank or unit. This is also paramount for maintaining public trust in the Kosovo Police at a high level.

The application of criminal legislation on inciting discord and intolerance, another topic examined in this report, must strictly adhere to human rights standards. A punitive approach towards what can be considered manifestations of freedom of expression risks harming public trust in the institutions, especially among non-majority communities. Therefore, a sensible approach by the authorities, based on constructive engagement and dialogue with all segments of society, remains essential.

Concerning the fight against domestic violence, an examination of a sample of cases revealed that increased focus should be placed on the protection of children as secondary victims. The analysis of judgments from courts around Kosovo on the criminal offence of rape, showcases that preconceived notions and stereotypes about this form of sexual violence influence the evaluation of evidence. These false presumptions can result in erroneous judgments, re-victimisation, and a lack of trust in the judiciary. Moreover, concerning sexual violence cases with a juvenile victim, EULEX monitoring revealed that the equipment and use of child-friendly interview rooms vary considerably, and interviews are not videorecorded even when equipment is available.

As for the investigation, prosecution, and adjudication of crimes under international law, particularly war crimes, EULEX noted continued increased activity at all stages. However, while striving to deliver justice for victims, authorities must fully uphold fair trial standards; the Mission identified a few areas of concern in this context.

Finally, the Case Management Information System, in place since 2018, continues to contribute to improved efficiency and transparency. Its operationalisation should be maintained and further strengthened through proper budgeting, planning, and training.

By sharing these findings and accompanying specific recommendations with the institutions and the wider public, EULEX aims to encourage all stakeholders – from political and institutional leadership to civil society and individuals – to engage in upholding the values of democracy, rule of law, and human rights. This joint effort is crucial for Kosovo's path towards the European Union. On this journey, Kosovo finds in EULEX a committed and reliable partner, and this report is yet another example of our commitment to supporting Kosovo, its institutions, and its people.

In closing, I would like to highlight that this Justice Monitoring Report would not have been possible without the engagement and cooperation of the relevant Kosovo institutions, to whom I express my sincere gratitude and reaffirm our Mission's steadfast determination to keep working together side by side as trusted partners.

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 (KP) and the judiciary in terms of procedural, legal and human rights compliance. This Justice Monitoring Report assesses specific aspects of the functioning of the entire chain of criminal justice - police, prosecution and courts, in line with the Justice Monitoring Reports published in 2020, 2021 and 2022.

The first section, titled "Systemic monitoring", provides background information, findings and recommendations on: high-profile cases, productivity of court hearings, enforcement of accessory punishments, planning and scheduling of consecutive hearings, length of time to receive written judgments from basic courts, ongoing practice of Law by indicted or convicted lawyers, implementation of the Sentencing Guidelines by basic courts, and threats against prosecutors. This chapter also includes an analysis of judicial oversight in specific forms of deprivation of liberty, following several cases monitored by EULEX in 2023 and 2024.

The other section, titled "Thematic monitoring", focuses on specific types of criminal offences, such as gender-based violence, covering investigations into domestic violence and protection of secondary victims, evaluation of evidence in rape cases, and child-friendly justice in sexual violence cases with a juvenile victim, crimes under international law and application of criminal legislation on inciting discord and intolerance. This section also includes an initial assessment on the accountability for alleged ill-treatment by members of the KP. Lastly, this section contains the analysis of the use and maintenance of the Case Management Information System (CMIS).

Most of the findings refer to the period November 2024 to September 2025, but the report also contains information on developments having occurred before or after that date, when relevant.

2. Findings of Systemic Monitoring

2.1. High-profile cases

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. 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, which sometimes included repeated retrials. Other high-profile cases progressed, and often ended with acquittals, including several former EULEX cases. High-profile cases attract wide public interest and high visibility given the fact that perpetrators are often well-known people and/or 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.

Findings

High-profile cases still ongoing with a minimum progress or without a final judgement

Numerous high-profile cases, including former EULEX cases, suffered delays for years until being adjudicated, and an important number of them have not reached a final judgement. For example, in the former EULEX *Olympia Case* regarding the killing of one UNMIK staff member and one KP officer in 2004, the Basic Court (BC) of Pristina convicted one of the defendants to eight years of imprisonment and acquitted the other in a judgement announced on 13 September 2023. The judgement was appealed, and the Court of Appeals (CoA) held a session in March 2025. However, by July 2025, the CoA had not yet delivered a verdict, 21 years after the crime was committed and eight years after the indictment was filed.

In the former EULEX *City Club Case*, the indictment was filed in 2017 against a defendant accused of having killed, in January 2010, one person and injured two in the nightclub "City Club" in Pejë/Peć. On 30 November 2023, in the second retrial, the defendant was found not guilty, after seven years in detention and two prior convictions. The judgment was appealed by the prosecutor, and on 20 September 2024, the CoA changed the BC judgment, convicted the defendant for aggravated murder and for causing general danger and sentenced him to 24 years of imprisonment ordering his detention. The defence attorney appealed the judgment to the Supreme Court (SC). On 25 February 2025, the SC once again annulled the judgment of the CoA and sent the case back for retrial. This will be the third retrial in the case, almost eight years since the indictment was filed and 15 years since the crime took place.

In the second retrial in the *Enver Sekiraqa Case*, the defendant was convicted in 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, the trial judge unexpectedly removed the measure of house arrest imposed against

the defendant, which resulted in the judge being suspended by the Kosovo Judicial Council (KJC). The CoA later changed the measure to detention, but the defendant could not be located anymore by the KP and is still at large. The appeal against the judgement is pending in the CoA.

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, but a considerable number of them were unproductive or cancelled. The judgment was announced by the BC of Pristina on 28 June 2024. Four out of six defendants were found guilty. However, the written judgement was not produced until May 2025, and it is now appealed.

In the *Turkish Deportees Case,* the former Director of the Kosovo Intelligence Agency (KIA) was sentenced 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 Türkiye based on a request by the Turkish authorities. More than one year later, on 13 December 2024, the CoA returned the case for retrial for the former KIA Director. The retrial started on 12 February 2025, in the presence of four of the Turkish citizens affected, who were released by the Turkish authorities, and since then sessions are taking place regularly.

The *Veterans Case* is still ongoing, seven years after the indictment was filed against 12 persons on charges of abusing official position or authority. The defendants 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. After five failed attempts, the first hearing of the retrial took place on 31 October 2023, following the annulment by the CoA of the acquittal judgment issued in the first instance for all 12 defendants in March 2022. Despite the retrial having been ongoing since October 2023, only on 14 July 2025 the court adopted a verdict sentencing all defendants but two to one-year imprisonment each. The written version of the verdict is still not available. Hence, it is not known if the verdict will be appealed again.

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 three other 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. However, the CoA annulled the first instance judgment through the decision dated 25 February 2025 and sent it for retrial. The first hearing of the retrial took place on 23 July 2025.

The trials in the several *Brezovicë/Brezovica Cases,* which for a long time were completely stalled, have lately increased their pace. The cases are related to charges including abusing official position, accepting bribes, trading in influence in connection with the issuance of building permits, and polluting, degrading, or destroying the environment. The initial hearing of the *Brezovicë/Brezovica I Case*, based on an indictment dated 11 November 2020 against 11 defendants, after numerous unsuccessful attempts for almost two years, took place in August 2023. Finally, on 4 July 2025, two construction municipal inspectors from the Municipality of Štrpce/Shtërpcë were sentenced to one-year effective imprisonment and accessory punishments for misuse of official position or authority, while a third defendant was sentenced to one year conditional imprisonment and a EUR 20,000 fine for the offence of pollution, degradation or destruction of the environment. Previously to that, a plea agreement had been reached with five defendants for a total amount of more than EUR 100,000 for the criminal offence of pollution, degradation and destruction of the environment, including the damages.

In the *Brezovicë/Brezovica II Case,* with an indictment filed on 9 December 2022 against 12 defendants, the start of the main trial was postponed on several occasions, and numerous delays occurred since the initial hearing took place on 3 April 2023. However, from November 2024 until January 2025, frequent hearings took place through the planning of successive hearings in line with the recommendations in previous EULEX Justice Monitoring Reports, but once again no hearings took place between January and June 2025.

High-profile cases without significant progress

A considerable number of high-profile cases remained slow-paced or even dormant during this reporting period.

Among them, for example, there is the part severed from the *Hospital Escape Case*, related to the intimidation of witnesses of the war crimes related *Drenica I Case*. This case, with an indictment dated 17 November 2016, was severed from the main one in February 2020 and since then it has been accumulating significant delays. The case concerns eight defendants, including the Mayor of Skenderaj/Srbica Sami Lushtaku.

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 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. During 2025, the case stalled again, more than nine years after the indictment was filed by the EULEX prosecutors, on 3 March 2016.

Similarly, the retrial in the *Salih Qitaku et al. Case* has been dormant since the initial hearing in the retrial in July 2017, initially due to the backlog of cases assigned to the judge, later due to his retirement and currently due to the international arrest warrant against three of the defendants who are abroad, so far to no avail. 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.

Another former EULEX case which saw little or no progress, despite the indictment being filed in 2015, is the *Touareg Case.* This is a particularly challenging case as it involves 41 defendants and complex charges of organised crime, avoidance of payment of mandatory customs fees, smuggling of goods, falsification of documents, prohibited trade and tax evasion, with an estimated damage to the Kosovo budget of over EUR 2.6 million. The case had been transferred from the BC of Mitrovica to the Special Department in the BC of Pristina in February 2024 due to the caseload, alongside 12 other complex cases with indictments filed by EULEX or the Special Prosecution. One of the transferred cases is also the *Transport Case,* for which the indictment was filed in 2016, but unlike the *Touareg Case*, a judgement was announced on 1 July 2025 sentencing seven defendants to seven-year prison sentences for smuggling of goods and participation in an organised criminal group. The other 21 defendants were acquitted. On the other hand, in the *Circuit/Qarku Case,* where the defendants were charged, as part of an organised criminal group, with avoidance of payment of mandatory customs fees, smuggling of goods, falsification of documents, prohibited trade and tax evasion, there have been only two attempts to start the main trial, in April and July 2025, since its transfer to BC of Pristina in February 2024. A new session has been scheduled for October 2025.

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. This case is a former EULEX case against Fahredin Gashi for allegedly committing the criminal offence war crimes against the civilian population, and against Hysri Rama for providing assistance to

perpetrators after the commission of criminal offences. In January 2025, the BC of Pristina suspended the case due to the mental condition of the defendant. The decision of suspension was appealed by the lawyer of the defendant and in March 2025, the CoA accepted the request of dismissal and instructed the BC accordingly. Based on these instructions, the judge dismissed the proceedings in July 2025.

In the former EULEX *Bill Clinton II Case*, with the indictment filed on 22 August 2014 and handed over to the local counterparts on 24 April 2018, no progress was registered for almost four years, caused in part by the COVID-19 pandemic and in part by changes in the panel composition. This case is related to the above-mentioned *Enver Sekiraqa Case*. Immediately after KP 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 revenge allegedly placed a bomb in the building where the Sekiraqa bar was located, which killed two people and injured several others. In the end of 2024, the main trial started, and during 2025 it has been active but at a slow pace.

Furthermore, the investigation in the former EULEX case related to the murder of the EULEX staff member Audrius Šenavičius in September 2013, the *Blue Case,* has seen some developments recently when on 19 October 2025 the KP, on the request of the Special Prosecution, carried out several searches in northern Kosovo.

High-profile cases adjudicated with acquittals

In line with the findings reported in the previous EULEX Justice Monitoring Report, a considerable number of high-profile cases ended with acquittals, although in some of these cases, convictions had been issued in the initial trials. For example, in the former EULEX *Medicus Case*, where the indictments were filed in 2010 for trafficking in human organs and organised crime, claiming that dozens of illegal kidney transplants had taken place at the Medicus Clinic during 2008, in June 2023 the BC acquitted both defendants in the second retrial, although they had been previously found guilty, including by former EULEX panels. The decision on the appeal is still pending.

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. On 28 May 2025, the CoA partially quashed the verdict and returned the case for partial retrial in regard to three counts against the Secretary General of the Ministry of Infrastructure Betim Reçica and upheld the acquittal for the other three. On 22 July 2025, the BC of Pristina announced an acquittal verdict in the retrial of this case.

In the former EULEX *Grande I and II Cases*, the prosecution filed an indictment in December 2016 against a group of 20 defendants, including Ukë Rugova, son of the former President Ibrahim Rugova, before the BC of Pristina. 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 residents from the Embassy of Italy in Pristina, thus acquiring considerable material profit for themselves. The cases were severed in two separate cases. *Grande I Case* (which included Ukë Rugova) ended in an acquittal by the BC of Pristina in March 2023 for the most serious charges. The written verdict became available on 30 June 2023 and was appealed. The case is still pending in the CoA. *Grande II Case* suffered the same developments. In October 2023, all 15 defendants were acquitted, the case was then partially sent for retrial, and in October 2024, the court acquitted all defendants again. The verdict was appealed and is still pending in the CoA.

The *Avanci Case*, in which two officials employed with the Kosovo Agency for Medicinal Products and with the Ministry of Health were indicted with misappropriation in office and intrusion into computer systems in 2020, took five years to be completed only in first instance. According to the prosecutor, the alleged damage to the Kosovo budget amounted to over EUR one million. Finally, in May 2025, both officials were acquitted by the decision of the BC of Pristina.

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, hearings took place regularly in front of the BC of Pristina from mid-2022 until 11 May 2023, but at a very slow pace in the second part of 2023. Several consecutive hearings were scheduled at the beginning of 2024, but few of them were productive. Finally, on 26 December 2024, the BC of Pristina announced the verdict. The former member of the Assembly of Kosovo Azem Syla and eight other defendants were acquitted of all charges, while seven defendants were found guilty of organised crime and sentenced to prison from three to seven years and fines from EUR 20,000 to 50,000.

Other examples are the remaining *Stenta Cases.* In the *Stenta III Case*, dormant from November 2021 to January 2024, the BC of Pristina announced on 21 October 2024 the acquittal of 14 defendants (both physical persons and legal entities), from the charges of giving bribes, irresponsible medical treatment and tax evasion. In relation to the charge of unlawful exercised medical and pharmaceutical treatment, the indictment was rejected because it had reached the statutory limitation. The acquittal verdict was confirmed by the CoA in September 2025.

The *Stenta II Case* had been severed into a larger *Stenta II.1 Case,* with 43 defendants, and the *Stenta II.2 Case,* where a smaller group is tried in parallel. The judgement in *Stenta II.1 Case* was announced on 20 September 2023, and all defendants were acquitted. Since then, the *Stenta II.2 Case* was also adjudicated, again all the defendants were acquitted. On 27 March 2025, the CoA rejected the appeal in the *Stenta II.1 Case* and upheld the previous decision. In September 2025, the CoA also upheld the acquittal verdict in the *Stenta II.2 Case.* After these CoA decisions, all defendants in the *Stenta Cases* have been acquitted based on final judgments.

In conclusion, there have not been significant changes with regard to the handling of high-profile cases since the publication of the 2024 Justice Monitoring Report. Many of these cases, including former EULEX cases, still suffer from prolonged delays and are far from final adjudication. Moreover, the excessive use of retrials, not only once but several times, contributes to a seemingly 'never-ending travel' through the justice system.

Recommendations

- ✓ In line with the KJC Strategic Plan for the Efficiency of Treating Corruption Cases, Abuse of Official Position and Organised crime 2025-2027, EULEX encourages the KJC to continue systematically monitoring the processing of high-profile cases, aimed at identifying and addressing the causes of extremely long proceedings including repeated retrials.
- ✓ EULEX also exhorts the presidents of the courts, including the CoA, to continue in their efforts to ensure that cases are not unduly delayed.

2.2. Productivity of court hearings

Background

As part of its monitoring of selected criminal cases, since 2019 EULEX has been tracking the *ratio* of productive hearings at different stages of the court proceedings, once the main trial has started. Productive hearings are directly linked with the right to a trial within reasonable time, a right guaranteed under Article 6 of the European Convention on Human Rights (ECHR) and the right to redress for victims of criminal offences. When justified by well-founded reasons, for example when it is necessary to collect new evidence, the adjournment of a hearing does not raise particular concerns and can be considered as a normal occurrence in the administration of a case. However, when the repeated adjournment of hearings could have been reasonably avoided and is a consequence of acts or omissions by the authorities, the delay caused is undue, leads to a waste of resources and can weaken public trust in the justice system.

For the purpose of statistical analysis in this report, when assessing the productivity of court hearings, EULEX distinguishes three categories of hearings: productive, unproductive and cancelled. A hearing is considered productive when it is held as scheduled and progress is made towards adjudication, for example, when material evidence is discussed, defendants, injured parties or witnesses are examined or opening and closing arguments are delivered. On the other hand, a hearing is unproductive when it starts but is adjourned without any meaningful progress. Lastly, a hearing is cancelled when, although scheduled often well in advance, is called off on a very short notice (e.g., only one day or even a few hours prior to the hearing) without even commencing.

The statistics shown hereunder refer to hearings scheduled after the main trial had started. The announcements of judgments and pre-trial hearings are not included in the data.

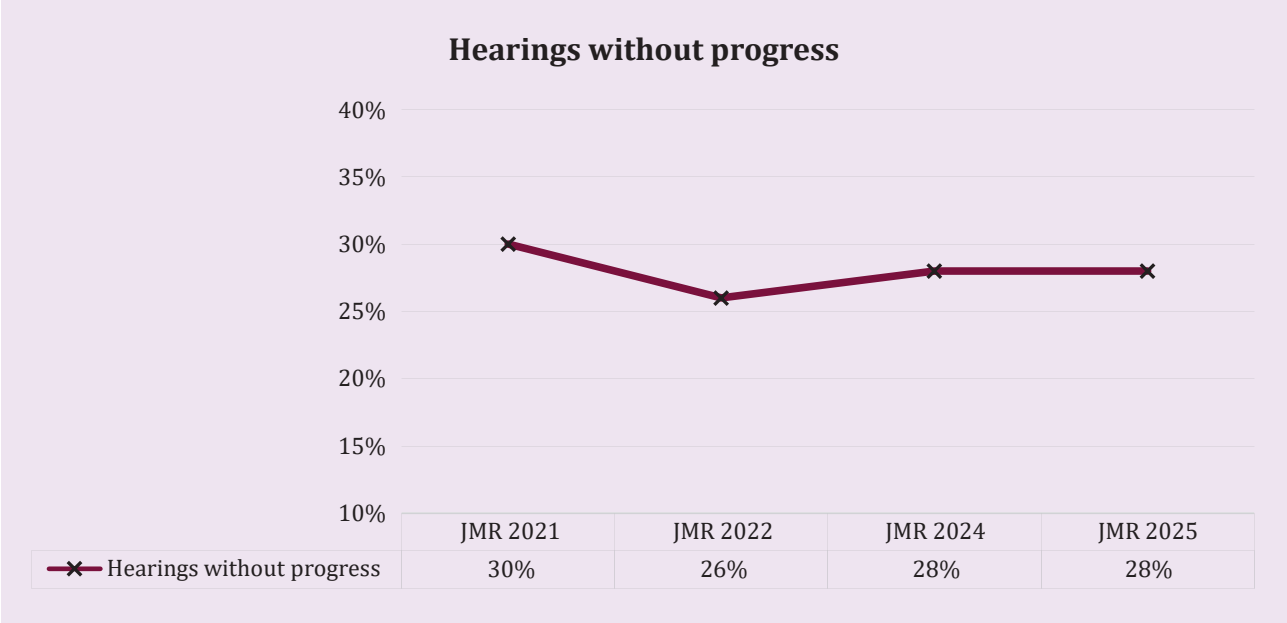
Findings

In the period June 2024 – July 2025, EULEX monitored a total of 478 hearings, out of which 132 (28%) were adjourned without any progress. In particular, 75 hearings, that is 16% of the total, were unproductive and 57 hearings, that is 12% of the total, were cancelled.

