

FINDINGS AND RECOMMENDATIONS JUSTICE SYSTEM

FINDINGS	RECOMMENDATIONS
<p>The identification of urgent activities by the Kosovo Judicial Council (KJC) followed best practices adopted in many European countries.</p>	<p>The approach adopted by the KJC identifying a number of specific activities deemed as 'urgent' but, at the same time, leaving a margin of discretion to judges in determining other urgent activities is to be commended. EULEX encourages courts to use this discretion wisely and in line with human rights standards, so as to prioritize activities which would, if neglected, cause irreparable harm, in particular to vulnerable individuals or groups.</p>
<p>Under international and domestic law applicable in Kosovo, there is no specific provision that would authorize the court to exclude the public from hearings in case of a public health emergency such as a pandemic.</p> <p>EULEX has not received any complaints by members of the public with respect to being refused entry in the courtrooms during sessions. Neither did EULEX observe any major issues or patterns regarding constant exclusion of members of the public from trials.</p> <p>EULEX also observed wide and unhindered presence of media inside courtrooms in hearings of high-profile and other cases attracting public interest.</p> <p>On several occasions, the increased presence of the public resulted in overcrowded courtrooms where it was impossible to implement any protocols or measures to contain the spread of COVID-19.</p>	<p>In order to ensure respect for the principle of 'publicity', courts must continue to provide adequate facilities for the attendance of interested members of the public. While measures to limit the numbers of people physically present in the courtroom may be deemed necessary and proportionate to prevent the spreading of the virus, it is important that these provisions are not interpreted in a way that for all practical purposes prevents the publicity of trials.</p> <p>Court presidents and judges should make arrangements and plan better in advance for the best use of court premises and courtrooms in particular to avoid small court rooms being used for trials involving large numbers of participants and large premises being used for trials with fewer participants.</p> <p>Presiding judges should proactively ensure that members of the public are allowed to attend hearings while also ensuring that social distancing and other protective measures are respected.</p> <p>Should the need to limit public presence in courtrooms arise, in light of COVID-19 restrictions, presiding judges should ensure nonetheless that members of the public, who wish to attend hearings in their private capacity, are not automatically precluded from doing so.</p>
<p>Overall information on the rules that the public must comply with while in the court premises appeared insufficient, and the number of disinfectant dispensers made available throughout the premises of the courts was also inadequate.</p> <p>EULEX did not observe the distribution by court personnel of any masks or leaflets for the public and observed that a significant proportion of the public was not wearing a mask or was wearing it incorrectly.</p> <p>EULEX did not observe any members of the public being asked to sign a statement confirming that they had not been in contact with infected persons.</p> <p>During the sessions, EULEX observed that some trial panels or single judges tried to disperse the public within the courtroom to facilitate safe distancing.</p> <p>In case of high-profile defendants the presiding judges appeared reluctant to request that the attendants wear masks or did not do so at all.</p> <p>All defendants in detention were provided with masks during the hearings.</p> <p>Regrettably, even members of the trial panels were inconsistent or less strict in the way they were wearing masks in court.</p> <p>The failure to implement protocols becomes particularly problematic in cases with high numbers of defendants.</p>	<p>Judges and court staff should request and ensure the use of masks and social distancing, especially in the courtrooms.</p> <p>Signs displaying protection measures should be visible and hand disinfectant available at all times in the premises of courts.</p>
<p>Planning of use of the courtrooms was not adequate in many courts. EULEX observed proceedings with one defendant scheduled in large courtrooms, while cases with as many as 15 defendants were scheduled in smaller courtrooms.</p>	<p>Allocation of courtrooms should take into consideration the anticipated number of persons to be present at the trials (defendants, lawyers, witnesses, injured parties, members of the public, etc.).</p>
<p>There were no breaks in the proceedings to allow the courtrooms to be ventilated or proper ventilation during the sessions.</p>	<p>Courtrooms should be frequently ventilated.</p>
<p>Court sessions often began later than scheduled, which increased the time parties and the public had to spend in the premises of the courts.</p>	<p>Court staff should proactively inform the parties and the public about a realistic time of the start of the hearings and prevent access to the waiting areas until the hearings are initiated and/or unnecessary presence at the court premises.</p>
<p>The Criminal Procedure Code does not authorise the holding of a VTC for detention hearings, although the KJC Crisis Plan for the pandemic allows the holding of a VTC in urgent cases.</p> <p>Courts have mostly limited the use of online hearings to civil cases, while they have been reluctant to use VTC means in criminal cases due to the lack of technological means and also because of concerns in relation to privacy or integrity of online sessions.</p>	<p>The use of VTC should be properly regulated by law.</p> <p>Although not specifically provided for by the CPC, the presence of the public could also be ensured through technological means. This could be implemented by providing a video link to the public and media or by providing TV monitors in separate spaces in the courtroom. In the absence of a concrete regulation for this matter, it is advisable to regulate this matter by law.</p>
<p>EULEX monitoring revealed that in most cases the "three-month rule" provision did not have an impact on the course of the proceedings because of a common judicial practice: in the first trial session after three months of inactivity, the parties can agree to have all evidence presented in previous hearings considered as "read" while also inserting a relevant entry into the trial minutes, however this practice is not in line with the law.</p>	<p>The matter of the 'three-month rule' should be urgently regulated by law in order to ensure legal certainty. It is to be noted that the current draft CPC stipulates that instead of three months, six months would have to pass between two hearings before the trial would have to recommence. Importantly, it also specifically allows considering testimonies as read after the passing of these six months which would contribute to increased legal certainty.</p>

