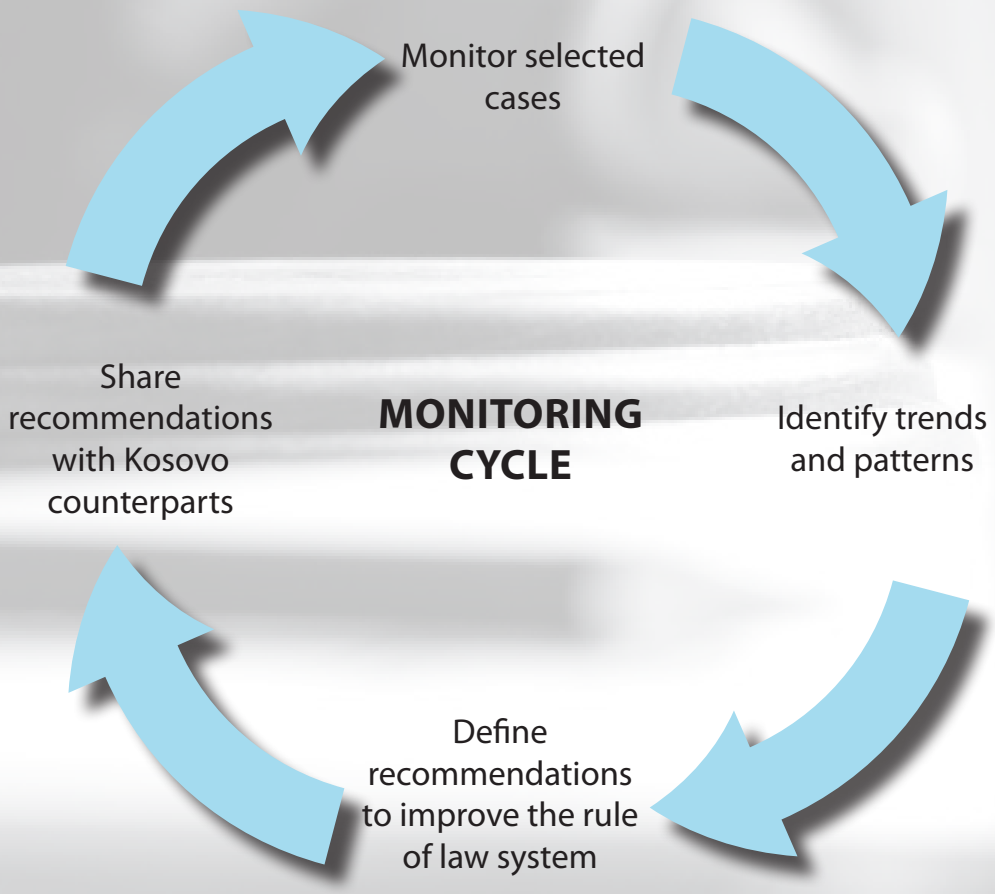
FACTSHEET

The EU Rule of Law Mission (EULEX) Case Monitoring Unit assesses the functioning of the Kosovo Police, prosecution and judiciary in terms of **procedural, substantive and human rights law** compliance. The assessment is carried out through **systemic** and **thematic** monitoring of selected **criminal** and **civil** cases, including cases previously dealt with by EULEX until June 2018 under its past executive mandate. The robust monitoring is spanning the entire chain of criminal justice (police, prosecution and courts) as well as certain aspects of the civil justice system. From January 2019 – after concluding in December 2018 the handover of police, prosecutorial and judicial case files to the Kosovo authorities – to October 2021, EULEX's justice monitors attended **1064 hearings**, including on high-profile cases, war crimes cases, gender-based violence cases, corruption cases, and cases previously dealt with by EULEX. This resulted in five reports with findings and recommendations for improvements of the rule-of-law system in order to assist the Kosovo justice institutions in achieving better compliance with Kosovo law and human rights standards.



EULEX is now monitoring 295 cases

A glimpse into EULEX's Justice Monitoring Report

Period: From March 2020 to October 2021
EULEX staff monitored 295 cases and 378 hearings

SYSTEMIC MONITORING

Issues identified through the monitoring with a systemic dimension

Overuse of detention on remand and potential punitive effects

Findings

EULEX examined 68 decisions imposing detention on remand from all Basic Courts in Kosovo and from each department within the courts.