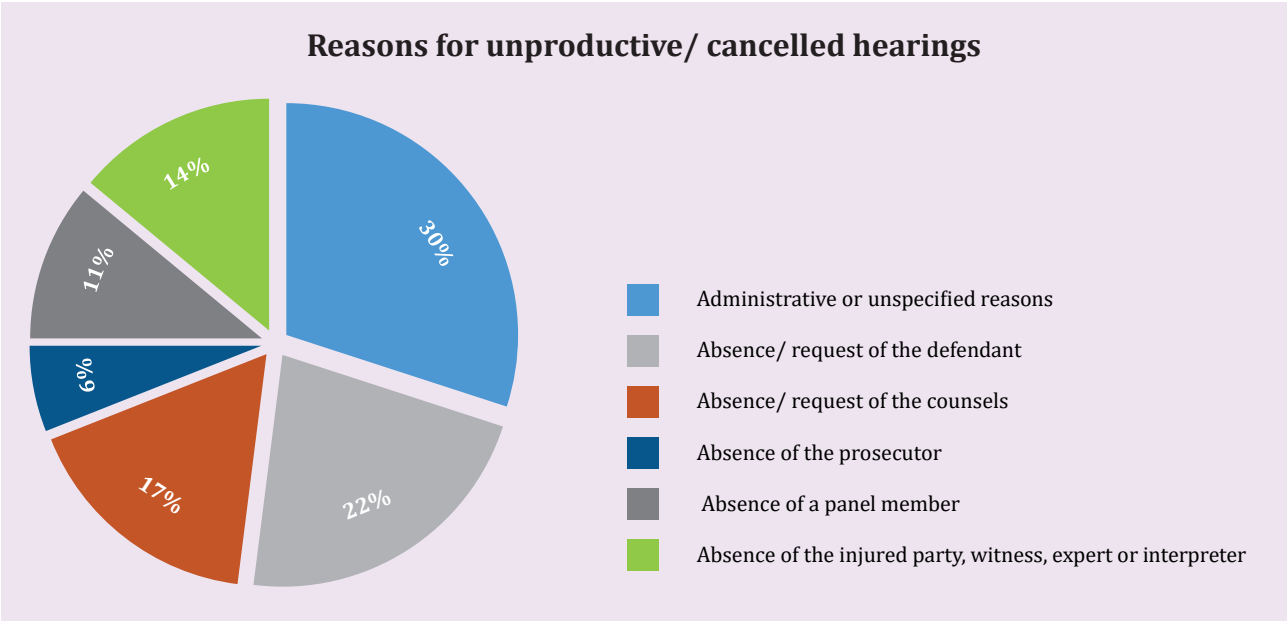
Comparing these numbers with those included in the previous Justice Monitoring Reports published in 2021, 2022 and 2024 respectively, no actual improvement was registered in the productivity of court hearings, as illustrated in the visualisation below, despite the adoption of the Strategic Plan for the Efficiency and Prioritisation of Cases Within the Judiciary 2022-2025 by the KJC in 2022.[1] For reference, in the Justice Monitoring Report from 2021, the *ratio* of unproductive hearings among the ones monitored by EULEX was 30%, in the report from 2022 it was 26%, while in the last report, from 2024, the percentage of unproductive and cancelled hearings was 28%.[2]

1 Strategic Plan for the Efficiency and Prioritization of Cases Within the Judiciary 2022-2025, adopted by the Kosovo Judicial Council on 8 June 2022, is available in Albanian version at https://www.gjyqesori-rks.org/wp-content/uploads/2022/06/KGJK_Plani_strategjik_per_permiresimin_qasjes_ne_drejtesi_2022_2025_lidhur_me_efikasitetin_dhe_prioritizimin_lendeve_brenda_sistemit_gjyqesor.pdf (last accessed on 12 September 2025). Two of the main objectives of the Strategic Plan were to increase productivity and efficiency in handling cases and to strengthen the capacities of the judiciary in handling the large number of cases that fall within the framework of high priority cases, as per Articles II.1 and II.2.

2 Before September 2022, EULEX did not keep track of the number of cancelled hearings, but only of unproductive ones. The tracking was thus amended after this date, including cancelled hearings when EULEX observed, through monitoring activities, a pattern of increased cancelled court sessions.



Also in this reporting period, the two main reasons for unproductive or cancelled hearings are the absence of the defendant or his/her request to adjourn the hearing without any proper justification (29 hearings, or 22% out of the total unproductive/cancelled hearings), followed by the absence or request of counsels to adjourn the hearing (22 hearings, or 17%), mostly claiming that they needed more time to prepare the case or that they were ill. Notably, several hearings had to be adjourned due to the absence of other trial participants: in particular, absence of injured parties, witnesses, experts or court interpreters caused the adjournment of 19 hearings (14%), absent panel members led to the postponement of 14 sessions (11%), while prosecutors not attending the sessions caused postponements in only eight hearings (6%). No progress in the remaining 40 sessions (30%) was caused by various administrative issues (such as delay in translation of court documents, promotion/retirement of panel members, requests for disqualification of panel members, or different technical issues) and unspecified reasons.



Out of the total 478 hearings monitored, 137 were in high-profile cases. The percentage of unproductive and cancelled hearings in this group was of 35% (48 hearings), similar to the 34% registered in the last Justice Monitoring Report. Therefore, this percentage continues to remain high, although high-profile cases should be adjudicated promptly due to the severity of the crimes or the profile of the defendants, as previously highlighted by EULEX.

Furthermore, one of most often-encountered reasons for adjournment of hearings in this type of cases remained the absence of the defendant due to illness. However, EULEX noted that in numerous situations the health condition was not duly verified by the trial panel, medical documents were either submitted late or never submitted. EULEX also observed that, on some occasions, several hearings were adjourned for the same reason before the court decided to apply, one of the measures available in the Criminal Procedure Code (CPC) to sanction the parties who delay the proceedings through their unjustified absence.[3]

For instance, from the hearings monitored by EULEX in the reporting period, there were only very few occasions where the courts applied measures against parties causing unjustified delays, namely fines in the amount of EUR 500 issued against absent defence counsels or arrest warrants ordered against absent defendants.

In conclusion, in the reporting period there was no meaningful progress made towards increasing the *ratio* of productive hearings, with the percentage of unproductive and cancelled sessions remaining relatively at the same level as in the previous years. Additionally, the courts continue to be reluctant in applying the available measures to avoid unnecessary delays and increase the efficiency of the court proceedings.

Recommendations

- ✓ EULEX urges courts to verify, to the best of their capability, the veracity of the reasons provided for the parties' absence and encourages them to refuse to accept any excuse of absence unsupported by written evidence.
- ✓ Trial panels should consider issuing court orders to ensure that absent defendants are brought in front of the court with police escort when absence cannot be duly and timely justified.
- ✓ Courts are encouraged to use available means to hold prosecutors and defence counsels accountable for unjustified delays or absence by notifying the Chief Prosecutor of their assigned prosecution office and the Bar Association respectively.
- ✓ The KJC should ensure that courts implement the objectives set out in the Strategic Plan for the Efficiency and Prioritisation of Cases Within the Judiciary 2022-2025, such as handling in due time high-priority cases and avoid unnecessary procedural delays overall.

3 For measures available to the courts, see Criminal Procedure Code, 08/L-032, 17 August 2022, Articles 65, 301, 302, 304, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

2.3. Judicial oversight in specific types of deprivation of liberty

Background

EULEX monitored several cases where individuals were deprived of their liberty by KP, without apparent or sufficient initial prosecutorial and judicial oversight.

Pursuant to the Kosovo CPC, the KP enjoy a certain degree of initial autonomy from prosecutorial authorities regarding their investigative actions. For example, the police can take steps to collect evidence from the crime scene, pursue suspects found at the crime scene, locate the perpetrators, prevent the perpetrators from fleeing and take other initial steps which must be performed quickly after a suspected crime has occurred.[4] As part of their initial steps concerning criminal investigations, the police also have the right to briefly detain individuals who were found at the crime scene for maximum six hours for the purpose of obtaining their name, address and other relevant information. This type of deprivation of liberty, called "police right to briefly detain", can only be used when no other means are available to gather the information.[5]

These limited, initial and autonomous investigative actions should be understood to cover the immediate period after a crime has occurred, and concern actions which must be taken quickly. While formally not considered as an initial investigative police action, the police are also allowed to arrest persons caught in the act of committing a criminal offence prosecuted *ex-officio*, or who are being pursued immediately after committing the offence, without a court order or the authorisation of the prosecution. This is called under the CPC "provisional arrest".[6] Aside from these two forms of deprivation of liberty, namely the "provisional arrest" and the "police right to briefly detain", the CPC stipulates that the police shall deprive a person of liberty only if there is either a local or international arrest warrant or when the arrest is authorised by the prosecution. However, an arrest authorised by the prosecution is only permitted after the prosecution has already initiated an investigation, which requires a "reasonable suspicion" that a criminal offence has been committed. In addition, the prosecution must have established both a "grounded suspicion"[7] – which carries an even higher threshold than "reasonable suspicion"[8] – and the conditions for pre-trial detention, such as *inter alia* a risk of flight or a risk of destroying evidence.[9] It should be noted that the provision of six-hour "temporary police custody" as regulated by the Law on Police is not relevant in this context, as the cases referred to in this section pertain to criminal investigations for which the CPC prevails.[10]

4 Criminal Procedure Code, 08/L-032, 17 August 2022, Articles 70 to 78. https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

5 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 73: Police Right to Briefly Detain, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

6 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 160: Provisional Arrest and Police Detention, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

7 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 19, paragraph 1.9: '*Grounded Suspicion - knowledge of information which would satisfy an objective observer that a criminal offence has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned is more likely than not to have committed the offence. Grounded suspicion must be based upon articulable evidence*', https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

8 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 19 paragraph 1.8: '*Reasonable Suspicion - knowledge of information which would satisfy an objective observer that a criminal offence has occurred, is occurring or there is a substantial likelihood that one will occur and the person concerned may or may have committed the offence. What may be regarded as "reasonable" will depend on all the circumstances*', https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.*What may be regarded as "reasonable" will depend on all the circumstances*', https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=61759. https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=61759.

9 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 162: Arrest and Detention During Investigation Stage, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

10 Law on Police, 04/L-076, 19 March 2012, last amendment on 27 December 2024, Article 11, paragraph 2, https://gzk.rks-gov.net/ActDetail.aspx?ActID=2806&langid=2: '*The powers and limitations of a Police Officer during performance of duties related to criminal investigation generally are described by other laws including, but not limited to, the Criminal Procedure Code'.* Article 20,

The CPC also stipulates that the police must report to the prosecution about every initial step undertaken as soon as possible and that the prosecution and police should work together during these initial steps to determine whether a criminal proceeding is warranted based on the establishment of "reasonable suspicion".

Findings

EULEX has observed that in several criminal cases, individuals were deprived of their liberty by the police for up to six hours for further questioning, without prior knowledge of the prosecution, because their names appeared on a dedicated register of the KP, internally labelled as 'stop list'. This register is an integral part of the Kosovo Police Information System, an internal KP tool which is regulated by a Standard Operating Procedure (SOP). This specific deprivation of liberty is arguably not covered by the CPC, as the prosecution must be informed of every initial step undertaken as part of a criminal investigation, while the six-hour police detention from Article 73 of the CPC can only be used to obtain information from persons found at the crime scene. As explained by the KP management, there is an understanding that the police can legally stop any person placed on this KP register on their own authorisation and keep that person up to six hours for questioning, even though this cannot be considered anymore as falling under the initial police powers, which cover only the period immediately after the occurrence of the criminal offence. While this is not of concern in cases where there is an arrest warrant issued by the court, or an arrest is already authorised by the prosecution, it however raises concerns when the persons on this register are not wanted based on an arrest warrant or if an arrest is not authorised by the prosecution. The CPC and the Law on Police make no reference to deprivation of liberty based on this KP register and any deprivation of liberty must meet the requirements foreseen by international human rights standards, particularly the requirement of lawfulness, which includes legal certainty and the absence of arbitrariness. *Prima facie,* a deprivation of liberty which is based on an internal KP SOP does not meet the requirement of lawfulness, which is extensively outlined in the European Court of Human Rights (ECtHR) jurisprudence on Article 5 of the ECHR.

Practice has shown in several cases that where the deprivation of liberty was based on this KP register, the police used the six-hour period to inform the prosecution and ask for the authorisation of an arrest. In many of these cases, it was observed that neither a criminal report had been filed yet nor had an investigation been opened by the prosecution, which means that no "reasonable suspicion" had been established yet by the prosecution. It should be reiterated that, in accordance with the CPC, in order to authorise an arrest, the prosecutor must first have established a "grounded suspicion" and conditions for pre-trial detention.

This practice implies that the prosecution is placed in the difficult position to decide in a very short timeframe (due to the six-hour maximum police detention), on cases of which they had no prior knowledge and often without any newly obtained information or evidence. Namely, in these cases, the prosecution has to open an investigation retroactively through a "ruling on initiation of investigation", which can only be done if there is "reasonable suspicion", and then authorise the arrest, which can only be done based on an established "grounded suspicion" and the existence of the conditions for pre-trial detention. However, it was observed that in most monitored cases, the prosecution acceded to the request of the police to authorise an arrest and subsequently asked for 30-day detention as the most severe security measure, which was then also granted by the court.

paragraph 1: '*A Police Officer has power to take a person into temporary custody when it is necessary to: 1.1. protect the person from harm or danger, especially when the person is in a helpless condition; or 1.2. to identify the person or to restrict the movement of the persons as authorized by law, when the person is uncooperative with lesser measures*'.

EULEX notes positively that several interlocutors in the justice system have acknowledged that this practice raises concerns and that it must be carefully scrutinised against the CPC and applicable human rights standards.

Recommendations

- ✓ Except for cases specifically outlined in the CPC concerning the arrest of suspects, the KP is recommended to refrain, on their own initiative or without instruction or order by the prosecution, from adding individuals on a dedicated KP register aimed at depriving them of their liberty.
- ✓ EULEX calls on the Office of the Chief State Prosecutor, the Kosovo Prosecutorial Council (KPC) and the KP to jointly review the compliance of current practices and to provide clear instructions to the KP to ensure that their actions are fully in compliance with the CPC requirements and applicable human rights standards.

2.4. Enforcement of accessory punishments

Background

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.[11] Article 59[12] of the Criminal Code (CC) 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[13] and 63[14] further regulate these two accessory punishments. In the CC of 2019, new provisions were introduced in Articles 62 and 63, which made it mandatory to impose the two mentioned accessory punishments in, *inter alia*, corruption cases.

In its 2022 and 2024 Justice Monitoring Reports, EULEX observed inconsistencies and a lack of standardised practices in the enforcement of these two categories of accessory punishments, in particular in terms of responsibility of the Execution Officer for Criminal Sanctions across the basic courts, communication with the institutions mandated to oversee the execution (Ministry of Public Administration[15] and Ministry of Labour and Social Welfare[16]) as foreseen by the Law

11 According to Article 40 of the Criminal Code, 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 46 of the Criminal Code, are 1) suspended sentence, 2) semi-liberty sentence and 3) an order for community service work.

12 Criminal Code, 06/L-074, 14 January 2019, Article 59, paragraph 2: '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 licence, 7) order to publish a judgment and 8) expulsion of a foreigner from Kosovo', https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

13 Criminal Code, 06/L-074, 14 January 2019, Article 62, paragraph 3: '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 offences covered in Chapter XXXIII (Corruption and criminal offences against official duty) of this Code'. Article 62, paragraph 4: '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', https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

14 Criminal Code, 06/L-074, 14 January 2019, Article 63, paragraph 4: '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 offences in Chapter XXXIII (Corruption and criminal offences against official duty) of this Code', https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

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

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

on Execution of Penal Sanctions (LEPS),[17] registration in the Central Criminal Record System, and conversion of imprisonment sentences to fines.

Findings

In the reporting period, EULEX found that the enforcement of criminal sanctions continues not being consistently treated as a responsibility of the Execution Officer for Criminal Sanctions in most of the basic courts. This task is also often dispersed among different offices or staff, which does not contribute to efficiency or accountability. As already underlined in the 2021 Justice Monitoring Report, it is necessary to better define the role and responsibilities of the Execution Officer for Criminal Sanctions in enforcing final criminal sanctions, including accessory punishments.

Positively, EULEX observed that several courts started to apply one of the two specific provisions in the Law on Execution of Criminal Sanctions (LECS) by submitting relevant judgments to the Ministry of Internal Affairs from fall 2024 onwards. However, the Ministry of Finance, Labour and Transfers has not yet received any judgment from the courts for the supervision of the execution of accessory punishments. EULEX noted that not all staff in basic courts in charge of the enforcement of such accessory punishments have been sufficiently informed yet about these legal provisions. EULEX also determined again that in some cases, accessory punishments were not duly, or were inaccurately, registered in the Central Criminal Record System, despite efforts made in this regard at central level to increase data quality control.

As in its 2022 and 2024 Justice Monitoring Reports, EULEX collected a sample of cases to assess whether the accessory punishments, mandatory in corruption convictions in case of punishment by imprisonment, had indeed been imposed as required by the law. EULEX also considered cases of fines or suspended sentences following the indication of the SC in its 2021 Specific Guidelines for criminal offences of corruption, which establish that when imposing a fine or suspended sentence, the court should take into account the prohibition under paragraph 2 of the Article 62 of the CC.[18]

In particular, EULEX assessed cases under the following criminal offences:

- *Abuse of official position*

Based on the assessment of 28 guilty judgments pursuant to Article 414 of the CC, EULEX identified that accessory punishments were imposed in 17 judgments. In two other judgments, the imprisonment sentence was suspended and in six other judgments the imprisonment sentence was converted to a fine and no accessory punishments were imposed in these eight judgments. Moreover, there were three judgments where there was an obligation to impose an accessory punishment, which was nevertheless not imposed by the court, in violation of the law. In one of the abovementioned 17 judgements with accessory punishments, the imprisonment had been suspended but the court lawfully decided to also establish an accessory punishment. Out of the 17 cases with accessory punishments, there were two cases in which there was also a conversion of imprisonment into a fine but where the accessory punishment remained. It is relevant to highlight that the range of imprisonment for this offence is one to eight years.

17 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.