FINDINGS AND RECOMMENDATIONS CORRECTIONAL SYSTEM

FINDINGS	RECOMMENDATIONS
<p>Kosovo authorities recognised early on the need to make preparations to prevent an outbreak of the pandemic in the correctional facilities.</p> <p>The Kosovo Correctional Service (KCS) succeeded in becoming self-sufficient rather rapidly by producing its own masks for all KCS facilities at the Lipjan/Lipljan Correctional Center for Women.</p> <p>EULEX's direct observation of the implementation of the preventive measures in the correctional facilities revealed a generally high level of compliance.</p> <p>On some occasions, EULEX monitors observed that, due mainly to poor material conditions, especially in older facilities, the KCS experienced difficulties in enhancing the hygienic conditions, despite additional efforts and social distancing.</p> <p>The Mission also observed that some staff members working with prisoners were not wearing masks. Moreover, on certain occasions, inmates complained about the loose implementation of protective measures with respect to COVID-19.</p> <p>By the end of March 2021, the number of KCS staff infected with COVID-19 since the outbreak of the pandemic in March 2020 was 223, while the number of prisoners infected was 46, out of which four died.</p> <p>Overall, preventive measures put in place by the Kosovo authorities appear to have led to a relatively low number of infections registered among KCS staff and prisoners.</p>	<p>The KCS middle and senior management should rigorously enforce COVID 19 preventive measures in all of the KCS facilities, including the correct usage of face coverings.</p>
<p>EULEX observed that none of the adopted Operational Plans or Orders mention the legal basis upon which they are adopted and do not make reference to Article 39 of the Administrative Instructions/House Rules.</p>	<p>Provide a sound legal basis for the restrictions to prisoners' rights.</p>
<p>The banning of all family visits to all facilities was announced to the public on 12 March 2020, through posts on the KCS website in Albanian, through Facebook (also only in Albanian) and through interviews to the media given by the senior management of the KCS.</p> <p>Information in Serbian was not provided to the public which is contrary to Kosovo law.</p>	<p>Ensure dissemination of information in all Kosovo official languages.</p>
<p>While EULEX recognizes that the authorities continuously assessed the situation with a view to lifting the measures as soon as feasible, the Mission notes that, in order to comply with the principle of necessity and proportionality, a case-by-case approach taking into account the specific situation in each facility would have been more appropriate, especially after the initial period of lockdown.</p>	<p>Introduce a case-by-case approach that takes into account the specific conditions of each facility.</p>
<p>The principles of necessity and proportionality should have been applied even more stringently in the case of juvenile inmates, while the authorities opted for applying the same measures also for facilities hosting them, despite the fact that juveniles are accorded more frequent visits in accordance with the law.</p> <p>No special arrangements were provided for female prisoners with children.</p>	<p>Allow for exceptions and special arrangements for specific categories of inmates such as juveniles and female prisoners with children, as well as for vulnerable individuals (e.g. older persons and persons with pre-existing medical conditions).</p> <p>Ensure that restrictions, measures, and operational orders/plans are gender-sensitive and gender-mainstreamed.</p>
<p>The suspension of the privilege for prisoners to work outside correctional facilities was the appropriate measure to be taken by the KCS, since the general protection of health and life of all prisoners and the staff in the Smrekonica/Smrekonicë Correctional Centre had to be taken into account.</p>	<p>Reinstate the privilege for prisoners to work outside correctional facilities as soon as it is safe to do so.</p>
<p>The National Preventive Mechanism stopped all field visits to correctional facilities and to other facilities they inspect in order to minimise the risk of COVID-19 infections spreading in mid-March 2020 and only resumed their ad-hoc visits to correctional facilities in September 2020.</p>	<p>The Ombudsperson should continue to make use of its right to visit KCS facilities whenever it is safe to do so, in order to exercise its fundamental functions for the prevention of torture and other ill-treatment in correctional institutions.</p>
<p>Physical access of lawyers to all Kosovo correctional facilities was banned from 12 March until 20 May 2020. It was again suspended from 21 October 2020, with the exception of defense counsels in cases where trials were ongoing.</p> <p>Representatives of the Kosovo Bar Association also raised concerns with respect to hindered access of the defense counsels to their inmate clients, especially in urgent cases, such as detention hearings, when immediate legal action and legal consultation were needed.</p> <p>Legal counsels raised concerns about the extensive body searches of lawyers in correctional facilities, even during the pandemic period, which caused delays and limited the time they could spend with their clients at the prison facilities.</p>	<p>Review how the rights of the defendant/person deprived of liberty to communicate with their defense lawyer orally and in writing under conditions which guarantee confidentiality can be respected and upheld without hindrance, in relation to the constraints added by the pandemic.</p> <p>Consult with legal experts and related official bodies prior to implementing any measures that may restrict these rights.</p>
<p>The legal framework does not allow for postponement, suspension or termination of sentences due to reasons related to the pandemic.</p> <p>The number of prisoners was reduced by 20.3% from 12 March, when KCS introduced restrictions, until the end of December 2020 as the total prison population went from 1,755 to 1,398. Delays in court hearings and sentencing in trials may be one explanation for the marked reduction in the number of inmates.</p>	<p>The authorities should consider adopting legislation allowing, when it is safe to do so, for the postponement, suspension or termination of sentences due to pandemic-related reasons, in particular for vulnerable groups such as juveniles, and individuals at risk of developing severe COVID-19 symptoms.</p>