In a large number of cases, the initially imposed detention on remand was not upheld in the later stage of the proceedings, be it before or after the indictment was filed.

Around two thirds of the analysed decisions did establish the facts of the act (actus reus) that determine the criminal offense, yet often not within the condition of grounded suspicion as required by the Criminal Procedure Code (CPC), but as part of the risk of repeating, completing an attempted or committing a criminal offence.

In the remaining one third of the decisions, the actus reus was not clearly outlined, but rather only hinted at, or the decisions relied exclusively on the prosecution's ruling on initiating an investigation, on police reports, witness interviews and/or other documents within the case file.

The calculation of the duration of detention on remand varies.

Detention on remand is often being applied systematically, without proper substantiation and carries, whether intended or not, a punitive effect.

Recommendations

When issuing rulings on detention on remand, in relation to the possible risk of flight, influencing witnesses or repeating the criminal offence, judges should strictly adhere to the legal prerequisites of Article 189, paragraph 1 of the CPC.

Judges imposing detention on remand should justify this measure based on facts and by providing sufficient proof of the specific risks. Basing the decision on general criteria and schematic arguments, or on the assumption that an imprisonment sentence could be expected at the end of the proceedings, should be avoided.

In case the conditions for imposing security measures are met, the most lenient one should be ordered and detention on remand should be the last resort as foreseen in Article 187, paragraph 1, subparagraph 1.3, CPC.

Judges should calculate the length of detention on remand in accordance with Article 190, paragraph 1, CPC.

Excessive length of detention on remand without final judgement

Findings

In April 2021, there were 37 cases of persons being in detention on remand for two years or more, as follows:

- 13 cases with more than two years;
- 10 cases with more than three years;
- 8 cases with more than four years,
- 2 cases with more than five years;
- 4 cases with respectively six, seven, nine and twelve years.

Recommendations

In line with the jurisprudence of the European Court of Human Rights (ECtHR), Kosovo courts should ensure that their decisions meet the criteria of necessity and proportionality to determine the justified length of detention on remand in relation to the length of the trial. Several aspects should be considered, such as the kind of crime, the role of the defendant, the stage of the proceedings, the delays in proceedings and the reasons for it, the time of the expected judgement, the potential sentence and an overall prognosis of the outcome of the case.
In cases where it is assessed that detention on remand is not necessary and proportionate any longer, the defendant should be released from detention regardless of the kind of the committed crime, as the seriousness of the criminal offences at stake does not justify by itself the continuous extension of detention on remand.

A moderate increase in unproductive hearings

Findings

From mid-March 2020 until end of October 2021, EULEX monitored a total of 378 hearings, out of which 113 were unproductive (30%).
There is a moderate increase compared to the figures identified in the previous report, covering the period August 2019 – February 2020 (23%), and to the figures identified in the first half of 2019 (29%).
Out of the total of 113 unproductive hearings monitored, 37 were in high-profile cases (33%). The number of unproductive hearings remains a concern, especially in high-profile cases, further impacting negatively on the already slow pace of adjudication.
The two main reasons for unproductive hearings remain the absence of the defendant (30 hearings), followed by requests by the defence counsels to adjourn the hearing (19 hearings).
The delays in the proceedings often exceed the reasonable time, in contradiction with the fair trial principle and timely proceedings standard.

Recommendations

Judges should be more thorough in verifying the parties' reasons of absence and apply the available toolbox, including punitive and disciplinary measures provided by the law, or be held accountable when failing to do so.

Courts should prioritise high-profile cases and avoid unnecessary procedural delays.

Prosecutors and defence counsels should be held accountable when causing undue delays.

Record of court proceedings

Findings

Court proceedings in trial hearings monitored by EULEX were never audio- or video-recorded, but rather in writing, often verbatim. In some cases, the judges justified this procedure at the beginning of the hearing with the lack of technical equipment.
Several issues and problems arise from this practice, such as the avoidable prolonging of hearings due to the production of written records requiring more time, the shifting of focus from the essential aspects of the hearing and the damage to the quality of the testimonies.