18 Criminal Code, 06/L-074, 14 January 2019, Article 62, paragraph 2: "The court may prohibit a perpetrator from exercising public administration or public service functions for one (1) to three (3) years, if such person has abused these functions and has been punished by fine or suspended sentence", https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

This means that the minimum punishment was imposed in five judgments, and even below the minimum punishment in six judgments. It should be noted that a six-month imprisonment is the maximum period for which a conversion to a fine is allowed. As mentioned above, in eight cases the imprisonment punishments were later converted to fines by which for six of them a mandatory application of an accessory punishment was avoided.

- ***Abuse and fraud in public procurement***

Based on the assessment of four guilty judgments pursuant to Article 415 of the CC, EULEX assessed that in one judgment the imprisonment sentence was suspended, and no accessory punishment was imposed. In two other judgements, the imprisonment sentence was converted to a fine, however this did not prevent the court from imposing an accessory punishment. In a fourth case, the imprisonment sentence included an accessory punishment.

- ***Conflict of Interest***

Based on the assessment of one guilty judgment pursuant to Article 417 of the CC, accessory punishment was not imposed in a suspended one-year imprisonment sentence.

- ***Misappropriation in Office***

In a guilty judgment pursuant to Article 418 of the CC, one accessory punishment was imposed in accordance with the law in a judgement with a three-year imprisonment sentence.

- ***Fraud in Office***

Based on the assessment of one guilty judgment pursuant to Article 419 of the CC, a six-month imprisonment sentence was converted into a fine without any accessory punishment.

- ***Accepting Bribes***

Based on the assessment of four guilty judgments pursuant to Article 421 of the CC, the court imposed four accessory punishments in cases with imprisonment sentence.

- ***Trading in Influence***

Based on the assessment of two guilty judgments pursuant to Article 424 of the CC, there was no accessory punishment imposed in one case where the defendant had been condemned to eight-month imprisonment, while imposing an accessory imprisonment would have been mandatory in this case.

- ***Falsifying official document***

Based on the assessment of four guilty judgments pursuant to Article 427 of the CC, there was no accessory punishment imposed in one case where the defendant had been sentenced to imprisonment for one year and six months, and for which it was mandatory. In the second case, concerning a suspended sentence of one-year imprisonment, and in the third case, where a six-month imprisonment was replaced by a fine, no accessory punishments were imposed. In the fourth case, where a six-month imprisonment was converted into a fine, the basic court did impose an accessory punishment.

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

Based on the assessment of 16 guilty judgments pursuant to Article 430 of the CC, only in one judgment an accessory punishment was imposed (in conjunction with a fine and a suspended four-month imprisonment), while in three judgments there was only a fine imposed as punishment. In 12 judgments, the imprisonment sentence was suspended (five cases) or converted into a fine (seven other cases), with no accessory punishment being implied.

Minimum prison sentences were imposed in four cases and sentences below the minimum in another four, out of which three were suspended and five converted into fines, avoiding the mandatory application of an accessory punishment.

To conclude, EULEX assessed that the findings of its 2024 Justice Monitoring Report are still largely valid. Similar inconsistencies and lack of standardised practices in the application and enforcement of the two assessed categories of accessory punishments have continued in 2025. Despite some observed improvements in the implementation with an increased application of mandatory accessory punishments, more efforts in the quality control of the data of the Central Criminal Record System and increased communication of judgements by some basic courts to the Ministry of Internal Affairs, the below recommendations remain applicable. EULEX again identified judgments of cases where the accessory punishment of prohibition on exercising public administration or public service functions should have been imposed pursuant to Article 62, paragraph 3, of the CC. Lastly, there is currently no monitoring mechanism in place to assess whether judges apply the mandatory accessory punishments in corruption related cases.

Recommendations

- ✓ EULEX recommends the KJC to 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 is advised to establish an automated system of data collection for accessory punishments and their enforcement through the CMIS, 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 complete data related to accessory punishments. To facilitate this, EULEX recommends introducing a specific data field to include information about the existence of an accessory punishment, its nature and specific duration.
- ✓ The courts are to be reminded by the KJC 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 CC.
- ✓ EULEX encourages the KJC to 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 into fines, leading not only to the avoidance of imprisonment sentences but also to the avoidance of the mandatory application of accessory punishments.

2.5. Planning and scheduling of multiple sessions in main trials

Background

In its 2022 Justice Monitoring Report, EULEX addressed the 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 ECHR. Since planning and scheduling of court sessions considerably impact on the progress of court proceedings, EULEX recommended that the courts should plan the entire

main trial at an early stage of the proceedings, schedule the following sessions within one month whenever possible and plan several sessions on consecutive days, especially in trials with a high number of defendants.

The conclusion in the 2024 Justice Monitoring Report was that both KJC and the Special Department at the BC of Pristina had developed awareness of the importance of case management and of the practice of planning future sessions through their strategic plans and workplans. While some improvement was observed in several trials involving a high number of defendants, in general, no improvement could be observed regarding scheduling of following sessions within one month or scheduling of consecutive sessions.

For the 2025 Justice Monitoring Report, EULEX tracked the scheduling of court sessions in criminal cases monitored during the period from September 2024 to June 2025. The tracking does not include detention hearings and initial hearings, as no planning of the trial is done in these hearings. Furthermore, the tracking does not include trials where only one session was observed, and no new session was scheduled. Finally, cancelled and unproductive sessions are counted as scheduled sessions. The methodology for this report slightly differs from the one used in the previous Justice Monitoring Reports. With regard to scheduling sessions within a month, in this report the tracking is concentrated on the period between two sessions, not the time from when the session was scheduled. The reasons for this are that the practice of scheduling multiple sessions has become more common, the block of sessions often consists of more than two hearings, and the sessions are not necessarily on consecutive days. Hence, the sessions are mostly no more than a month apart. The other difference in methodology is that in this report, the number of trials where the court, on one or more occasions, has scheduled more than one hearing at once is also counted. This tracking gives an indication on how common it is to schedule multiple sessions in the cases monitored by EULEX.

Findings

During the above-mentioned tracking period, EULEX counted 395 scheduled sessions in 64 different cases. It was observed that the court scheduled multiple sessions once or several times in 37 cases. In the rest of the cases (27), only one future session was scheduled after each session. In the previous Justice Monitoring Report, EULEX established that the courts scheduled two or more sessions in 40% of the sessions where follow-up sessions were scheduled. Because of the increased practice of scheduling more than two sessions at once, fewer hearings are used to schedule a higher number of sessions. For instance, in the *Cocaine Case*, where there are six defendants, the court has so far scheduled four blocks of respectively five, three, five and two sessions, all together 17 sessions since October 2024. In the *Gjilan/Gnjilane Triple Murder Case,* a case with three defendants, there are five blocks of five or four sessions in each block, altogether 20 scheduled sessions since September 2024. In the *Brezovicë/Brezovica II Case*, a complicated case with 12 defendants where the trial started in November 2024, the court has already scheduled 25 sessions in four blocks of respectively four, five, seven and nine sessions. It should be mentioned, however, that the *Brezovicë/Brezovica II Case* suffered from several cancelled sessions. For instance, a whole block of seven hearings got cancelled.

From the tracking, it is also observed that out of the 395 scheduled sessions, 58 sessions were more than a month apart, 26 sessions more than two months apart and seven sessions more than three months apart. In the 2024 Justice Monitoring Report, it was observed that in 44% of the cases, follow-up sessions were scheduled within one month, 45% within two months and 11% within three months or more. Even if the methodology is slightly different, in the last tracking period, the sessions were regularly scheduled within a month from each other, with only about 15% of the sessions scheduled more than a month apart, and less than 7% with more than two months apart.

Comparing the data, the practice of scheduling more than one future session, and even more than two sessions, has increased substantially, especially in multi-faceted cases and cases with many defendants. Moreover, in the vast majority of trials, there is no more than one month between two sessions, showing a positive development in the planning of trials, in accordance with EULEX previous recommendations.

It should be noted that the Workplan for 2025 of the Special Department of the BC of Pristina[19] (Workplan) emphasises that the Special Department will continue with consecutive sessions for identified cases, highlighting that this remains a priority for the 2025 work plan as it was for the previous one. Considering that many of the trials monitored by EULEX are handled by the Special Department of the BC of Pristina, it is a fair assumption that the practice encouraged by the Special Department has contributed to the observed positive development regarding scheduling of hearings.

However, scheduling of sessions continues to be planned during the trial and after a court session, not at the very beginning of the court proceedings. In fact, the scheduling of a preparatory meeting and a statutory hearing to plan the progress of the case and to determine (among other things) *"the working hours (timetable and number of necessary court hearings for the specific case)"* is also emphasised in the above-mentioned Workplan. Furthermore, it is stated that the trial panel *"identifies the necessary days of consecutive hearings for the specific case and sets the dates of consecutive hearings. It informs the parties about the consecutive hearings and the activities that will be undertaken in these hearings, including monitoring the implementation of consecutive hearings and the implementation of planned activities"*. This is in line with EULEX recommendations from the 2022 Justice Monitoring Report.

Ideally, all the sessions of the trial should be scheduled on consecutive days in one block. This would ensure keeping the trials concise and effective. The professional parties would use less time for preparation for each hearing, and the quality of the verdict would benefit. However, the CPC sets a deadline for starting the main trial (within one month after the indictment is confirmed)[20] and this, in combination with the scheduling practice up to now, might lead to difficulties in gathering prosecutors and defence lawyers within a short period of time to conduct an entire trial on consecutive days. On the other hand, the positive developments described above, in combination with proper planning of the trials emphasised in the Workplan, may open the possibility of more structured and effective handling of the trials.

Recommendations

- ✓ EULEX encourages the courts to continue their efforts to plan several sessions on consecutive days whenever possible, as this has proven to enhance efficiency in the conduct of the trials.
- ✓ The courts are recommended to adopt a plan to schedule the entire main trial at an early stage of the proceedings, as foreseen in the Workplan for 2025 of the Special Department of the BC of Pristina.
- ✓ EULEX advises the KJC to consider the courts capability to plan and schedule trial sessions as an efficiency indicator.

19 Work Plan of the Special Department at BC of Pristina for 2025 (to be approved by KJC).

20 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 280 and Article 249, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2861.

2.6. Length of time to receive written judgments from basic courts

Background

Article 6 of the ECHR guarantees the right to a fair trial within a reasonable time. This right is also recognised explicitly by the Kosovo Constitution under Article 31. To give effect to this right, the CPC establishes specific time limits to complete the different stages of the proceedings and time limits for the parties or the court to perform specific acts. [21]

With regard to the judgment, Article 368 of the CPC states that this shall be drawn up in writing within 15 days of its announcement, if the accused is in pre-trial detention or if pre-trial detention has been imposed, while in all other cases it shall be drawn within 30 days of its announcement. As an exception, when a case is complex, the single trial judge or presiding trial judge may ask the president of the court to extend the deadline up to 60 days.

Findings

From July 2023 to April 2025, EULEX calculated the time elapsed between the oral announcement of judgment until the delivery in writing in 32 criminal cases.[22] Of these cases, half are considered complex cases and half non-complex cases, as per Article 19 of the CPC. In five cases, the defendants remained in detention after the announcement.

In about half (17) of all the monitored cases, the judgment was not delivered within the time prescribed by the CPC. In the cases that are considered complex, half of the judgments were delayed, and in the cases that are not considered complex, more than half (nine) judgments were delayed. The average time of delay was 36 days in non-complex cases and 25 in complex cases. In some cases, the delays were significant. In one complex case, for example, the judgment was delayed by 88 days, and in one non-complex case, by 131 days. In these specific cases, the defendant(s) did not remain in detention after the announcement. It is noteworthy that in the *Skopje Highway Case*, which is a high-profile case, the judgment was drafted within 49 days of the announcement, showcasing a strong commitment to follow the deadline even in a complex case.

In two complex cases, the defendant(s) remained in detention, and the judgments were rendered within 53 and 58 days respectively, therefore were not delayed. In three non-complex cases, the defendant(s) remained in detention and while in one case the judgment was not delayed, in the other two the judgment was delayed by 45 and 14 days respectively. Considering that the timeline for the written judgment is shorter in cases with pre-trial detention, they should be prioritised.

From information provided to EULEX from basic court judges, it can be concluded that when an extended deadline is considered justified by the presiding or single trial judge, the judge requests an extension from the president of the court. If the president of the court agrees, which is most often the case, as prescribed by the CPC the president of the court makes the decision, which is then documented in the case file. According to the judges, the parties are not informed about the decision, so they are not aware if the judgment will be rendered within 15, 30 or 60 days, or if there will be a longer delay. Considering the importance of a criminal judgment, in particular for the defendant and injured party, the timeframe in which the sentence shall be delivered should be transparently communicated with all involved parties. As explained by

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

22 Out of the 32 cases, 23 cases are from Basic Court of Pristina, three cases are from Basic Court of Mitrovica, two cases are from Basic Court of Gjakovë/Đakovica, two cases are from Basic Court of Ferizaj/Uroševac and one case each from Basic Court of Prizren and Basic Court of Pejë/Peć.

judges, the delays are often due to lack of time, as they are busy with hearings almost on daily basis, and they can draft the judgement only after working hours.

EULEX findings show that the basic courts, in many cases, do not abide by the time limits set by the CPC. While drafting judgments is often a time consuming and complex task, and judges often lack time to work on it, it is highly important that the courts operate within the framework of the law. The parties, particularly the defendants, should not have to wait for an undetermined period to receive a judgment, even if they are aware of the outcome of the trial from the announcement of judgment. Failure of the courts to meet the deadline can negatively impact the trust in the judiciary. Ultimately, a delay in rendering the written judgment can contribute to negatively affect the reasonable length of the proceedings and even lead to a violation of the right to a fair trial,[23] especially as the delay affects when a possible appeal of the judgment can be filed.[24]

Recommendations

- ✓ EULEX urges the basic court judges to finalise the written judgments within the legal timeframe, while especially prioritising cases where the defendant(s) remain in detention.
- ✓ For the basic court judges, it is important to allow more time out of hearings to draft judgments, within the working hours.
- ✓ EULEX strongly recommends that court presidents communicate decisions to extend deadlines for the delivery of written judgments pursuant to Article 368 of the CPC, to all involved parties.

2.7. The ongoing practice of law by indicted or convicted lawyers

Background

Lawyers play a fundamental role in upholding the rule of law, securing access to justice and ensuring the protection of human rights. In order to fulfil this role, they must act with integrity, independence, and in the best interests of justice.[25]

In Kosovo, the exercise of the legal profession is regulated by the Law on the Bar, which sets out the conditions for suspension, termination, and loss of the right to practice.[26] According to this

23 ECtHR, *B v. Austria*, 28 March 1990, paragraph 52.

24 According to the ECtHR case law, the period to which Article 6 is applicable covers the whole proceedings, including appeal proceedings, see *König v. Germany*, 28 June 1978, paragraph 98.

25 Standards set out in, for example: the General Principles for the Legal Professional, Adopted by the International Bar Association on 20 September 2006, https://www.ibanet.org/MediaHandler?id=E067863F-8F42-41D8-9F48-D813F25F793C; the Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers; or the Recommendation No. R (2000) 21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, Adopted by the Committee of Ministers on 25 October 2000 at the 727th meeting of the Ministers' Deputies, https://www.icj.org/wp-content/uploads/2014/10/CoE-rec200021-freedom-exercise-profession-lawyer.pdf (last accessed on 12 September 2025).

26 Law no. 04/L-193 on the Bar, 31 May 2013, Article 37, paragraph 3, https://gzk.rks-gov.net/ActDetail.aspx?ActID=8673&langid=2: *'If the practice of bar is suspended due to the disciplinary proceedings instituted against the lawyer, the duration of suspension shall be calculated against the duration of the imposed measure for the suspension of bar. (…)'*. Article 38: *'Bar practice is terminated: if criminal proceedings are initiated for criminal offence, which makes the lawyer indecent to practice bar; 1.2. if disciplinary proceedings are initiated against the lawyer due to gross violation of his/her duty and reputation of bar; 1.3. if the lawyer has been sentenced for criminal offence, which makes him/her indecent to practice bar; (…)'*. Article 39: *'A lawyer should lose the right to practice bar if: (...) 1.5. he/she has been imposed with disciplinary sentence of permanent prohibition to practice bar; (…). 1.9. he/she has been sentenced to more than one (1) year in prison for criminal offence that makes him/her indecent to practice bar; (...)'*.

law, a lawyer may be suspended if the circumstances of a case the lawyer is involved in lead to the initiation of disciplinary proceedings but are not grave enough to trigger the termination of practice. On the contrary, if the criminal offences the lawyer is accused of are rendering the lawyer unfit to practice, or the lawyer is convicted of such offences, the right to practice law is terminated.

A key distinction exists between indictment (formal charges) and conviction (a finding of guilt). An indictment does not equate to guilt and is subject to the presumption of innocence under Article 6, paragraph 2, of the ECHR. Therefore, automatic suspension or disbarment based solely on an indictment is generally considered disproportionate and potentially unlawful, but a temporary suspension may be permissible in exceptional cases where the integrity of the profession or public trust is at stake. In contrast, criminal convictions, particularly those involving abuse of position/authority, corruption, obstruction of justice, or violence, typically warrant disciplinary sanctions, including disbarment, in line with the ECtHR jurisprudence.[27]

Findings

EULEX identified several instances during main trial proceedings where lawyers, despite being subject to ongoing criminal proceedings or having been convicted, albeit not by a final judgment, were still providing legal representation to defendants. In some cases, the criminal charges against these lawyers were directly related to their professional conduct, including but not limited to providing assistance to perpetrators after the commission of a criminal offence,[28] obstruction of evidence or official proceedings,[29] and trading in influence.[30]

For instance, EULEX monitored a hearing in which a defence counsel, himself a defendant in an ongoing sexual abuse court case, had to request the hearing adjournment because he had to be present in his own hearing in the capacity of defendant. In another high-profile case monitored by EULEX, one of the defence counsels had been himself accused and was undergoing court proceedings for corruption, while in another high-profile case, one of the defence counsels had been arrested on charges related to providing assistance to perpetrators after the commission of a criminal offence, obstruction of evidence or official proceedings and trading in influence. A few days later, the same lawyer was present in courtroom in his capacity as defence counsel, although his arrest and ongoing investigation against him had already been made public.

Despite multiple written and in-person requests, the Kosovo Bar Association (KBA), invoking confidentiality, has not provided statistical data regarding the number of lawyers under indictment or convicted or the number of disciplinary proceedings initiated in such cases, although EULEX requested only numerical data, without any personal information. Additionally, from the information received by EULEX from the KJC, the CMIS does not distinguish defendants based on their profession, making it impossible to determine how many active lawyers are subject to ongoing criminal trials.

The cases monitored by EULEX, although limited in number, may raise questions about the integrity of the legal profession if it allows lawyers subject to active criminal proceedings to continue practicing law, particularly when other key actors in the justice system, such as prosecutors or judges, are suspended under similar circumstances.

27 ECtHR, *Samarin v. Russia,* 2017: ECtHR upheld the disbarment of a lawyer convicted of extortion, emphasising the importance of upholding public confidence in the legal profession. ECtHR, *Dimitrov v. Bulgaria*, 2011: ECtHR ruled that a lifelong ban for a minor offence was disproportionate, reinforcing the principle of rehabilitation.