Recommendations

All courts should be provided with the technical equipment to be able to audio-record the court proceedings.

When the equipment is available, the courts should use it to at least audio-record the testimonies of the parties, witnesses and expert witnesses and only keep a written record of the essentials of the court session

State institutions as injured parties

Findings

In a large number of corruption cases, the injured institution, often a state institution, was not identified as such in the indictment phase, but only later.
State institutions often displayed a lack of activity when identified as injured parties.

Recommendations

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

The role of the State Advocacy Office in court proceedings should be enhanced.

Lack of progress in the handling of high-profile and former EULEX cases

Findings	Recommendations
Several prominent high-profile and former EULEX cases are not progressing at all since they were handed over, for example, such as the "Drenica I", "Olympus II", "Land 4" and "Fahredin Gashi" cases. Other former EULEX cases which are not progressing are "Medicus", the "Naser Kelmendi", "Touareg", "Fadil Shabani", "Muhamet Kamberaj and Makfir Spahiu", "Salih Qitaku et al.", "Olympia" and three "Vukotić" cases. In the few high-profile cases which did come to an end, verdicts were often lenient or the defendants were acquitted.	The courts should ensure that trials are not unduly delayed, which is of specific concern in relation to many high-profile cases, also in order to avoid the impression that the Kosovo judiciary is not fully ready or willing to adjudicate these cases.

Enforcement of final criminal sanctions

Findings	Recommendations
EULEX observed some inconsistencies and lack of homogeneous practices in the enforcement of final criminal sentences throughout the different basic courts. The level of application of the Case Management Information System (CMIS) regarding the execution of criminal sanctions is uneven. It is of concern that the function of the CMIS, which is designed for the use of Execution Officers, is not being used at all in Pristina Basic Court. The position of Execution Officer is not specifically regulated by law. The practices of the different Basic Courts related to the execution of fines and to the total duration of the execution of the criminal sanctions are not harmonized. The fact that the correctional facility informs the competent court whether the convicted person had reported to serve the sentence is a good practice.	The Kosovo Judicial Council (KJC) should ensure that the Case Management Information System is fully implemented at all levels of the execution procedures. To facilitate the transition from using their own databases or manual registries to a unified system, the Execution Officers should be fully trained. The KJC should ensure that the position of Execution Officer is better regulated with specific terms of reference, job requirements, defined category and retributions. Judges should include a specific reference in their judgements to the manner of substituting a fine when it cannot be collected by means of compulsion, as required by Article 365, paragraph 2, CPC and Article 43, CPC.

THEMATIC MONITORING

Issues identified through the monitoring with a thematic dimension

Anti-Corruption

Findings	Recommendations
An Exchange of Letters between the SPRK and the KP, formalising the cooperation between the two parties, and the establishment of specialised departments in the SPRK in 2020, including one on anti-corruption as the main interlocutor of the Special Investigation Unit (SIU), are important steps.	The Kosovo Police (KP) should further empower the Special Investigation Unit (SIU), formerly Anti-Corruption Task Force, as a major actor in the area of anti-corruption detection and investigations. The SIU, supported by other law enforcement agencies, should improve the quality of corruption investigations by enhancing intelligence-led policing and its financial investigations capacities. The SIU, supported by other law enforcement agencies, should enhance the 'follow the money' principle, as this is critical in the investigation of money laundering and other financial crimes. The Anti-Corruption Agency should coordinate with the KP on the continuation of pertinent pending investigations once the Law on the Agency for Prevention of Corruption is in place.