28 Criminal Code, 06/L-074, 14 January 2019, Article 380, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413 https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18413.

29 Criminal Code, 06/L-074, 14 January 2019, Article 386, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

30 Criminal Code, 06/L-074, 14 January 2019, Article 424, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

Recommendations

- ✓ EULEX recommends the KBA to revise and enforce internal disciplinary rules in accordance with the Law on the Bar and ensure that investigations into professional misconduct are initiated *ex officio* upon knowledge of a member's indictment or conviction.
- ✓ The KBA is also encouraged to apply *interim* measures that can be imposed pending the outcome of criminal proceedings, with built-in safeguards for due process and proportionality.
- ✓ To enhance accountability, EULEX proposes the KBA to revise its approach to transparency in line with the public interest and international best practices, including public reporting of aggregated data concerning disciplinary cases, suspensions and disbarments with respect to confidentiality principles and, in cooperation with oversight bodies, and other monitoring entities, to provide relevant data under appropriate safeguards.
- ✓ EULEX also encourages the KJC, in coordination with the Ministry of Justice, to initiate technical upgrades to the CMIS system to include optional tagging of professional status (e.g., lawyer, prosecutor, judge, notary).

2.8. Implementation of the Sentencing Guidelines by basic courts

Background

On 15 February 2018, the SC adopted non-binding General Sentencing Guidelines for Kosovo in order to unify the sentencing practice of the courts and address the problem usually referred to as 'sentencing disparity'. In this context, this term essentially implies imposing unwarranted different punishments for the same criminal offence, which can lead to a violation of the right to a fair trial.[31] The aim of the Sentencing Guidelines is to support judges in fair decision-making by providing them with an indicative list of circumstances to be utilised in mitigation and aggravation of sentences, as a complement to the sentencing rules set out in Articles 69 and 70 of the CC.[32] Apart from the indicative list of mitigating and aggravating circumstances, the Sentencing Guidelines also provide judges with numerical tables with suggested starting points to calculate the punishment.

In order to address specific aspects of sentencing, in February 2020 the SC adopted Specific Guidelines on Imposition of Fines as a Sanction in Criminal Offences from the Criminal Code (and developed a calculator for calculating the criminal fine) and in June 2021, the specific Sentencing Guidelines for Official Corruption and Offences Against Official Duty. They do not replace the General Sentencing Guidelines but provide elaboration regarding these specific offences.

On 8 November 2024, to unify the sentencing practice of the courts after the entry into force of the new CC in 2019, the SC adopted new Sentencing Guidelines, repealing the ones from 2018. Unlike the 2018 Sentencing Guidelines, where the average between the legal minimum and maximum was set as the starting point for all punishments provided for by the CC, a different approach has been taken in the 2024 Sentencing Guidelines. For each chapter of the CC (excluding Chapter XXXIII, which is covered by the Sentencing Guidelines for Official Corruption and Offences Against Official Duty mentioned above), three different scales of starting points

31 Judgment of the Constitutional Court, Pristina, 20 July 2012. Ref No. AGJ 285/12, Case No. KI 04/12.
32 Criminal Code, 06/L-074, 14 January 2019, Article 69 and Article 70, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

have been determined – a third, half or two thirds of the stipulated minimum and maximum of the punishment, depending on the danger and prevalence of the criminal offences, as well as on the general interest for stricter policy both in legislation and in implementation. The starting points define the position within a category scale from which to start calculating the sentence. Once the starting point is established, the court considers further aggravating and mitigating factors and previous convictions to adjust the sentence within the range. Calculation of aggravating factors is conducted by adding the appropriate percentage of this factor to the starting point, while the calculation of the mitigating factors is conducted by reduction of the appropriate percentage of this factor from the starting point. As next steps, the court determines whether alternative and/or accessory punishments for that offence are possible, proportionate and adequate and determines restitution/compensation.[33]

Findings

To assess if the basic courts follow the General Sentencing Guidelines of the SC (Sentencing Guidelines), EULEX analysed randomly selected basic courts judgments published between January 2024 and June 2025 for 12 criminal offences.[34] Based on this assessment, EULEX found that sentencing in basic courts for the same criminal offences continues to be inconsistent. All analysed judgments have a reasoning part on how the punishment is determined, and they include determination on the principal punishment and then reference to the general rules set in Articles 69 and 70 of the CC. Still, the reasoning relies on templates which tend to be very general, and it does not reflect the specific considerations in each case. In none of the analysed judgments, the courts explain what evidence supported the conclusions that the defendant's personal circumstances is a mitigating factor. Moreover, when imposing a fine, the courts do not specify in the judgments the income and the financial situation of the defendant and do not explain how the imposed fine is calculated.

For example, according to the 2018 Sentencing Guidelines, applicable until the autumn of 2024, for the criminal offences of illegal possession of weapons,[35] the starting point to calculate the punishment is the midway point of the available range identified by the CC for each specific offence. At the midway point, the court is given the maximum discretion to move up or down within the statutorily established range.[36] Although the midway point of the alternative punishment for illegal possession of weapons is a EUR 3,750 fine (the stipulated punishment under the Article is a fine up to EUR 7,500 or imprisonment of five years), the highest punishment imposed in the analysed cases is a EUR 1,500 fine even when the defendant had a past criminal record. In addition, when suspended sentences are imposed, the court does not include specific reasoning as to why it believes the threat of punishment is sufficient to deter the defendant from committing another offence. In most of the judgments concerning this offence, the courts accepted as mitigating circumstance that the defendant shows remorse and promises not to repeat the criminal offence, while at the same time pointing out that the defendant had already been convicted for the same criminal offence. Moreover, in judgments where the defendants pleaded guilty and did not have a criminal record, the courts imposed fines ranging from EUR 300 to 1,500. In another case regarding the same offence, where some of the defendants had

33 2024 Sentencing guidelines, Chapter VI. Sentencing Stages, p.p.82 and 83 of the English version.

34 Criminal Code, 06/L-074, 14 January 2019, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413 as follows: Unlawful possession of weapons (9 judgments); corruption cases as abuse of official position and authority, giving bribes, accepting bribes, conflict of interests, abuse and fraud in public procurement, subsidies fraud, fraud in office (19 judgments); domestic violence (9 judgments); murder (10 judgments); endangering public traffic (8 judgments); illegal construction (9 judgments). The judgments are not final, as this is not needed for the purpose of the analysis.

35 Criminal Code, 06/L-074, 14 January 2019, Article 366, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

36 General Sentencing Guidelines, Kosovo Supreme Court, 2018, Chapter 3, Subchapter 3.3 Sentencing Starting Point and the Presumptive Term, p.27 in the English version.

a past criminal record, and others did not, the court imposed the same punishment to all of them, with no justification. These examples show that sentencing sometimes is arbitrary, as the balance between the aggravating and mitigating circumstances is not maintained.

The same inconsistent approach to imposing punishments was found in corruption cases dealt with by the serious crimes departments of the basic courts. The 2021 Sentencing Guidelines for Official Corruption and Offences Against Official Duty provides three sentencing ranges for the criminal offence of conflict of interest, for which a punishment of a fine and imprisonment up to three years is stipulated,[37] depending on the responsibility of the defendant. In all analysed cases for this offence, the imposed punishment was six months of imprisonment (conditional or replaced by a fine), and cumulatively a fine in the range of EUR 800-2,500. In none of the cases, an accessory punishment was imposed. There was no reasoning why the relatively low sentence range was applied if aggravating circumstances were present, or why the imprisonment was replaced by a fine. In cases of abuse and fraud in public procurement procedure, with a stipulated punishment of a fine and imprisonment up to five years,[38] all the imposed punishments were determined in the low sentence range for this crime (imprisonment of six months, all of them replaced by a fine).[39] In only one case, the accessory punishment to ban the participation in procedures for awarding public procurement contracts was imposed. Even the CoA, when confirming a judgment regarding abuse and fraud in public procurement procedure, did not justify why the punishment imposed was below the limits provided by law. In a case of abuse of official position or authority[40] which caused damage over EUR 1,000, the imposed punishment was a six-month imprisonment replaced by a fine of EUR 3,600. However, the stipulated punishment is imprisonment of one to eight years and according to the 2021 Sentencing Guidelines the low sentencing range (out of the three: low, middle, and high) is between two and three years.[41] In a bribe case,[42] both persons giving and accepting bribes had previous criminal records, and even the defendant accepting the bribe (a court expert who was convicted for the same criminal offence four years earlier), still received a punishment below the low sentencing range. On a positive note, he was banned from exercising his profession for two years as an accessory punishment. Regarding the guilty verdicts in corruption cases issued by the Special Department in the BC of Pristina examined by EULEX, the imposed punishments followed the recommended sentence range of the 2018 Sentencing Guidelines. The judgments were well reasoned in the sentencing part and reflected the considered mitigating and aggravating circumstances and the role of each defendant.

In domestic violence cases, both the Sentencing Guidelines provide the same starting point of one-half of the stipulated punishment: fine and imprisonment up to three years.[43] The monitoring of cases under Article 248, paragraphs 1 and 3, of the CC show that calculations of the imprisonment punishments are within the range of the Sentencing Guidelines, though more weight is often given to mitigating factors. Also, in murder cases the courts impose punishments within the Sentencing Guidelines punishment ranges, and if the sentence is under the minimum range of punishment, they provide sufficient reasoning.

Regarding the criminal offence of endangering public traffic,[44] the 2018 and 2024 Sentencing Guidelines are not implemented. The CC stipulates that traffic accidents committed by negligence

37 Criminal Code, 06/L-074, 14 January 2019, Article 417, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
38 Criminal Code, 06/L-074, 14 January 2019, Article 415, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
39 Except in one guilty plea agreement where the six-month imprisonment punishment was conditional.
40 Criminal Code, 06/L-074, 14 January 2019, Article 414, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
41 While Article 71 of the Criminal Code, 06/L-074, 14 January 2019, allows the court to impose a punishment below the limits provided for by the law, reasoning has to be provided, which was not included in this judgment.
42 Giving bribes under Article 422, paragraph 1 of the Criminal Code, 06/L-074, 14 January 2019 and accepting bribes under Article 421, paragraph 1 of the Criminal Code, 06/L-074, 14 January 2019, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
43 Criminal Code, 06/L-074, 14 January 2019, Article 248, paragraphs 1 and 3 https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
44 Criminal Code, 06/L-074, 14 January 2019, Article 370, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

resulting in grievous bodily injury or damage of EUR 20,000 or more to property, carry a punishment of imprisonment from six months to five years.[45] According to both Sentencing Guidelines, this is considered a medium sentence (with maximum of up to five years) and the starting point for calculating the sentence is half (two years and six months of imprisonment). In the analysed judgments, the minimum and below the minimum sentences were imposed even when there were aggravating circumstances, and in some cases the minimum sentence of six months was replaced by a fine ranging from EUR 800 to 1,000, that was allowed to be paid in instalments.[46] In one case, the court imposed a sentence under the minimum, even though the defendant had a criminal record which should have impacted the sentencing. In another case, the punishment was waived, even though the defendant caused an accident with a deadly outcome in an unregistered vehicle that he drove without a licence.[47] In none of the analysed judgments, the court imposed any accessory punishment such as prohibition on driving motor vehicles and confiscation of driving.[48] The damage caused to the victims was not considered in sentencing, and the reasoning part of the judgments did not reflect on the caused damage.

As for the criminal offence of illegal construction,[49] the 2024 Sentencing Guidelines states that the foreseen punishment is a medium sentence with maximum up to five years. For medium sentence, the starting point is half, which ranges from two years and nine months to four years and six months of imprisonment depending on the qualification.[50] The imposed punishments for illegal constructions in the protected zones and national parks, with a starting point of four years and six months of imprisonment, varies in different basic courts. In two analysed judgments, one-year conditional imprisonment with one year verification period was imposed. In the judgement for three illegally constructed villas in the Rugova valley, a punishment of five months of imprisonment, then replaced by a fine of EUR 800, was imposed, while for an illegally constructed house in the "Sharri National Park", the punishment was four months of imprisonment replaced by a fine of EUR 1,000. In all four cases the defendants pleaded guilty, showed remorse and had no criminal record. In only one of the judgments the court considered aggravating circumstances (like the intent, the circumstances and the dangerousness of the criminal offence due to protected environment), but still imposed a lenient punishment without justification why the aggravating circumstances did not affect the sentence. In cases concerning illegal construction that continued after an order had been issued by a competent institution to halt the works[51] (with stipulated punishment of a fine and imprisonment of one to five years, with three years as a starting point), sentencing was also observed to be lenient. In these cases, the punishments were calculated in the minimum range even though there were aggravating circumstances (high degree of intent, the manner and circumstances of commission and the danger). While not directly related to sentencing, it is worth noting that in all the analysed judgments concerning illegal construction, the courts ordered the demolition of the illegal constructions at the expense of the defendants.[52] However, these orders remain unenforced, as none of the illegal constructions in the "Sharri National Park" and in Rugova valley are demolished.

Based on the level of implementation, the SC Sentencing Guidelines appear to be relatively unknown among judges in the basic courts. This conclusion is supported by the fact that for most of the judges, the Sentencing Guidelines were not part of their educational process, since

45 Criminal Code, 06/L-074, 14 January 2019, Article 370, paragraph 8, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413
46 The reasoning in the judgments do not reflect how the court has calculated the fine and how that amount reflects the gravity of the offence and the financial circumstances of the defendant.
47 Criminal Code, 06/L-074, 14 January 2019, Article 78, paragraph 1 (1.1), https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
48 Criminal Code, 06/L-074, 14 January 2019, Articles 64 and 65, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413..
49 Criminal Code, 06/L-074, 14 January 2019, Article 359, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
50 Criminal Code, 06/L-074, 14 January 2019, Article 359, paragraphs 2-4,https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
51 Criminal Code, 06/L-074, 14 January 2019, Article 359, paragraph 3, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
52 Criminal Code, 06/L-074, 14 January 2019, Article 359, paragraph 5, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

they only date back to 2018. In cases of corruption (apart from the Special Department in the BC of Pristina), illegal possession of weapons, traffic accidents and illegal construction, the courts normally hand out the minimum and below the minimum range of punishments, even when there are aggravating circumstances. This lenient approach without clear justification undermines the rule of law in Kosovo as well as the purpose of punishment as set out in the CC, including reducing (re)offending and providing justice for the victims.[53]

Recommendations

- ✓ EULEX encourages the SC to continue raising awareness among judges in the basic courts about the Sentencing Guidelines, through meetings, trainings, workshops and with references in SC judgments.
- ✓ The Sentencing Guidelines should be used by the judges, including the calculator for calculating the criminal fine, to avoid unjustified and unnecessary differences in sentencing policy.
- ✓ KJC is advised to ensure that the Sentencing Guidelines and the calculator for calculating criminal fines are easily accessible to judges both digitally and on paper.

2.9. Threats against prosecutors

Background

In a democratic society, prosecutors have an important role in upholding the rule of law and in ensuring that justice is served while representing the public interest. Their decisions can profoundly affect lives, public trust, and the integrity of the justice system. In Kosovo, prosecutors are entrusted with the responsibility to initiate and conduct criminal proceedings as well as other duties and functions foreseen by the law. In line with the local legislation, prosecutorial functions must be carried out in an independent, fair, objective and impartial manner and must ensure that all persons are treated equally before the law.[54] To perform their duties effectively, prosecutors must be free from external pressures, intimidation or threats.

In the course of its regular monitoring activities, EULEX learnt about several cases of threats or intimidation directed at prosecutors related to their official activities and initiated a closer examination of these cases and the manner in which such incidents are addressed within the justice system.

Findings

Through its monitoring, EULEX observed cases of threats or intimidations against prosecutors reported to the authorities. In most of them, the investigations show no real progress. It should be noted that the prosecutors who received threats were working on corruption cases, on cases involving organised crime groups, in high-profile cases, or politically sensitive (interethnic) cases.

Moreover, prosecutors or their immediate family members were sometimes directly or indirectly threatened in relation to their professional activity in a specific case. For instance, in one of the cases monitored by EULEX, a prosecutor from a Basic Prosecution Office (BPO)

53 Criminal Code, 06/L-074, 14 January 2019, Article 38, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.
54 Law no. 08/L-167 on State Prosecutor, 17 May 2023, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=74943.

has been under close protection for already five years.[55] Threats against the prosecutor and a family member started in 2020 after he/she had filed an indictment against a high-profile official for corruption charges. An investigation against the suspect was initiated in 2021, but it was suspended soon after, due to the lack of cooperation from foreign judicial authorities. The last request for judicial cooperation was sent to the relevant authorities in August 2024, but no reply has been received until the date of this report. In the meantime, the suspect was released in 2021 when the motion of the prosecutor to extend the pre-trial detention was rejected by the court and the more lenient pre-trial measure of bail was imposed. The suspect left Kosovo, while the prosecutor and the immediate family member continued to receive threats. The prosecutor then was provided with close protection. Meanwhile, in 2022 the same prosecutor was threatened due to investigation activities in another high-profile case. After filing the indictment, the main trial started in 2023 in a court in another region and it is still ongoing in first instance. Since then, the prosecutor has been moving with close protection, also when traveling for the sessions to that court in the case in relation to which he/she was allegedly threatened. The suspect of the threat in this case is also at large and there has been little advancement in the initiated investigation against him

Another prosecutor of the Serious Crimes Department in another BPO was the target of several simultaneous threats while preparing and filing an appeal against a judgment of acquittal.[56] More specifically, several anonymous false criminal complaints had been sent against an immediate member of the prosecutor's family. An investigation was initiated immediately against the family member. Several months after, another BPO established that the charges were false, no crime was committed, and the investigation was terminated. However, there had been no follow-up nor any investigative measures against the anonymous person who had made the false complaint. Meanwhile, a photo of the prosecutor was published on social media falsely alleging that the prosecutor had died. Seven months later, the same prosecutor received on the private e-mail a faked sexually explicit photo with a blackmailing text. Later, the photo was also spread on social media. Investigations were initiated in both social media cases by the same BPO where the prosecutor serves, but the suspects are still unknown, and no real progress was achieved.

In 2021, a Special Prosecution prosecutor was verbally threatened at the registry of the Special Prosecution premises. The investigation was concluded speedily by the BPO and within a month an indictment was filed. The initial hearing was scheduled by the court three years later, as the case was not considered an urgent one according to the KJC Strategic plan for the improvement of access to justice 2022-2025.[57] The main trial started in 2025 and is still ongoing in the basic court, although it is not of a complex nature.

Another issue observed by EULEX is that of threats against prosecutors which follow criticism of the executive against them through the media, often amplified through social media and digital platforms.[58] For example, the decision to impose the less severe security measure of house arrest to a detained suspect at the end of 2022 was followed by harsh criticism in the media from members of the government against the case prosecutor and the pre-trial judge. This was followed by a graffiti text '*Pillar of shame*' (in Albanian: '*Shtylle e turpit'*) with the names of the judge and the prosecutor involved in the case which appeared in several locations in Pristina shortly after. Three years later, in 2025, the graffiti with their names has still not been removed from all locations, while no investigation was initiated in this case.

55 The prosecutor agreed that EULEX would refer to this case in the Justice Monitoring Report.
56 The prosecutor agreed that EULEX can refer to this case in the Justice Monitoring Report.
57 Strategic plan for the improvement of access to justice 2022-2025, https://www.gjyqesori-rks.org/wp-content/uploads/2023/03/KJC_Strategic_Plan_on_Access_to_Justice_2022.pdf (last accessed on 12 September 2025).
58 In 2024, a Deputy Minister shared a status on social media (Meta) of the director of a company who called the Special Prosecution a criminal organisation after they had started an investigation against the company.

On a positive note, EULEX observed that in cases of threats against prosecutors, the KPC usually initiates providing physical protection to them when deemed necessary, and in most of the occasions reacts publicly to the attacks through the media. However, more work should be done in tackling the issue of threats against the prosecutors. Some of the serious cases of threats, attempts to impede, intimidate, interfere or retaliate prosecutors are aimed at the obstruction of justice and therefore warrant a swift and thorough investigation and adjudication. In view of this, while acknowledging the heavy workload of judges in the basic courts and their duty to follow the KJC rules on how to deal with the backlog of cases (priority is given to the oldest cases), the delay in adjudicating cases concerning threats against judges or prosecutors sends a message that they are not important, leaving the perpetrators unpunished. A well-functioning and independent Association of Prosecutors can provide personal assistance and support to prosecutors under threat or intimidation, but the existing Association of Prosecutors, although formally enacted, lacks the necessary resources to provide meaningful assistance.

Threats can compromise the independence of the prosecutors, can intimidate them to alter or abandon cases, and can lead to the erosion of the public trust in the justice system and discourage public cooperation with investigations. It is therefore imperative that all cases of threats against prosecutors are investigated thoroughly and swiftly. Effective investigation serves both to protect the individual and to send a clear message that any attempt to obstruct justice will not be tolerated. It is also important to stress that the ECtHR has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, must enjoy public confidence to be successful in carrying out its duties.[59]

Recommendations

- ✓ BPOs should prioritise the investigation and prosecution of cases involving attempts to intimidate or threaten prosecutors.
- ✓ EULEX recommends the KPC to establish and operationalise a structured mechanism for the assessment and response to threats targeting prosecutors.
- ✓ The KPC is advised to facilitate the establishment and functioning of an independent, self-regulating Association of Prosecutors, which, among other responsibilities, would provide institutional support and representation in cases involving threats or undue pressure.
- ✓ The executive should refrain from harsh public criticism of individual prosecutors as this may have an impact on the institutional independence of the prosecution, creating a 'chilling effect' and resulting in self-censorship.

59 ECtHR, *Kovesi v. Romania*, 2020, no. 3594/19, paragraph 201 and ECtHR, *Morice v. France*, 2015, no. 29369/10, paragraph 128.

3. Findings of Thematic Monitoring

3.1 Accountability for alleged ill-treatment by members of the Kosovo Police: initial assessment

Background

In line with international human rights standards, in Kosovo the prohibition of torture and other forms of cruel, inhuman, or degrading treatment or punishment is absolute and applies under all circumstances.[60] Authorities bear both negative and positive obligations when it comes to the right to be free from torture and ill-treatment. The negative obligation essentially entails that all officials, including but not limited to police officers, must refrain from committing acts of torture or other forms of ill-treatment. The positive obligation requires the establishment of a comprehensive legal and institutional framework that effectively prevents torture and ill-treatment, as well as the duty to conduct effective investigations whenever there are credible allegations or arguable claims of such conduct. In order to meet international human rights standards, an investigation into allegations of torture or ill-treatment must adhere to several essential parameters that ensure its effectiveness. Firstly, the investigative measures undertaken must be adequate; they should be capable of thoroughly establishing the facts and identifying those responsible. Secondly, investigations must be initiated promptly and carried out without undue delay ensuring that evidence is preserved and witnesses are available while their recollections are still fresh. Thirdly, the victim must be involved in the investigative process to a reasonable extent. This includes being kept informed of significant developments and being allowed to contribute with relevant information. Finally, the investigation must be conducted by a body that is both institutionally and practically independent from those implicated in the alleged misconduct, in order to maintain public confidence and avoid conflicts of interest.

It is also important to underline that under international standards, the obligation to conduct an effective investigation is not of result, but of means. This implies that not every investigation should necessarily be successful or come to a definite conclusion on the veracity of the allegations raised. However, the investigation must be thorough, and authorities must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible, may risk falling foul of this standard.[61]

In Kosovo, acts of torture and ill-treatment by public officials are criminalised respectively

60 This is based on the direct applicability of the rights recognised under the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, the ECHR, the Convention on the Rights of the Child, and the International Covenant on Civil and Political Rights, but also the specific provision from Article 27 of the Kosovo Constitution [Prohibition of Torture, Cruel, Inhuman or Degrading Treatment] which states that "*No one shall be subject to torture, cruel, inhuman or degrading treatment or punishment*".

61 For more information on the positive and negative obligations under the ECHR, please refer to the Council of Europe "Guide on Article 3 of the European Convention on Human Rights: prohibition of torture", 28 February 2025.

under Articles 196[62] and 195[63] of the CC. Moreover, the Law on Police stipulates that a police officer shall not inflict, instigate, support or tolerate any torture act or inhuman or degrading treatment under any circumstances, and no issued order can justify any such action.[64] The Administrative Instruction no. 04/2019 for Violations, Measures and Disciplinary Procedures in Kosovo Police classifies excessive use of force as a serious disciplinary violation.[65]

Accountability for alleged ill-treatment and torture by the KP is ensured through different institutional mechanisms. The Police Inspectorate of Kosovo (PIK), an independent agency within the Ministry of Internal Affairs, is responsible for the investigation of allegations that include elements of criminal offences. PIK can investigate cases based on external complaints, on its own initiative or after internal initiation by the KP or referral by other institutions. Following an initial review of a complaint by the PIK Department for Management of Complaints, the case is processed by the Investigation Department if it contains elements of KP officers' involvement in criminal activities, while it is referred to the Internal Investigation Division (IID) within the KP when it contains elements of disciplinary violations.[66]

After having investigated cases that contain elements of criminal offences, the PIK files them with the prosecution authorities through: a criminal report, when, based on the obtained information, there is a reasonable suspicion that a criminal offence prosecuted *ex officio* has been committed (in such case, the prosecution decides whether to prosecute the case or not);[67] a special report, when the PIK could not gather sufficient information which could establish reasonable suspicion that a criminal offence was committed (in such case, the prosecution can ask for follow-up actions from the PIK or close the investigation).[68] Once the case reaches the prosecutorial authorities, it then proceeds through the justice chain like any other criminal case. In case individuals deem that the authorities – by their actions, inactions or decisions – have violated their rights, they can file a complaint to the Ombudsperson.

Findings

In 2021, the Council of Europe Committee for the Prevention of Torture (CPT) published the findings on its visit to Kosovo held in October 2020. The CPT stated that the majority of persons interviewed during the visit who were – or who recently had been – in police custody made no allegations of ill-treatment by police officers, but the delegation received a number of allegations

62 Criminal Code, 06/L-074, 14 January 2019, Article 196, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413: "*Torture 1. An official person, or a person acting at the instigation of or with the consent or acquiescence of an official person, who commits an act of torture shall be punished by imprisonment of one (1) to fifteen (15) years. 2. When the offence provided for in paragraph 1. of this Article is committed against a child, the perpetrator shall be punished by imprisonment of three (3) to fifteen (15) years. 3. For the purposes of this Article, an act of torture means any act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for the purpose of obtaining from such person or from a third person information or a statement, or punishing such person for an act that he or she or a third person has committed or is suspected of having committed, or for intimidating or coercing the person or a third person or for any reason based on discrimination of any kind. An act of torture does not include any act or omission arising only from, inherent in or incidental to lawful sanctions*".

63 Criminal Code, 06/L-074, 14 January 2019, Article 195, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413 "*Mistreatment during exercise of official duty or public authorization 1. An official person who, in abusing his or her position or authorizations, mistreats, intimidates or gravely insults the dignity of another person shall be punished by imprisonment up to three (3) years. 2. When the offence provided for in paragraph 1. of this Article is committed against a child, the perpetrator shall be punished by imprisonment of six (6) months to five (5) years*".

64 Law on Police, 04/L-076, 19 March 2012, last amendment on 27 December 2024, Article 13, paragraph 3, https://gzk.rks-gov.net/ActDetail.aspx?ActID=2806&langid=2.

65 Law on Police, 04/L-076, 19 March 2012, last amendment on 27 December 2024, Article 19, https://gzk.rks-gov.net/ActDetail.aspx?ActID=2806&langid=2.

66 Within the KP itself, key accountability structures include the Internal Investigations Directorate, the Disciplinary Commission, and the Use of Force Commission.

67 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 82 paragraph 5, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

68 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 82 paragraph 4, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

of physical ill-treatment at the time of apprehension and during police questioning.[69]

During the reporting period, following allegations of ill-treatment by the KP raised in the media or by civil society organisations, particularly in northern Kosovo, EULEX looked into the functioning of the accountability process regarding this specific type of allegations, with the aim to come to an initial preliminary assessment of the matter. In order to do this, EULEX examined the existing case-law of the Kosovo courts on the criminal offences from Articles 195 and 196 of the CC, and monitored how a sample of relatively recent individual cases alleging ill-treatment by the KP were handled by the relevant authorities.

Findings on publicly available case-law of Kosovo courts

In order to identify relevant cases for this analysis, EULEX consulted the website of the KJC. While no court cases relating to charges of torture (Article 196 of the CC) were found, there were 24 cases relating to mistreatment[70] during exercise of official duty or public authorisation (Article 195) handled by the basic courts. In most of the cases, the criminal charge from Article 195 was combined with either a charge of light bodily injury (Article 185) or of grievous bodily injury (Article 186) of the present CC or the corresponding articles in the previous CC. The facts which gave origin to the cases occurred in the period from 2012 until 2021. Based on the review of the judgments, it is apparent that out of the 41 police officers accused in these 24 cases, 18 were part of different 'special units' (44%), 15 were belonging to regular units or their unit was not specified in the judgment (37%), five were investigators (12%) and three were from the traffic police (7%). The cases involved in total 29 victims, including three juveniles.[71] The average time elapsed from the date of the incident to the date of indictment was approximately 560 days, while the time from the incident to the first-instance court judgment was around 1,330 days.

Regarding the locations where the alleged ill-treatment occurred, the majority (22 cases) took place outside police premises, namely during stops, checks, operations, handcuffing, and similar situations; 11 cases occurred inside police premises, concretely in yards, corridors, interview rooms, or other locations; and six cases happened during transportation. In some single cases, ill-treatment occurred in multiple locations, e.g. on the street or in other public/private spaces and during transport, and/or at police premises.

The alleged ill-treatment involved insulting language and physical abuses such as punches, kicks, slaps, and baton strikes, resulting mostly in hematomas (bruises) and abrasions, and in some cases fractures of the extremities and the jaw.

In total, 73 charges were brought against the 41 accused. Of these charges, 34 resulted in convictions for mistreatment (Article 195), 13 for light bodily injuries, and seven for grievous bodily injuries; nine charges led to acquittals, and ten were dismissed due to statutory limitations.

Regarding the punishments, out of the 45 imposed,[72] 20 were fines ranging from a few

69 Council of Europe, Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo* carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 16 October 2020, September 2021, https://rm.coe.int/1680a3ea32 (last accessed on 12 September 2025).

70 In this report, EULEX utilises the term ill-treatment as opposed to mistreatment, in conformity with the practice of international human rights bodies including the ECtHR. However, when referring to Article 195, it uses the term mistreatment, as this is the term used in the official translation of the CC.

71 Gender, age, and ethnicity of police officers and victims are not specified; only in a few cases is it explicitly noted that the victim is a person under the age of 18.

72 In some cases, an aggregate punishment was imposed for multiple charges; this explains why the number of imposed punish-

hundred up to EUR 2,000; ten were imprisonment sentences (ranging from a few days up to six months) replaced with fines; three were imprisonments of less than six months; four were imprisonments above six months; and finally, eight imprisonments were suspended for a specific period. Surprisingly, no accessory punishments were proposed by the prosecutor or imposed by the court, despite the requirements set forth in Articles 62 and 63 of the CC (see also the relevant section in this report).

Although the proportionality of the punishment with the committed offence must always be assessed against the specific circumstances of each case, it can be preliminary assessed that overall, the apparent leniency of the punishments even in cases where the charge from Article 195 was combined with bodily injury charges, raises some questions. Concretely, whether the sanction imposed is commensurate to the gravity of the offences and compatible with the absolute nature of the prohibition of torture and ill-treatment. Given Kosovo's positive obligations to prevent these prohibited conducts, the justice system must ensure it can exercise a deterrent effect and therefore must impose sanctions that are commensurate to the severity of the offence, including accessory punishments. Otherwise, the risk is weakening public trust in the accountability system which may give rise to a sense of impunity.

Findings from EULEX monitoring of a sample of cases

During the reporting period, EULEX monitored 25 recent cases involving allegations of ill-treatment or excessive use of force (including firearms) which occurred between October 2022 and May 2025. In some of the monitored cases, the investigations by the PIK have been completed and the case is, at the time of writing this report, with the prosecution authorities or at court, while in other cases the investigation by either PIK or IID was completed and/or terminated. It must be born in mind that documents from the relevant 25 case files were not available to EULEX and the findings are mainly based on information acquired through meetings with the relevant authorities, and in a few cases also with alleged victims.

The KP officers involved in the alleged misconduct in the 25 monitored cases included 13 police officers from 'special units', five regular uniformed police officers and two plain clothed police officers. In six cases, the unit to which police officers belong is not known to EULEX. In several cases, multiple police officers were involved in or at least present at the alleged ill-treatment or excessive use of force. Allegations of ill-treatment included insulting language, slaps, punches and kicks, some resulting in bone fractures.

Reports sent by PIK to the responsible prosecutor included six criminal reports, two informative reports,[73] 11 special reports, while for seven cases the type of reports are not known. In some cases, multiple different reports were sent to the prosecutor relating to different officers. For example, in a case where police officers at a checkpoint shot a man driving a car, the PIK investigated four police officers from the 'special units' and filed three criminal reports. The court later convicted one police officer for attempted murder and sentenced him to three years of imprisonment.

In light of the parameters of effective investigations described above, EULEX noticed positively that in a case of alleged police physical violence resulting in bodily injury, the PIK promptly investigated the incident and filed two criminal reports against two police officers to the prosecution approximately one month and a half after it occurred. Moreover, in many cases, the PIK promptly initiated *ex officio* investigations in the absence of formal complaints and

ments is lower than the number of charges that ended with a conviction.

73 Informative reports are reports filed to the prosecution within 72 hours from receiving information that a criminal offence prosecutable *ex officio* may have been committed.

communicated this publicly. In several other cases, PIK took effective steps to ascertain relevant facts, including by promptly acquiring available CCTV footage. Moreover, with a view to deterrence of misconduct and prompt reaction on the spot, the PIK has conducted independent and impartial monitoring of police operations during high-profile events.

However, EULEX has also identified that in some cases, the investigative steps taken were not sufficiently prompt or appear inadequate. In multiple cases, initial investigations were launched several weeks after public allegations, leading to diminished evidentiary availability and reliability. Interviews with the people involved (police officers, alleged victims and witnesses) were sometimes conducted late, sometimes several months after the incident, even when their identity was known; this approach may result in reduced evidentiary value and increase the risk of coordinated statements. While delays in conducting interviews may be justified by operational prioritisation and unavailability of personnel, it must be considered that lack of promptness may affect the overall effectiveness of the investigation and therefore its ability to establish facts and ultimately determine whether the allegations are founded or not.

EULEX also found that in several investigations, the PIK did not acquire digital evidence or promptly identify relevant witnesses. Moreover, in some cases, the identity of the officers present at the moment of the alleged ill-treatment could not be established. It must be stressed that failure to obtain available forensic evidence or pursue obvious investigative leads may severely compromise the effectiveness of the investigation and can raise public doubts about its thoroughness. In this context, the recent distribution of bodycams to police stations throughout Kosovo is a positive development as their use may deter possible misconduct and can help debunk false allegations against the KP.

As already pointed out by the CPT in 2020,[74] and as identified also in some of the monitored cases, particularly those involving special units, securing police officers' cooperation in the investigations can pose difficulties to the PIK and the IID. This can be due to a feeling of fellowship which can result in officers keeping silent in the case of misconduct by their colleagues. Not being able to identify all police officers present during an incident or failing to obtain their statements makes an investigation ineffective and therefore not in line with the positive obligations described above.

Coming to the prosecution stage, while it is important to reiterate that in most of the 25 cases, the prosecution has not yet decided whether or not to pursue them, discussions with some prosecutors have highlighted that cases of alleged ill-treatment by the KP are not usually treated as a priority.

This may pose problems in particular with regard to the acquisition of evidence not already acquired during the PIK investigation. As a result, this evidence may no longer be available if requested by the prosecutor at a very late stage. Another concerning element emerged in relation to a case involving ill-treatment and serious bodily injury which occurred during an arrest. The prosecutor in charge of the case informed EULEX that he considered solving the case by mediation. Although this course of action is not formally prohibited,[75] it is inappropriate in cases of ill-treatment by public officials and clearly falls short of the positive human rights obligations. Referring a case to mediation implies that facts will not be established, those

74 Council of Europe, Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo* carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 16 October 2020, September 2021, page 13, https://rm.coe.int/1680a3ea32 (last accessed on 12 September 2025).

75 Criminal Procedure Code, 08/L-032, 17 August 2022, Article 229, https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759. Article 229 allows a case to be referred to formal mediation for criminal offences punishable by a fine or up to three years of imprisonment (excluding domestic violence and offences against sexual integrity). Referral is done under the supervision of judicial authorities, with the consent of injured party Mediation is conducted through independent and certified mediators.

responsible will not be punished and there will not be any public scrutiny.[76] While EULEX has not, at this stage, established the extent to which mediation is used in ill-treatment cases, the fact that it came up during the monitoring activities raises concerns. Finally, EULEX noticed that in some cases, prosecution authorities did not consider including charges of bodily injury, even if the medical documentation clearly established that the victims suffered injuries.

With regards to the IID, which operates within the KP and is tasked with internal discipline and ethics compliance, its effectiveness is closely tied to timely access to case information and willingness of the KP command structure to support internal scrutiny. The strengths observed by EULEX in the work of IID are a solid regulatory framework, proven professionalism and transparency as well as a willingness to recommend sanctions, such as salary deductions, where appropriate. Moreover, EULEX finds that IID generally initiates interviews and evidence collection as early as possible in the process, respects timelines and informs complainants about the outcome of the investigations. Nevertheless, a problematic issue identified by EULEX is that the IID sometimes postpones final conclusions in internal disciplinary cases until after criminal court proceedings are finalised.[77] While this approach aims to avoid conflicting findings, and may be justified in some cases, in other cases disciplinary proceedings should be conducted in parallel with criminal investigations. Serious disciplinary violations are subject to statutory limitations after four years from the time of the commission, and light disciplinary violations after two years.[78] Therefore, the suspension of disciplinary proceedings in certain cases may entail loss of relevant evidence, risks of statutory limitations, risks of reiteration of the offences in cases where officers resume their duties, and in the worst cases, result in impunity.