Crimes under international law

Findings	Recommendations
Some progress was made in the work of the KP War Crimes Investigation Unit (WCIU) with regard to operationalising the war crimes database, which was set up between 2019 and 2020 with considerable support from EULEX. The KP and SPRK identified ten priority cases, in which investigation is progressing. Several new investigations were opened but only one indictment was filed, in the "Zoran Vukotić" case. The SPRK War Crimes Department was enlarged and is now staffed with four prosecutors, which is an important improvement and in line with the Mission's recommendation in its previous Monitoring Report. The KP made some progress on several active war crimes investigations. The prosecution could not make much progress, partly due to the fact that many suspects remain abroad and could not be arrested. Several crimes cases under international law, currently being adjudicated before Mitrovica Basic Court and Prizren Basic Court, have not progressed at all. There were some shortcomings in the quality of judgements, particularly first instance judgements, when it comes to the legal reasoning and imposing sentences. The lack of international cooperation, notably with Serbia, remains a significant challenge.	Kosovo's Special Prosecution Office (SPRK) should improve the level of cooperation with the KP with regard to the ongoing investigations, especially in cases in which suspects are in detention. The Mitrovica Basic Court should speed up the retrial of the "Drenica I" case and the remaining Vukotić cases, while the Prizren Basic Court should prioritise the retrial of the "Remzi Shala" case. The Academy of Justice should provide training for judges on the specifics of reasoning of judgements concerning crimes under international law. Kosovo authorities, with help from the international community, need to undertake steps to improve international cooperation, especially with Serbia. Additional resources should be allocated to the SPRK to enable it to cope with the high number of pending cases.

Property rights

Findings	Recommendations
An issue that attracted attention was the non-execution of decisions of the Kosovo Property Claims Commission (KPCC) or judgements of the Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo (KPA AP) and the Constitutional Court of Kosovo. The Kosovo Property Comparison and Verification Agency managed to finalise successfully only one case involving demolition, which lasted for 11 years and in which the Constitutional Court had pronounced a judgement already in April 2014. Another 54 cases are still awaiting implementation, which is highly concerning. One of the main reasons is the lack of budget to perform the demolitions. An additional concern remains the fact that the majority of decisions and judgements that have long been pending execution relate to properties owned by Kosovo Serbs.	More funds should be assigned to the Kosovo Property Agency (KPA) for the purpose of demolition of illegal constructions, which pose the main obstacle for property rights holders to enjoy their rights.

Privatisation and Liquidation

Findings

The Law on the Special Chamber of the Supreme Court (SCSC) of Kosovo on Privatisation Agency Related Matters, adopted in May 2019, is still not being fully implemented.
The KJC has not established a tentative norm about the number of cases to be finalised by SCSC judges within a given time period.
Positively, the SCSC applied a template to effectively and swiftly deal with all 514 mass claims in the "Shock-Absorbers" case.
It is of concern that the SCSC still needs to deal with cases in which the Privatisation Agency of Kosovo as claimant requests the annulment of final judgements of the regular courts, although they were already adjudicated and may not be pursued further.
All monitored Special Chamber judgements and decisions suffered to a certain extent from insufficient reasoning.

Recommendations

The Special Chamber of the Supreme Court (SCSC) should adopt a long-term backlog clearing strategy, e.g. by establishing priority criteria and identifying the optimal number of resources needed to effectively deal with the backlog.
In case the strategy proves insufficient to clear the backlog, the recruitment of additional judges and legal officers should be considered.
The KJC should consider establishing a tentative norm specifying how many cases SCSC judges are expected to finalise.
As an additional tool to clear the backlog, the SCSC should increase, and introduce as a standard, the usage of templates for dealing with mass claims.
The KJC should strengthen the Serbian language translation and interpretation capacity of the SCSC, especially in light of the fact that most court cases concern Serbian parties.
The Privatisation Agency of Kosovo should discontinue the practice of requesting the annulment of final judgements of the regular courts, thereby disregarding the fact that such claims are ungrounded due the fact that they are res judicata.
The SCSC should pay more attention to the reasoning of judicial decisions. The reasoning shall be diligent, comprehensible and in accordance with relevant jurisprudence of the ECtHR. It is crucial that the judgements answer every decisive issue raised by parties and avoid contradictory statements in the reasoning.
The SCSC should install, like all other courts in Kosovo, the Case Management Information System in order to make the SCSC more efficient.