Concerning the involvement of the alleged victims in the investigative process and their right to be kept informed of significant developments, EULEX found that complainants who actively sought information from the PIK in person, both about the registration of the complaint or about its status, generally received such information. However, information on significant developments, such as the fact that the PIK did not find elements of criminal offences and the case would be referred to the IID, is sometimes provided by phone. This approach leaves room for misunderstandings and frustration, as complainants may not be able to fully understand how the process works and end up losing hope in the system, especially in those cases where they do not hear anything from the institutions for a long time. The provision of accurate information about the status of the cases when these have reached the prosecution authorities also appear problematic at times, due to their overall low prioritisation.

In conclusion, EULEX finds that Kosovo has put in place a comprehensive legal and institutional framework to fulfil its positive obligations and it is important it is applied in practice to its full extent in all cases where an arguable allegation of ill-treatment by police officers is raised, regardless of their rank or unit. Alleged victims must be adequately and proactively kept informed of relevant developments throughout the accountability process. Moreover, punishments in cases where allegations are confirmed must be commensurate to the gravity of the offences.

Bearing in mind that certain forms of ill-treatment do not leave visible injuries or marks (such as slaps) and may be hard to prove in the absence of witnesses or forensic evidence, leading to *de facto* impunity, a clear message should continue to be delivered to all police officers that

76 ECtHR, *Al Nashiri v. Romania*, 31 May 2018, p. 641 and ECtHR, *Sabalić v. Croatia*, 14 January 2021, p. 97.

77 The Administrative Instruction no. 04/2019 for Violations, Measures and Disciplinary Procedures in Kosovo Police, Article 5.16, https://www.kosovopolice.com/wp-content/uploads/2020/07/ADMINISTRATIVE-INSTRUCTION-No.-04-2019.pdf (last accessed on 12 September 2025).

78 The Administrative Instruction no. 04/2019 for Violations, Measures and Disciplinary Procedures in Kosovo Police, Article 70 https://www.kosovopolice.com/wp-content/uploads/2020/07/ADMINISTRATIVE-INSTRUCTION-No.-04-2019.pdf (last accessed on 12 September 2025).

any form of ill-treatment including verbal abuse is unlawful and constitutes a human rights violation. As pointed out by the CPT, the KP must promote a police culture where to resort to ill-treatment is regarded as unprofessional and a clear understanding that "*…culpability for ill-treatment extends beyond the actual perpetrators to anyone who knows, or should know, that ill-treatment is occurring/has occurred and fails to act to prevent or report it.*"[79]

Recommendations

- ✓ KP leadership should continue reiterating to all police officers that only force that is strictly necessary should be used when effecting an apprehension and that, once the apprehension has taken place, and apprehended persons have been brought under control, no further force should be used.
- ✓ Through training, supervision and leadership the KP should continue to send a clear message to all police officers that any form of ill-treatment, including verbal abuse, is unlawful and will be punished accordingly.
- ✓ EULEX calls on the KP leadership to ensure mandatory use of bodycams and CCTV in police stations, by patrols and special units. In cases where bodycams and CCTV are insufficient or unavailable, adequate resources should be allocated to address this gap, and the KP leadership should consider prioritising police units or stations that have a proven record of misconduct, arguable allegations raised against them or operate in sensitive contexts.
- ✓ When there are multiple complaints and/or public reports about the behaviour of specific units, PIK/IID should not investigate them as isolated cases but should analyse and examine them jointly in order to determine any patterns and/or systemic practices.
- ✓ KP leadership should take measures to ensure that police officers cannot refuse to provide statements and further incentivise existing whistleblowing mechanisms.
- ✓ EULEX encourages the PIK to include in its investigative protocols measures to systematically ensure early collection of statements and evidence (also of a digital nature).
- ✓ EULEX also encourages the IID to adhere to legal timelines and avoid, when possible, reliance on court rulings before concluding disciplinary proceedings.
- ✓ BPOs should seek to prioritise cases involving police misconduct.
- ✓ BPOs should not use mediation in cases involving police misconduct.
- ✓ The different authorities involved in the accountability process must ensure of their own initiative that complainants are kept informed of relevant developments and have an opportunity to contribute with relevant information.

79 Council of Europe, Report to the United Nations Interim Administration Mission in Kosovo (UNMIK) on the visit to Kosovo* carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 16 October 2020, September 2021, page 14, https://rm.coe.int/1680a3ea32 (last accessed on 12 September 2025).

3.2. Gender-based violence

3.2.1. Investigations into domestic violence and protection of secondary victims

Background

Through a snapshot analysis of six randomly chosen domestic violence cases across Kosovo, EULEX aimed to obtain an initial understanding of how this type of cases are handled by the police and prosecution, and the cooperation among them. For this analysis, in addition to data drawn from the selected cases, a structured questionnaire conducted with police officers and specialised prosecutors served to ensure consistent data collection. It should be noted that, at the time of drafting this report, the new SOP[80] regulating the coordination and cooperation among service providers, including police and prosecution, in line with the new Law on Prevention and Protection from Domestic Violence, Violence against Women and Gender-based Violence,[81] was still under drafting procedure. Therefore, the SOP in force was used as terms of reference.

Additionally, EULEX looked into the aspect of secondary victims of domestic violence with a focus on the protection of child witnesses. In this case, the analysis was drawn from two of the six randomly chosen cases, as well as three additionally selected sensitive cases. Article 26 of the Council of Europe Convention on Combating and Preventing Violence against Women and Domestic Violence (known as the Istanbul Convention) states that the rights and needs of child witnesses of all forms of violence must be taken into due account, including providing age-appropriate psychosocial counselling. The term "child witness" refers not only to children who are present during the violence and actively witness it, but to those who are exposed to screams and other sounds of violence while hiding close by or who are exposed to the long-term consequences of such violence.[82]

Findings

On the cooperation between police and prosecution in investigating domestic violence cases, five regional specialised prosecutors and police officers from across Kosovo[83] unanimously reported on efficient and functioning relations, a finding also confirmed by the respondents of the questionnaire. Two prosecutors shared their observation that police investigators specialised in domestic violence are too often assigned to other cases. This leads to their capacities being strained, and non-specialised police officers attending the crime scene.[84] The data drawn from the randomly selected six domestic violence cases indicate a timely progression of these cases and a strong commitment to protect the victims. In concrete, in five out of the six cases, the specialised domestic violence KP investigator attended the crime scene; in one case, the on-call officer was present. Medical assistance was offered to the victims in four out of six cases, whereas in one case it was not necessary and in the other case the victim was already hospitalised. In all six cases, the KP reportedly notified the Victim's Advocacy and Assistance Office (VAO). However, in none of the cases the VAO services contacted the victim. In

80 SOP on handling cases of domestic violence, violence against women and gender-based violence.

81 Law No. 08/L -185 on Prevention and Protection from Domestic Violence, Violence against Women and Gender-based Violence, 12 October 2023, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=83131.

82 Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, Article 26, paragraph 144, https://eige.europa.eu/resources/Explanatory%20report.pdf (last accessed 12 September 2025).

83 Gjilan/Gnjilane, Pejë/Peć, Gjakovë/Đakovica, Prizren and Mitrovica.

84 Prosecutors from Pejë/Peć and Gjilan/Gnjilane.

five out of six cases, the KP notified the Centre for Social Welfare, which addressed the victim in all cases; in one case, no such intervention was required. In five out of six cases, the KP submitted the initial notification about the case to the prosecution within 24 hours;[85] in one case, no such intervention was required. Again, in five out of six cases, the criminal report was submitted to the prosecution within 48 hours; in one case, the submission took three weeks. In the latter case, the victim left the shelter for victims of domestic violence after three days to return to her marital home abroad and subsequently reconciled with her husband after having withdrawn her complaint.[86] In five out of six cases, the KP informed the victim of the possibility to be protected in a shelter for victims of domestic violence.[87] Four out of six victims opted to return to their marital or parental home.

With regard to the protection of minors as secondary victims of domestic violence, in two out of the six randomly selected cases, children witnessed domestic violence being perpetrated against their mothers. Likewise, children witnessed the violence in all three additionally selected sensitive cases. Although in none of the cases the children were the direct physical target of the offender (in all cases their fathers), they witnessed the violence from a near distance or were present in the family household where the abuse took place.

EULEX observed that as primary victims, the mothers were at the centre of the prosecutors' protective considerations, while there was very limited reference by prosecutors to the children involved. In one case, EULEX understood only from the provided investigation documents that there were children who had witnessed the violence from nearby. In two of the sensitive cases, the prosecutor initially did not know the whereabouts of the children, assuming that relatives had taken care of them. In one case, child custody was entrusted to the father who was the subject of a restraining order due to domestic violence and had a long history of abuse. It remains questionable if that decision was in the best interest of the children. Additionally, such a decision is eligible to entrench the intimidation by the father towards the mother through resorting to judicial means, which again is not in the best interest of the children.

Recommendations

- ✓ Considering the importance to have specialised police officers working on domestic violence cases, EULEX urges police investigators specialised in domestic violence to always prioritise these cases, before being assigned to other types of investigation. Therefore, EULEX also calls on the KP to ensure that the necessary resources are in place for this to happen.
- ✓ As it appears that the growing recognition of traumatic impact of domestic violence on children has not been fully recognised by Kosovo justice system yet, EULEX calls on the KP and prosecution to improve child-sensitive approaches and to fully recognise the traumatic impact of domestic violence on children in cases where they are secondary victims.

85 In one case it took three days, only because the case was reported by the hospital where the victim received medical treatment.
86 Notwithstanding the prosecution prepared an indictment.
87 In one case this advice was not applicable.

3.2.2. Evaluation of evidence in rape cases

Background

Cases that concern the offence of rape can be hard to adjudicate. The crime often takes place in a closed environment with no eyewitnesses, and the crime does not always leave forensic evidence behind. Indictments for rape therefore present a challenge for the courts.

International human rights conventions contain positive obligations to protect women and girls that are relevant in this context. In particular, Article 5 of the Istanbul Convention contains the obligation to take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence perpetrated by non-state actors.

The legal framework for the offence of rape in Kosovo has made progress and is aligned with international standards.[88] The victim's lack of consent is the constituent element of the offence (Article 227 of the CC),[89] which is in line with Article 36 of the Istanbul Convention.

In 2022, EULEX published a report titled "Assessment of the handling of rape cases by the justice system in Kosovo"[90] providing a preliminary assessment of the state of play regarding the handling of cases qualified as rape in Kosovo in light of the international standards. The 2025 Justice Monitoring Report provides a deeper assessment of the basic court's evaluation of evidence in rape cases.

Findings

For this chapter, EULEX has reviewed 11 judgments on charges of rape (Article 227 of the CC) issued by basic courts.[91] Of the randomly selected cases, nine resulted in acquittals and two in convictions. All defendants were adult men, and all injured parties were adult women. Additionally, the statistics below, related to the period from January 2023 to June 2025 extracted from the CMIS and by the Director of KJC Statistics Department, show that of 31 defendants indicted for rape,[92] 15 defendants were acquitted, 12 indictments were dismissed, and four defendants were convicted. This translates to a conviction rate of 16% of the total number of indictments filed in that reporting period, and an acquittal rate of 60%.

88 The relevant international instruments are the Council of Europe Convention on Combating and Preventing Violence against Women and Domestic Violence (the Istanbul Convention), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the ECHR.

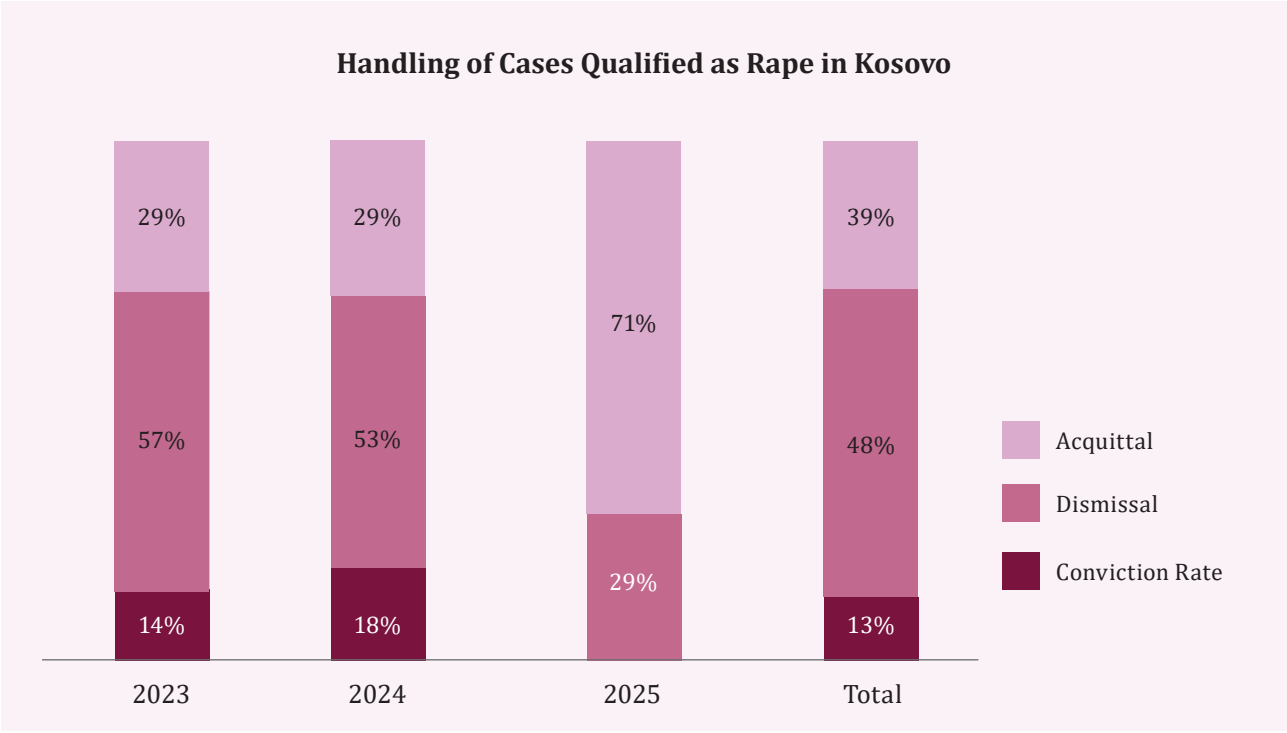
89 Criminal Code, 06/L-074, 14 January 2019, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413.

90 EULEX, Assessment of the handling of rape cases by the justice system in Kosovo, 2022, https://www.eulex-kosovo.eu/eul/repository/docs/(07.06.2022)Report_EN.pdf.

91 Of the 11 cases, five are from the BC of Pristina, two from the BC of Prizren, two from the BC of Gjakovë/Đakovica, one from the BC of Ferizaj/Uroševac and one from the BC of Pejë/Peć.

92 Some indictments had associated criminal offences besides the rape charges.

Handling of Cases Qualified as Rape in Kosovo					
Basic Court	Number of cases	Number of suspects	Number of defendants convicted of rape charges	Number of defendants acquitted of rape charges	Number of indictments dismissed
2025					
BC Pristina	1	1	0	0	1
BC Gjilan/Gnjilane	0	0	0	0	0
BC Prizren	0	0	0	0	0
BC Mitrovica	2	4	0	0	4
BC Pejë/Peć	0	0	0	0	0
BC Ferizaj/Uroševac	1	1	0	1	0
BC Gjakovë/Đakovica	1	1	0	1	0
Total for the year	**5**	**7**	**0**	**2**	**5**
2024					
BC Pristina	5	6	1	3	2
BC Gjilan/Gnjilane	0	0	0	0	0
BC Prizren	6	7	2	4	1
BC Mitrovica	2	2	0	0	2
BC Pejë/Peć	0	0	0	0	0
BC Ferizaj/Uroševac	1	2	0	2	0
BC Gjakovë/Đakovica	0	0	0	0	0
Total for the year	**14**	**17**	**3**	**9**	**5**
2023					
BC Pristina	3	3	1	2	0
BC Gjilan/Gnjilane	0	0	0	0	0
BC Prizren	0	0	0	0	0
BC Mitrovica	0	0	0	0	0
BC Pejë/Peć	0	0	0	0	0
BC Ferizaj/Uroševac	1	1	0	1	0
BC Gjakovë/Đakovica	2	3	0	1	2
Total for the year	**6**	**7**	**1**	**4**	**2**
TOTAL	**25**	**31**	**4**	**15**	**12**



Based on the review of the judgments, EULEX analysed how the courts evaluated evidence in the cases, as referenced in the court's reasoning and assessed against preconceived notions about rape, also referred to as 'rape myths'.[93]

The statements of the defendant and the injured party are often the central pieces of evidence in cases of rape with corroborative evidence seldom collected or available. To evaluate how reliable such statements are, the court must assess several elements as indicators of credibility. Significance should be given to the content of the statement, and not to the general impression of the person giving the statement, or other non-verbal factors, keeping in mind that no particular behaviour should be expected from the victim. Apart from the statements of the parties, the court must evaluate other evidence presented. In evaluating testimony, the court must take into consideration whether the facts described by the injured party, defendant or witness are supported by other evidence, such as material evidence and/or other testimonies, based on objective criteria. Often, indirect evidence either supports or does not support the parties' statements of what happened.

As eyewitnesses to the crime are rare, the testimony of witnesses who interacted with the parties, most importantly the injured party, can be of value. Information shared by the injured party shortly after the incident, in addition to the witness' own observations. such as the injured party's behaviour and reactions may in some cases constitute corroborative evidence for the injured party's statement.

While evaluating the evidence, in particular the injured party's testimony, it is important for the court to keep in mind that not all victims of rape react the same. Reactions may not always be in line with what the court or others consider to be rational. While some victims can react with a 'fight' response, i.e. trying to fight off the attacker and/or scream for help, a very common reaction to rape is the so called 'freeze' response. This response implies that the

93 Burt, Martha R., "Cultural myths and supports for rape", February 1980, Journal of Personality and Social Psychology: 38 (2): 217-230. Rape myths are "prejudicial, stereotyped and false beliefs about rape, rape victims and rapists" which create "a climate hostile to rape victims".

victim does not resist, scream for help or attempt to fight off the attacker.[94] It is imperative that a victim who states that she did not fight the attacker, or scream for help, is not misunderstood as having consented to the act. This applies even if the crime takes place in a situation where screaming for help would be possible, i.e. in an apartment with people in it.[95]

While the crime of rape can be a violent one, international human rights standards and Kosovo legislation stipulate that the constitutive element is the absence of consent, and do not require violence or force as constitutive elements of the offence.[96] Hence, the absence of bodily injuries does not indicate that a crime has not taken place. The act of vaginal penetration, which is the most common form of rape, does not necessarily result in injuries in the genital region. The absence of injuries, genital or otherwise, as described in a forensic medical and/or gynaecological report can therefore not on its own be considered as proof of absence of the crime.[97] Such reports instead must be assessed in light of other evidence provided, such as the statement of the injured party.

In six of the 11 analysed cases, the lack of physical injuries in the genital region was emphasised by the court as one of the reasons for the acquittal. In none of the cases, the violence described by the injured party would necessarily lead to such injuries (i.e. as vaginal bleeding or extreme genital pain were not mentioned). In five cases, other bodily injuries were documented. These injuries were to a large extent consistent with the way the injured party described how the defendant had injured her, which should have given credence to her statement. Even though the courts' final conclusion in each case was not based solely on the lack of genital injuries, the finding that lack of such injuries is emphasised in acquittal judgments suggests that the courts are at least partially influenced by stereotypes and the untrue notion that a rape should result in genital injuries, part of that group of preconceived notions about rape referred to as 'rape myths'. As confirmation that 'rape myths" exist in the courts in Kosovo, in one of the cases that ended in acquittal, the court judgment provided that "acts of rape are usually accompanied by signs on the body".

In three of the analysed cases, the courts took into account that the injured party did not scream for help or physically resist the defendant in the evaluation of the testimony. The courts found the injured party's statement to be inconsistent, noting that while she asserted not giving consent to a sexual intercourse, she also stated that she neither screamed for help despite the presence of other people nearby nor physically resisted the assailant or fought back. This reasoning was applied even when the injured party explained that the defendant was stronger than her adding that she was frightened and froze in the situation. Furthermore, in one of the cases that ended in conviction, the court put a lot of emphasis on the fact that the injured party had resisted and called out to a passerby for help (the rape took place inside a vehicle). These findings further support the notion that another 'rape myth', namely that all rape victims react by resisting and screaming for help, exist in the courts in Kosovo.

When it comes to the parties' statements, the analysis of the judgments suggests that conceived inconsistencies in the injured party's statement influence the court's evaluation. In several cases, the court considered the statement of the injured party to be contradictory, and

94 ECtHR, *M.C. v. Bulgaria*, 2003, no. 39272/98, paragraph 164-166, https://hudoc.echr.coe.int/%20en-g#{%22itemid%22:[%22001-61521%22]} and CEDAW, *Vertido v. the Philippines*, 2010, Communication No. 18/2008, 2010, https://juris.ohchr.org/casedetails/1700/en-US.

95 Amnesty International, *Time for a change: Justice for rape survivors in the Nordic countries*, 2019, p. 54, https://www.amnesty.org/en/documents/eur01/0089/2019/en/. (last accessed on 12 September 2025)

96 Criminal Code, 06/L-074, 14 January 2019, Article 227, paragraph 1, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413: "*Whoever subjects another person to a sexual act without such person's consent […]*".

97 University of Birmingham, Lack of sexually related injuries does not mean rape victim was 'making it up', 6 October 2023, https://www.birmingham.ac.uk/news/2023/lack-of-sexually-related-injuries-does-not-mean-rape-victim-was-making-it-up (last accessed on 12 September 2025).

therefore unreliable, for reasons that were not based on objective criteria. For example, in one case the injured party had been driven to a remote area in a vehicle, where the alleged rape had happened. The court found it contradictory that she could not recall the exact place of the event. In another case, the court found it contradictory that the injured party had sent text messages to her boyfriend, and had gone to a motel with him, while also stating that she was afraid of him and that the relationship was not good at that moment. Similarly, in one case the court did not give credence to an injured party stating that she had been raped by her boyfriend, because the couple had had sexual intercourse before. These approaches are also evidence of existing stereotypes and biases affecting an impartial assessment of the presented facts.

When it comes to indirect evidence, it was observed that the court in two cases totally disregarded the statement of friends and family of the injured party, whom she had contacted immediately after the incident. Their testimony regarding what the injured party had said, as well as her mental state at that time, was not given any value while evaluating all the evidence. The reason in both cases was that they were not eyewitnesses to the alleged rape. While eyewitness' testimony is often more valuable than indirect evidence, it is often not available in rape cases and indirect evidence can amount to essential corroborative evidence.

In a criminal case, it is up to the court to evaluate the evidence to see if the criminal offence is proven beyond a reasonable doubt. If the evidence does not reach that threshold, and the defendant is acquitted, it does not mean that the injured party was lying. What could have happened, outside the scope of the indictment, is not the court's obligation to comment on. Still, in the analysis of the judgments, EULEX noticed that in acquittal judgments the court at times used expressions such as "it is confirmed that no sexual relation happened at the time". In addition to going beyond the scope of a criminal trial, this also shows a disregard for the injured party's statement and implies that she lied in front of the judicial authorities, causing possible re-traumatisation and re-victimisation. Likewise, in many cases the court indicated in the reasoning that "no credence was given to the statement of the injured party, since it is not supported by any other evidence". While it is correct to render an acquittal where there is a complete lack of supporting evidence, the Istanbul Convention aims for the use of victimless prosecutions and it requires Kosovo prosecutorial and judicial authorities to ensure that criminal proceedings related to sexual violence are not wholly dependent on a report or complaint by the victim and may continue even if the victim withdraws their statement or complaint.[98] The Istanbul Convention promotes the use of all available forms of evidence, not just the victim's testimony, to build a case, including, aside from medical evidence, also digital evidence (text messages, calls, photos etc.). The Istanbul Convention requires so to reduce reliance on traumatised or unwilling victims, to enhance victim protection and to improve conviction rates.

In conclusion, the analysis of 11 judgments from courts around Kosovo showcases that preconceived notions about rape and stereotypes influence the evaluation of evidence. These false presumptions can result in erroneous judgments, re-victimisation and a lack of trust in the judiciary. In addition, they are contrary to international legal instruments, such as the Istanbul Convention, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the ECHR.

98 Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, Article 55, paragraph 1, https://rm.coe.int/168008482e.

Recommendations

- ✓ Considering that findings show that prejudicial, stereotyped and false beliefs about rape exist in the courts in Kosovo, EULEX urges the KJC to provide training in evaluation of evidence in rape cases for judges, including training in rebutting 'rape myths'.
- ✓ Due to the observed use of preconceived notions when evaluating the evidence, EULEX urges the courts to always keep in mind the known facts about rape and victim's reactions.
- ✓ In line with the Istanbul Convention, which promotes the use of all available forms of evidence in rape cases, the courts should carefully evaluate all evidence and not disregard indirect evidence.
- ✓ EULEX encourages the courts dealing with rape cases to draft judgments carefully with focus on what is proven in regard to the indictment and to avoid taking a stance against the injured party.

3.2.3. Child-friendly justice in sexual violence cases with a juvenile victim

Background

In previous Justice Monitoring Reports, EULEX has noted progress made by Kosovo in aligning its legal framework and practice with the requirements of the Istanbul Convention.[99] An important document for actors in the criminal justice chain, the State Protocol for Treatment of Sexual Violence Cases, was approved by the Government Decision no. 11/109 of 23 November 2022. The Protocol, drafted with EULEX support, represented a landmark step towards implementation of obligations under the Istanbul Convention as well as the National Strategy for Protection from Domestic Violence and Violence Against Women 2022-2026. It outlines steps to be taken by various authorities in cases of sexual violence with the aim of standardising these processes.[100]

In parallel to the foreseen opening of Sexual Violence Referral Centres and Sexual Assault Response Teams across Kosovo, the observations below are made under the current available mechanisms, with a focus on child-friendly justice in cases of sexual violence against children, particularly the interview of children and the videorecording of such interviews. [101] According to Article 112, paragraph 4 of the Juvenile Justice Code (JJC), the child victim cannot be interviewed more than twice during the entirety of a criminal proceeding, including all stages from investigation to trial. According to Article 112, paragraph 4.1, this interview shall be headed by the prosecutor. The JJC also envisages in Article 112, paragraph 8, the videorecording of victim statements to be used as evidence.

99 EULEX, Justice Monitoring Report, 2024, p.46, https://www.eulex-kosovo.eu/eul/repository/docs/(11.11.2024)EU%20Rule%20of%20Law%20Mission%20Justice%20Monitoring%20Report%202024.pdf (last accessed 12 September 2025).

100 State Protocol for Treatment of Sexual Violence Cases, 2022, no. 11/109, https://md.rks-gov.net/wp-content/uploads/2024/07/8C3ACF03-4387-453D-942A-AC5B38B00838.pdf.

101 Administrative Instruction 02/2021 for the Implementation of Child-friendly Justice in the Criminal, Civil and Administrative Proceedings defines (in Article 3) child-friendly justice as *"the justice system that guarantees the respect and effective implementation of the rights of the child at the highest accessible level, the best interest of the child is the predominant consideration, non-discrimination, protection of the dignity of the child and child participation by giving consideration to the level of maturity, understanding of the child and the circumstances of the case. In particular, it is accessible, age-appropriate, prompt, accurate, suitable for, and focusing on the needs and rights of the child, respecting the rights of the child, including the right to due legal process, the right to participate and to understand the procedures, the right to respect for private and family life and the right to integrity and dignity".*

Findings

In June and July 2025, EULEX met with juvenile prosecutors in all the seven BPOs in Kosovo. As a general observation, the equipment and the level and modality of operationalisation of child-friendly interview rooms varies. While in some locations, the rooms were operationalised and in use,[102] in others, they were utilised to a lesser extent.[103]

Some of the prosecutors informed that they would give the defence counsels the opportunity to observe the interview via video link from another room in the premises. However, this practice is not consistent. In cases when this opportunity is provided, the prosecutor will usually give the defence counsel the possibility to propose questions to be asked by the prosecutor. This involvement of the defence ensures that all relevant questions are asked at the stage when recollections are fresh and makes it possible to ask follow-up questions on the spot. In this way, the unwarranted challenging of victim statements by the defence in court is less likely.

None of the BPOs reported having videorecorded victim interviews or used such statements as evidence, as envisaged by the JJC. Lack of suitable equipment was sometimes mentioned, but often there was no articulated reason. Interviews seem not to be recorded because it is not common practice. As a result, as videorecorded evidence has not been produced, there is no experience of the use of recordings as evidence at the courts.

However, there was a consensus among the juvenile prosecutors that the videorecording of victim statements would be powerful evidence.[104] In addition to being forceful as evidence, a videorecording would significantly reduce possible re-traumatisation of victims during the second interview and the likelihood of victims changing their statements due to inappropriate pressure from families or suspects. Should the defence counsel be involved during the first interview, the rights of the accused would also be better protected as any undue influence would become apparent in the recording, and the defence would have a real opportunity to present their questions to the victim.

It is of note that the JJC reads that the first interview "shall" be headed by the prosecutor and it "may" be used as evidence. While the recording of statements is discretionary, the duty of the prosecutor to head the first interview is clear. According to monitoring observations, this rule is not always followed, and police officers frequently conduct interviews without the presence of the prosecutor. This practice, while going against the requirements of the JJC, is reported to be a result of current working arrangements and the pressure of the caseload.

In terms of required equipment, the prosecutors referred to the lack of suitable equipment to record interviews. This could be rectified by simple solutions, such as webcams and laptops, thereby also allowing the prosecutor to be mobile to conduct interviews in another location if necessary.

The persistent problem of re-trials, which has been pointed out in the 2024 Justice Monitoring Report as also affecting juvenile cases,[105] has potentially harmful consequences. The juvenile prosecutors observed that if a case is sent for retrial by the CoA, this can lead to violating the requirements of the JJC of limiting the interviews of the child. In some instances, to protect the victims against re-traumatisation and avoid a direct violation of the law, prosecutors reported having refused to interview the victims in retrial. As the court records the interviews *verbatim* in the minutes, another interview in the re-trial might not seem necessary.

102 Gjilan/Gnjilane, Gjakovë/Đakovica, Ferizaj/Uroševac, Pejë/Peć.

103 Prizren, Mitrovica, Pristina. In Mitrovica, the BPO is on rented premises and thereby does not have a room of its own. In Pristina, the rooms are used, but interviews are conducted in the offices of the prosecutors.

104 One prosecutor referred to a videorecording as "the queen of evidence".

105 EULEX, Justice Monitoring Report, 2024, p.46, https://www.eulex-kosovo.eu/eul/repository/docs/(11.11.2024)EU%20Rule%20of%20Law%20Mission%20Justice%20Monitoring%20Report%202024.pdf (last accessed 12 September 2025).

In some regions, the lack of qualified forensic psychologists to attend the interviews and court sessions was also emphasised. The unavailability or limited availability of specialised forensic psychologists leads to difficulties with the scheduling, especially if they have to be replaced from other regions and in the worst case the interview goes ahead without the presence of a psychologist.

Recommendations

- ✓ EULEX encourages the KPC and the Ministry of Justice to make available and operationalise child-friendly interview rooms in all BPOs and to make suitable technical equipment for audio and video recording available for recording of victim statements.
- ✓ Considering that none of the BPOs have had videorecorded victim interviews or used such statements as evidence, EULEX urges the KPC to organise capacity-building sessions to develop prosecutorial practice to fully utilise video recording equipment.
- ✓ Similarly, the prosecutors should produce and utilise video-recorded statements as evidence.
- ✓ EULEX encourages the Ministry of Justice to ensure availability of accredited psychologists for child victim interviews in all regions.

3.3. Crimes under international law

Background

The investigation, prosecution and adjudication of war crimes against the civilian population and of other serious crimes under international law[106] is a human rights obligation and a core component of transitional justice in Kosovo and in the region. While authorities must strive to deliver justice for victims, upholding fair trial standards is equally paramount to foster trust in institutions by all members of the society.

EULEX looked at recent developments in terms of prosecutorial and judicial activities in this field and highlights some aspects in the administration of monitored cases which deserve attention as they raise human rights concerns.

Findings

On the prosecutorial activity, EULEX notes positively that the War Crimes Investigation Department at the Special Prosecution was staffed with four prosecutors throughout the reporting period. Based on the figures below, it can be inferred that both the Special Prosecution and the KP treated war crimes as an operational priority.

106 War crimes against the civilian population are serious violations of the laws of war that directly target or harm civilians (persons taking no active part in the hostilities, including members of armed forces who have laid down their arms). Examples include murder, torture, taking hostages, outrages upon personal dignity, in particular humiliating and degrading treatment, etc. Other serious crimes under international law include genocide and crimes against humanity - which are offences committed as part of a widespread or systematic attacks directed against the civilian population, and include acts like murder, enslavement, deportation, torture and sexual violence, etc.

In 2024, 14 indictments[107] were filed and nine arrests were conducted. Of the total indictments filed that year, seven were *in absentia*[108] against 64 individuals, while the remaining seven concerned individuals who were already in pre-trial detention and will face trial in person. Overall, despite the persistent backlog and the complexity of the cases, a relatively high number of indictments were filed, signalling an increased activity compared to the previous years.

This positive trend continued in 2025 when in the first six months, the prosecution filed six new indictments related to war crimes. Four of them are *in absentia*, while two indictments concern individuals who were already in pre-trial detention and will face trial in person if the indictment is confirmed. Also, five war crimes arrests were conducted in 2025. Regrettably, there were no positive developments with regard to the regional cooperation in particular with Serbia.

With regard to judicial activity, in 2024, the BC of Pristina dealt with 28 war crimes cases at different stages of the proceedings. Notable verdicts issued that year included guilty judgments against Muhamet Alidemaj, Ekrem Bajrović, and Čedomir Aksić (tried *in absentia*), as well as an acquittal for Zlatan Arsić that was later upheld on appeal. Two guilty judgments (Duško Arsić and Časlav Jolić) were returned for retrial by the CoA. In the first half of 2025, first instance judgments led to two partial acquittals (Zoran Vukotić and Časlav Jolić), one full acquittal (Gavrilo Milosavljević), and two guilty judgments (Dragiša Milenković and Živojin Nešić).

While progress in prosecutorial and judicial activities represents a positive development for the right of victims to obtain justice, in some instances, EULEX found that the administration of cases raised some concerns under Article 5 and 6 of the ECHR, particularly in three aspects described below.

Violations of deadlines for scheduling the main trial

In the reporting period, EULEX noted with concern extended delays in commencing main trial proceedings in several cases. For example, two cases had initial hearings on 8 December 2024 and 15 January 2025 respectively, but as of mid-July 2025 neither had moved to the main trial phase. According to the CPC, a defendant may file a motion objecting to evidence or requesting dismissal of the indictment within 30 days of the initial hearing. Once such a motion is filed, the court must give the prosecutor 15 days to respond in writing, and the single trial judge is then required to issue a written decision within 15 days after that period. This decision may be appealed by either party within ten days of its delivery. Taking those deadlines[109] together, it is apparent that a longer period has expired without the two above-mentioned cases moving forward. While some delay may be considered unavoidable due to the court workload, prolonged court inactivity, especially where defendants are detained, may raise concerns under Article

107 This number includes the indictment in the *Mejë/Meja Case* which was initially filed in December 2023 but later returned to the Special Prosecution by the court and filed again in 2024 in an amended form.

108 The term 'indictment in absentia' is not explicitly used in the CPC unlike the term 'trial in absentia'. However, it was introduced in practice and indictments filed by the Special Prosecution in the absence of the suspect have the title 'indictment in absentia'. This term indicates that the pre-trial stage (partially or in entirety) took place in the absence of the suspect. During the pre-trial stage the suspect has multiple rights (e.g., to be informed about the charges against them, the reason for being charged, to be informed about all of their rights, to have lawyer, to remain silent or to give statements, etc.) with correspondent obligations for the investigators and prosecutors in charge. In case the suspect was present during the pre-trial stage, the omission of those obligations would be a serious violation of rights, but this is not the case when the suspect is absent.

109 The relevant legal provisions on these deadlines can be found in the Criminal Procedure Code, No. 08/L-032, 17 August 2022: Article 240, paragraph 7.1 (30 days for the defence to file a motion to object evidence) and paragraph 7.2 (30 days for the defence to file a motion to dismiss indictment), Article 243, paragraph 3 (15 days for the court to issue a ruling to address the objection to evidence) and paragraph 6 (10 days for either party to appeal it), Article 244, paragraph 3 (15 days for the court to issue a ruling to address the request to dismiss the indictment) and paragraph 4 (10 days for either party to appeal it) and Article 245, paragraph 3 (15 days for the prosecutor to file a response to both objection to evidence and request to dismiss the indictment), https://gzk.rks-gov.net/ActDetail.aspx?ActID=61759.

6, paragraph 1, of the ECHR, which guarantees a trial within a reasonable time. The ECtHR has consistently interpreted this provision as placing an obligation on states to organise their legal systems to ensure timely proceedings.

Disclosure of exculpatory evidence and use of anonymous witnesses

In line with Article 47 of the CPC, prosecutors have an obligation to consider both inculpatory and exculpatory evidence. This provision creates a duty of objectivity for the prosecutor to not only act as a party, but also as a guardian of legality and fairness of the trial. Moreover, the obligation of the prosecutor, upon the filing of the indictment, to submit to the court the complete file on the investigation in line with Article 236, ensures the principle of equality of arms, which is a core element of the right to a fair trial enshrined in Article 6 paragraph 1 of the ECHR. Failure to disclose evidence to the court may therefore constitute a breach of due process rights and undermine the integrity of the judicial process.