Court administration - Case Management Information System (CMIS)

Findings

Blind case allocation was not always applied, even though this was required by law.
The development and roll-out of CMIS in all the courts had been successful.
The CMIS had gained the trust of most court users.
Due to the complexity of the CMIS and the lack of sufficient resources, mostly technical but also human, the system is not yet fully functional and efficient, mostly in the branch courts.
One of the identified obstacles for the proper functioning of CMIS is the often weak internet connection in courts and subsequent slow system performance.
A sizeable number of cases were manually reassigned in 2020. This concern is being discussed within the KJC.
The option of automatic print out of summons for parties was not used in any of the branches, reportedly due to the lack of available IT experts.
Many branches are understaffed because of long recruiting procedures and often have no interpreters and translators for Serbian language.
The two branch courts in the north of Kosovo have no official telephone numbers, which does not facilitate the required access to justice.

Recommendations

The KJC should ensure a more stable internet connection in all courts and branches.

The KJC, through the CMIS team, should provide additional tailored CMIS training measures for certain users.

The KJC and courts should ensure that translation and interpretation services are better organised and available for parties in all courts.

The KJC should consider the creation and a system of oversight of minimum performance norms for judges by utilising CMIS.

Gender-based violence

Findings

There has not been much progress with regard to the effective use of the domestic violence database created by the Office of the National Coordinator in 2019.
The Office of the National Coordinator has been engaging with all actors by highlighting the need to insert data into the database and trying to address the current challenges.
Thirteen additional victims-centred interview rooms were established in police stations around Kosovo.
A concerning increase in cases of sexual assault, rape, sexual harassment and trafficking in human beings involving minors and juvenile female victims was reported.
With regard to cases of sexual integrity offences, EULEX observed that the referral procedure of victims to the Institute of Forensic Medicine for medical examination and acquisition of biological evidence, although improved it is still not consistent and often depends on the level of engagement of the prosecutor in charge.
There is no special unit or specialised investigators within the KP dealing with sexual integrity offences, as is already the case with domestic violence cases.
The victims-based approach needs to be consistently mainstreamed by all institutions working with victims of sexual offences.

Recommendations

The Government of Kosovo should expedite the procedure for setting up specialised services and standardised processes and responsibilities within the KP, the prosecution, courts and among social workers for victims of sexual violence, starting from the drafting of a national protocol and guidelines.

The KP Training Unit, the Academy of Justice and the Minister of Labour and Social Welfare need to ensure continuous training and specialisation of service providers involved in sexual integrity offences, like police investigators, prosecutors, judges and social workers, as is the case in domestic violence cases.

Law enforcement and judicial authorities need to further mainstream the victim-based approach and minimise the number of interviews by different service providers of a victim of sexual integrity offences, which may reinforce the trauma experienced by the victims.

Access to justice for victims of domestic violence during the COVID-19 pandemic

Findings

Kosovo still lacks a comprehensive and consolidated system of collection of domestic violence data.
There was a constant increase in cases of domestic violence reported to the KP in 2018 (up by 20% compared to 2017) and in 2019 (up by 25% compared to 2018), and a considerably smaller increase of 8% in 2020.
In 2020, 862 temporary emergency protection orders were issued by the KP as compared to 798 issued in 2019.
In 2019, a total of 795 calls were received by the helpline, which decreased to 650 calls in 2020.
EULEX also observed a significant increase of cases affecting minors during 2020 compared to the previous year.
While in 2019 in four of six cases of domestic murder the male spouse killed his female spouse, in 2020, out of 13 cases of murders, only two were perpetrated by the male spouses against the female spouse, while in the majority of cases the perpetrators were young members of the family and the victims were other family members.
The numbers of releases on regular procedures by Prosecution Offices and the number of cases where the KP did not carry out any arrests remain high.
Institutions continued operating normally and responded to victims even during the pandemic.

Recommendations

Under the supervision of the Office of the National Coordinator for Domestic Violence, courts, prosecution and Victims Advocacy Office should improve the effective use of the domestic violence database created in 2019 by inserting consolidated data.

Under the supervision of the Office of the National Coordinator for Domestic Violence, general and specialist service providers (KP, Victims Advocacy Office and NGOs) should increase outreach of online services available to victims, like the current helpline.

Under the supervision of the Office of the National Coordinator for Domestic Violence, the Standard Operating Procedures on Domestic Violence should be reviewed and complemented to be fully in line with the Istanbul Convention requirements, particularly in the field of data collection, coordinated approach and special procedures in cases of minors and juveniles.