In a recent war crime case, it was observed that certain exculpatory materials had been filed to the Special Prosecution but were not submitted to the court pursuant to Article 236 of the CPC, as the prosecution assumed that only evidence supporting the indictment needed to be filed. While Article 235 of the CPC permits the indictment to reference only selected evidence, Article 236, paragraph 1, of the CPC imposes a duty on the prosecution to submit the complete case file to the court. Any materials presented to the Special Prosecution, even if deemed irrelevant by the prosecution, become part of the case file and must be submitted to the court, because they might be assessed as relevant by the latter. In this case, the court's intervention to order the material to be added to the case file eventually remedied this shortcoming, but the initial withholding, which EULEX also identified in other cases, constitutes an inaccurate application of the procedural law.

EULEX also identified concerns in relation to the right to defence recognised by Article 6, paragraph 3d, of the ECHR, in particular when it comes to the practice by the prosecution of withholding anonymous witness testimonies. In a few cases, the prosecution initially denied the defence access to the testimony of two anonymous witnesses, reasoning that the CPC gives the prosecutor the authority to withhold them in case they contain information that could potentially reveal the identity of a witness whose anonymity was granted through a court ruling. However, this interpretation is questionable. Article 216, paragraph 1.3, of the CPC clarifies that the anonymity only covers information regarding the identity or whereabouts of an injured party, cooperative witnesses, witnesses, etc., but not the whole statement. Article 222 of the CPC concerning the main trial stage further obliges all parties to refrain from posing questions that could potentially reveal the anonymous witness's identity. Consequently, the law protects the name and whereabouts of the witnesses, but not the actual testimonies, for which there is no legal ground to be withheld from the defence. Failure to disclose these testimonies could be interpreted as a violation of Article 6, paragraph 3d, of the ECHR, which guarantees the defendant's right to examine witnesses who testify against them.[110] The defence must be able to know, access, and comment on all evidence presented to the court, including statements made by witnesses prior to trial.

Another potential problem with some pending war crime cases, mainly those involving conflict-related sexual violence, is the frequency in the use of anonymous witnesses, particularly the victims whose identities are protected for safety reasons. Under Article 257, paragraph 3, of the

110 The ECtHR has held that this right includes not only cross-examination at trial but also access to pre-trial statements. In *Al-Khawaja and Tahery v. United Kingdom*, the ECtHR emphasised that restrictions on the right to confrontation must be strictly justified and must not compromise the overall fairness of the trial. In cases like *Keskin v. The Netherlands* and *Schatschaschwili v. Germany,* the ECtHR consistently clarified that access to all evidence is an integral part of adversarial court proceedings.

CPC, a conviction cannot be based solely, or to a decisive extent, on the testimony of anonymous witnesses. In many of these cases, the key witness is the victim, whose testimony is crucial to proving the crime. However, when their identity remains concealed, the case risks not meeting the legal standards for a fair trial, especially if the victim's testimony is the most decisive piece of evidence. The ECtHR has addressed this issue in several cases, such as *Al-Khawaja and Tahery v. the United Kingdom (2011)*, where the ECtHR ruled that while anonymous testimony and hearsay could be used, it could not be the sole or decisive basis for conviction. These rulings highlight the importance of ensuring a balance between protecting victims and upholding the defendant's right to challenge evidence, making such limitations crucial to safeguarding the fairness and integrity of the trial process.

Systematic use of pre-trial detention and concerns under Article 5 of the ECHR

Another systemic problem identified by EULEX concerns the excessive and automatic use of pre-trial detention. In war crimes cases, the BC of Pristina has routinely and automatically justified pre-trial detention on the ground of flight risk due to the suspects' dual citizenship. However, this blanket reasoning fails to consider less restrictive alternatives as required by the CPC. Therefore, it is not in line with the jurisprudence of the ECtHR on Article 5 of the ECHR, which has consistently held that any deprivation of liberty must be exceptional, necessary, and proportionate. Examples from previous EULEX trials and current domestic cases show that defendants with multiple citizenships living in Kosovo who were released have not absconded. This indicates that individualised risk assessments are feasible and necessary to comply with the legal standards.

Recommendations

- ✓ To avoid that prolonged court inactivity affects the right to a trial within a reasonable time, the BC of Pristina should ensure timely progression from initial hearings to main trial phase.
- ✓ In order not to breach due process rights and undermine the integrity of the judicial process, EULEX urges the Special Prosecution to enforce full and timely disclosure of evidence, including exculpatory and anonymous witness testimony, and to submit the entire case file to the court, pursuant to Article 236 of the CPC.
- ✓ EULEX urges pre-trial judges at the Special Department of the BC of Pristina to reform pre-trial detention practices to require individualised assessments supported by concrete evidence, and to apply alternative measures whenever they are sufficient, based on proportionality and necessity.
- ✓ In regard to the investigation, prosecution and adjudication of war crimes against the civilian population and of other serious crimes under international law, Kosovo institutions are encouraged to seek ways to strengthen regional cooperation and international engagement, especially with Serbia.

3.4. The application of criminal legislation on inciting discord and intolerance

Background

Freedom of expression is a right enshrined in several international human rights instruments including the ECHR where it is recognised under Article 10.[111] In its jurisprudence, the ECtHR has held that freedom of expression constitutes one of the essential foundations of a democratic society as well as one of the basic conditions for its progress and for the development of every person.[112] It further held that this right can be invoked not only in relation to information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb since "*such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society*".[113]

Given that it is not an absolute right, freedom of expression can be interfered with, provided that the interference meets the requirements of lawfulness, legitimacy and necessity in a democratic society, as elaborated by the ECtHR. Hate speech, that is "*all types of expression that incite, promote, spread or justify violence, hatred or discrimination against a person or group of persons, or that denigrates them, by reason of their real or attributed personal characteristics or status such as "race", colour, language, religion, nationality, national or ethnic origin, age, disability, sex, gender identity and sexual orientation*",[114] is not considered to be part of the freedom of expression as it infringes upon the rights of others. Therefore, authorities have a duty to prevent and combat it by putting in place carefully calibrated civil and administrative law provisions as well as, for certain forms of hate speech, criminal provisions.[115] Factors that determine whether speech qualifies as hate speech include the political context in which the statements are made and whether, in that context, they can be seen as a direct or indirect call for violence, or as a justification for violence, hatred or intolerance.[116] Criminal provisions must be applied as a measure of last resort and in a proportionate manner.

In Kosovo, particular forms of hate speech are criminalised under Article 141 of the CC on inciting discord and intolerance.[117] The conduct which is at the basis of Article 141 can take various

111 Article 10: *1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises. 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

112 ECtHR, *Handyside v. the United Kingdom,* 1976, paragraph 49.

113 ECtHR, *Handyside v. the United Kingdom*, 1976, paragraph 49; ECtHR, *Observer and Guardian v. the United Kingdom*, 1991, paragraph 59.

114 Having in mind that there is no universally accepted definition of hate speech, the one used in this report is from the Council of Europe Committee of Ministers Recommendation of the Committee of Ministers to member States on combating hate speech, CM/Rec(2022)16.

115 ECtHR, *Özgür Gündem v. Turkey*, 16 March 2000, paragraph 63.

116 ECtHR, *Perinçek v. Switzerland*, 15 October 2015, paragraphs 205-206.

117 Criminal Code of Kosovo, 06/L-074, 14 January 2019, Article 141, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413. Article 141 reads "*1.Whoever publicly incites or publicly spreads hatred, discord and intolerance between national, racial, religious, ethnic and other groups or based on sexual orientation, gender identity and other personal characteristics, in a manner which is likely to disturb the public order shall be punished by a fine or imprisonment of up to five (5) years.*
2.Whoever commits the offence provided for in paragraph 1. of this Article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence, or other grave consequences by the commission of such offence shall be punished by imprisonment from one (1) to eight (8) years.
3.Whoever commits the offence provided for in paragraph 1. of this Article by means of coercion, jeopardizing safety, exposing national, racial, ethnic or religious symbols to derision, damaging the belongings of another person, or desecrating monuments or graves shall be punished by imprisonment of one (1) to eight (8) years.
4.Whoever commits the offence provided for in paragraph 3. of this Article in a systematic manner or by taking advantage of his or her position or authority or causes disorder, violence or other grave consequences by the commission of such offence shall be punished by imprisonment of two (2) to ten (10) years".

forms such as speeches, dissemination of posters, material disseminated through online web pages which are publicly accessible, etc. It must be aimed at spreading hatred against specific groups, based on characteristics such as nationality, sexual orientation, ethnicity, religion, etc. The element of inciting means that there must be an intention to evoke some sort of reaction from the public/the people addressed, and this reaction must pose a threat to public order. According to the legal framework, the Special Prosecution has exclusive jurisdiction over cases under Article 141 of the CC.[118]

In a judgment from 2023 which acquitted a defendant of the offence under Article 141, paragraph 1, of the CC, the SC[119] clarified that the criminal offence of inciting discord and intolerance is constituted of three cumulative elements which must be present concurrently: 1) the *actus reus,* i.e. the action of incitement or public spreading of hatred or discord and intolerance; 2) the *mens rea*, meaning the intention of inciting or publicly spreading hatred, discord or intolerance among racial and ethnic groups; and 3) the likelihood of disrupting public order. In the same judgment, the SC also recalled that the right of holding opinions is an essential element of the right to freedom of expression protected under Article 10 of the ECHR and essentially clarified that holding and expressing an opinion that is not shared by the majority of the population cannot be deemed to constitute *per se* inciting discord and intolerance.

Another relevant provision in this context is Article 11 of the Law on Public Peace and Order,[120] which sanctions the distribution or display of any writing, sign or visible representation which is insulting or obscene with the intent to threaten a breach of peace. This is a minor offence and is punishable by a fine. This qualification is sometimes used by the judicial institutions when an expression does not meet the elements of the criminal offence inciting discord and intolerance.

In response to a perceived increase of cases being initiated or adjudicated under Article 141 of the CC, EULEX conducted a preliminary assessment on how this provision is applied by the judicial institutions. The information and findings below are drawn from eight cases from the period 2023-2025, out of which one was adjudicated, while the others are still pending or were eventually closed.

Findings

A recurrent issue identified in most of the monitored cases is the uncertainty around whether the qualification of the actions or statements under article 141 of the CC was correct. In several instances, individuals were questioned and later criminal proceedings were initiated after having placed stickers, made public statements or wearing clothing with symbols deemed provocative or offensive. In the absence of all the elements of the criminal offence from Article 141 described above, even in light of the sensitive ethnic/political environment in Kosovo, EULEX deems that the statements or the display of those symbols constituted merely the expression of a political opinion or national or ethnic affiliation.

In one of the monitored cases, individuals were also placed in pre-trial detention for several months before the charges of inciting discord and intolerance were eventually dropped. This happened in a case of three foreign citizens arrested due to an inscription on their vehicle containing a political viewpoint.

118 Law on the Special Prosecution Office, 08/L-168, 23 November 2023, Article 9, https://gzk.rks-gov.net/ActDetail.aspx?ActID=84236.

119 Supreme Court of Kosovo, *Todosijević case*, 3 July 2023, Pml.no.157/2023.

120 Law on Public Peace and Order, 03/L-142, 17 September 2009, https://old.kuvendikosoves.org/common/docs/ligjet/2009-142-eng.pdf.

Some cases raised concerns also regarding the treatment of juveniles. Specifically, a number of underage children were shortly deprived of their liberty and questioned by the police for wearing t-shirts carrying national symbols or painting of graffiti, in breach of international children's rights standards and Kosovo law, which foresee that detention of juveniles, even briefly, must be used only as a measure of last resort. Some of the juveniles received a fine for a minor offence based on Article 11 of the Law on Public Peace and Order. However, in the monitored cases involving juveniles, the legally required intent to threaten a breach of peace was not straightforward. In conclusion, EULEX finds that the KP, Special Prosecution and courts demonstrate an uneven interpretation of the offence of inciting discord and intolerance, often acting in disregard of the relevant jurisprudence of the SC and in breach of Article 10 of the ECHR.

A punitive approach towards what can be considered as manifestations of freedom of expression can harm public trust in the institutions, especially among non-majority communities, leading to further social divisions. A more sensible approach by the authorities based on constructive engagement and dialogue with all segments of society is needed to adequately balance freedom of expression with the need to prevent and punish hate speech. Given Kosovo's political and social context, it is of paramount importance to ensure a fair, proportionate and non-discriminatory application of legislation in this field. In light of these considerations, EULEX encourages all stakeholders to engage constructively on the topic and presents the following recommendations.

Recommendations

- ✓ Limitations on the display of symbols in sensitive contexts based on public order considerations should be compatible with the requirements of Article 10 of the ECHR as interpreted in the relevant jurisprudence of the ECtHR. Moreover, any such limitations must be duly communicated to the public.
- ✓ EULEX calls on authorities to resort to criminal or minor offence sanctions only when all the elements of the offences are present.
- ✓ In order to avoid unnecessary and/or disproportionate police actions, in particular regarding juveniles, EULEX encourages the KP to set up a system where police officers can receive real time advice from a prosecutor or legal adviser on whether a conduct can be considered as meeting the criteria from Article 141 of the CC and of Article 11 of the Law on Public Peace and Order.
- ✓ EULEX calls for more cross institutional discussion, for instance in a form of workshops/ roundtable with KP, Special Prosecution, judges and civil society to reach a common understanding on what conducts constitute inciting discord and intolerance or display of obscene and offensive material, ensuring a proper balance between freedom of expression and the fight against hate speech and with due consideration for juvenile justice standards.
- ✓ In line with international children's rights standards and Kosovo law, the KP should detain juveniles only as a measure of last resort.

3.5. Use and maintenance of the Case Management Information System

Background

The CMIS is an integral and highly important part of Kosovo judiciary and prosecution. CMIS is an electronic system which stores a variety of information regarding cases. The system has been in place since 2018 and, despite some challenges described below, is an important element of the rule of law contributing to improved efficiency, transparency, and access to justice within the Kosovo judiciary.

Findings

CMIS is of great assistance in the daily work of the courts and prosecution offices. Thanks to the CMIS, basic court presidents, supervising judges in court branches as well the chief prosecutors in BPOs can easily verify action and progress done by judges, prosecutors, legal associates and other staff. More specifically, through the CMIS, the chief prosecutors or basic court presidents can easily supervise each prosecutor's or judge's work digitally and see how often they opened the system, in what cases, and what documents are uploaded. Also, the CMIS shows the case status without having to search in paper registries and look for case files. An excellent practical example of the CMIS usefulness was demonstrated after a fire destroyed two judges' offices in the branch of the Basic Court of Ferizaj/Uroševac in Kaçanik/Kačanik in spring 2024. Close to 300 cases could be restored thanks to the existence of electronic copies in the CMIS.

Moreover, through the CMIS, the cooperation between basic courts and the BPOs is timely and efficient. Only in pre-trial detention cases, where decisions need to be taken in a matter of hours by the on-call judges, it happens that the paper version of case files is delivered by the on-call prosecutors to the court before the electronic CMIS version. Although such omissions do not have significant negative implications, they should be avoided. It would be desirable that the judges have all required documentation on their computer screen, as well as their desk. When electronic files are not available yet, the on-call judges could work on paper files in exceptional situations for the benefit of swift case management. However, the BPO case file should be uploaded to CMIS before the decision is rendered.

On a less positive note, EULEX notes that CMIS maintenance, which is necessary for its unhindered functioning, is not regulated in a permanent contract. This has been an ongoing challenge for some time. The CMIS maintenance tender, which was repeated for the third time, failed again in late April 2025. Currently, the system is maintained only by the KJC staff despite a lack of their sufficient technical expertise. In case of CMIS malfunctioning, it is questionable if the expertise to solve the issue is available. Companies that had a tender contract for the CMIS in the past, maintained the system on an *ad hoc* emergency contract, or sometimes due to their good relations established with the KJC. Currently, there is no permanent and feasible solution. Such an important element of the efficient functioning of the judiciary cannot depend on someone's good will, especially since serious problems with the proper CMIS day-to-day maintenance could arise.

In the 2021 EULEX Justice Monitoring Report, EULEX recommended KJC to conduct an additional tailored CMIS training based on a survey among the CMIS users, as a tool to make the CMIS more user friendly and satisfactory. In March 2025, a survey was distributed by KJC to all relevant judiciary staff, structured in the form of a questionnaire which was adjusted to specific job responsibilities of judges, legal associates, legal officers, and administration/ registry clerks. The goal of the survey was to identify problems and staff needs to set priorities

for system enhancements, however, most of the staff failed to participate in the survey.[121] The outcome of the survey is yet to be analysed by KJC.

EULEX has further observed that, even though the BPOs assess the level of cooperation between their offices and the KP to be sufficient and without serious issues, improvements are needed in the registration of parties and the accurate scanning of case files. The electronic system used in police stations is not CMIS, but it is compatible with it. While this fact does not inherently cause issues, several challenges in electronic data exchange with BPOs have been identified. The KP is aware that documents not entered in CMIS will not be accepted in physical form by the BPOs. An exception is only made in cases involving pre-trial detention, where paper files may be submitted before being digitally recorded in CMIS, due to time-sensitive procedures. Decisions are nevertheless taken only after the corresponding electronic version is received. There have been instances where new submissions in already registered cases were mistakenly treated as new cases, resulting in the creation of new CMIS numbers. Common interoperability shortcomings include incomplete or poor-quality scans and missing case files and parts of reports. These are typically due to human error, resulting from insufficient knowledge or lack of training on the use of the police electronic system. In some police stations, only one officer is trained to operate the system and manage file transfers to BPOs. Police reports frequently lack sufficient personal data on involved parties, such as their personal identification numbers, contact details, ethnicity, or economic status. These human errors need to be addressed.

Finally, the end of support provided by the Norwegian Court of Administration for the CMIS in December 2025, with no further extension foreseen, is of concern. Proper planning and budgeting for the CMIS is crucial for its long-term development and progress.

Recommendations

- ✓ As in pre-trial detention cases, it was observed that the paper version of case files is delivered by the on-call prosecutors to the court before the electronic CMIS version, EULEX encourages KJC and KPC to ensure interoperability regarding timely exchange of electronic data between the courts and the prosecution.
- ✓ Considering its importance in contributing to improved efficiency, transparency, and access to justice within the Kosovo judiciary. EULEX calls on the KJC to ensure professional and long-term maintenance of the CMIS, together with proper planning and budgeting.
- ✓ In order to identify problems and staff needs and set priorities for system enhancements, EULEX encourages the KJC to analyse and, if reasonable, implement the CMIS survey feedback from users.
- ✓ Considering the observed challenges in electronic data exchange with BPOs, EULEX encourages the KP to train a larger number of police officers on the use of the police electronic system for data transfer to BPOs.
- ✓ Similarly, the KP should ensure accuracy and completeness of case files before submitting them to BPOs for registration in CMIS.

121 From 1250 questionnaires, only 491 were completed according to the KJC, CMIS Project, *CMIS Enhancement Needs Assessment Report* of 17 April 2025.

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