EULEX
European Union Rule of Law Mission
Kosovo

# EU Rule of Law Mission
# Justice Monitoring Report

## Findings and Recommendations
## November 2021 – September 2022

**November 2022**


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# List of Abbreviations

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| **ACA** | Automatic Case Assignment |
| **ACTF** | Anti-Corruption Task Force (KP) |
| **BC** | Basic Court |
| **BPO** | Basic Prosecution Office |
| **CC** | Criminal Code |
| **CCSFRY** | Criminal Code of Yugoslavia |
| **CMIS** | Case Management Information System |
| **CoA** | Court of Appeals |
| **CPC** | Criminal Procedure Code |
| **ECHR** | European Convention on Human Rights |
| **ECtHR** | European Court of Human Rights |
| **JJC** | Juvenile Justice Code |
| **KCS** | Kosovo Correctional Service |
| **KJC** | Kosovo Judicial Council |
| **KP** | Kosovo Police |
| **KPA** | Kosovo Property Agency |
| **KPC** | Kosovo Prosecutorial Council |
| **KPS** | Kosovo Probation Service |
| **KTA** | Kosovo Trust Agency |
| **LECS** | Law on Execution of Criminal Sanctions |
| **LEPS** | Law on Execution of Penal Sanctions |
| **PAK** | Privatisation Agency of Kosovo |
| **SCSC** | Special Chamber of the Supreme Court |
| **SIU** | Special Investigation Unit (KP) (former ACTF) |
| **SPRK** | Special Prosecution Office |
| **SC** | Supreme Court |
| **UCCK** | University Clinical Centre of Kosovo |
| **UNDP** | United Nations Development Programme |
| **WCIU** | War Crimes Investigation Unit (KP) |

# Foreword

It is a pleasure to present the third public *Justice Monitoring Report* of the EU Rule of Law Mission in Kosovo (EULEX). Following the phasing out of its executive mandate at the end of 2018, the Mission is engaged in a robust monitoring of the Kosovo justice system. Since then, EULEX issued five general *Justice Monitoring Reports*; the first two were shared only with the judiciary and institutions with specific responsibilities in the rule of law sector, while reports issued since 2020 are made public to ensure that citizens and civil society are able to better understand how rule of law is implemented in Kosovo. As part of a series of public reports on specific rule of law subjects, in July this year the Mission furthermore published a report focusing on the handling of rape cases by the justice system in Kosovo.

By ensuring that our reports are accessible in Albanian, Serbian, English, and for the first time this year also in Braille, EULEX Kosovo is seeking to contribute to ongoing efforts to strengthen the Kosovo justice system. As a Mission, we are determined to ensure transparency about our work and foster an informed public debate about concrete legal remedies to improve accountability and a more efficient delivery of justice, drawing on concrete examples and specific recommendations aimed at improving rule of law.

Upholding the rule of law is ultimately about daily actions of individuals, who by virtue of their position and responsibilities in different institutions and in civil society can make a difference, for better or worse, in the life of the women, men, girls and boys of Kosovo. While institutions and those practising law, such as judges and prosecutors, have to be held accountable for their actions, all parts of society, including civil society organisations, media and informed citizens have a role to play in promoting accountability, transparency and efficiency of justice.

Overall, this report identifies a few relatively recent and encouraging developments in the execution of justice in Kosovo and the Mission is pleased to see that some of the recommendations in previous reports are being implemented by the judiciary. Thus, for instance, the rate of unproductive hearings among those monitored by the Mission has declined and several high-profile cases monitored are pursued more actively.

Notwithstanding some of these improvements, available tools to fight corruption remain underutilized, including the application of accessory punishments; too many high-profile corruption cases continue to suffer setbacks; and progress in the prosecution of war crimes is confined to a limited number of cases. Moreover, delivery of justice in cases of threats against journalists and gender-based violence is inconsistent, with justice being applied unevenly. Cooperation and coordination between different parts of the judiciary, as well as within institutions such as the Kosovo Police and the prosecution, is at times also lacking.

As with previous reports, this report would not have been possible without the cooperation and engagement of the relevant Kosovo institutions. It is intended to further assist Kosovo authorities in improving the functioning of the justice system, in line with EULEX's mandate as a Rule of Law Mission. We trust it will be received by our local counterparts in the same constructive spirit as previous reports and will contribute to the advancement of Kosovo on its European path.

**Lars-Gunnar Wigemark**

# 1. Introduction

Like its predecessors, this Justice Monitoring Report is assessing specific aspects of the functioning of the entire chain of criminal justice – at the police, prosecution, and court stages – combining a systemic and a thematic perspective as reflected in the structure of the Report.

The section titled 'Systemic monitoring' is dealing with issues identified mainly, although not exclusively, through the monitoring of individual cases, pointing to possibly wider and systemic problems. In this report, this includes the progress in high-profile cases, the *ratio* of productive versus unproductive court hearings, the enforcement of accessory punishments, the scheduling of court sessions, and the implementation of the case management information system.

The section titled 'Thematic monitoring' is focusing on issues identified through the monitoring of the handling of specific types of criminal offences, such as corruption, gender-based violence, terrorism, and crimes under international law. It also covers new topics that were not covered in previous reports such as crimes against journalists and the application of diversion measures to juveniles in contact with the law. This section also includes a chapter on the processing of civil cases related to several types of property disputes.

Like in previous reports, findings on each of the issues analysed are accompanied by tailor-made recommendations to the relevant authorities on ways to address certain aspects where shortcomings have been identified.

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

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

Most of the findings refer to the period November 2021 to September 2022; however, the report also includes information on developments occurring after that date due to their relevance.

# 2. Findings of Systemic Monitoring

## *2.1. Progress of high-profile cases*

During the reporting period, EULEX continued to closely monitor high-profile cases, following up on their progress and on the recommendations provided by the Mission to the judiciary in the previous *Justice Monitoring Reports*. For monitoring purposes, EULEX classifies as 'high-profile' those cases 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 and are still ongoing. The main criminal offences concern, *inter alia*, organised crime, high level corruption or violent crimes. Due to the high number of such cases, the Mission has the capacity to monitor only a selection of them.

Previously, EULEX had observed that a significant number of the monitored high-profile cases was recording a slow pace of proceedings, due in part to the impact of the COVID-19 pandemic on the activity of prosecution offices and courts. Lengthy investigations and court proceedings in such cases contribute to the public perception that high-profile offenders were exempted from the legal consequences of illegal actions and that cases regarding offences associated with corruption were treated preferentially by the justice system. EULEX was pleased to observe a change during this reporting period, with several high-profile cases now active after having been dormant for long periods.

### High-profile cases registering progress

In the former EULEX *Olympus I Case* (also known as the *Land Case*), in which the defendants were indicted in 2016 on charges of having illegally gained ownership of socially owned land and other properties, the monitored trial proceedings were recording a productive pace until the court activity was affected by the imposition of pandemic-related measures. Close to the end of the trial, the proceedings entered a slow pace caused by changes in the panel composition, as one judge passed away. In 2022, a new judge was assigned to the case. He scheduled two hearings in June 2022 and the trial had to start again from the beginning, as prescribed by the law for cases in which no activity had taken place for three consecutive months or more. Additionally, two of the defendants who had been in detention on remand for a very long period (more than six years), were released to house arrest in June 2022, which marked a significant development. In its previous *Justice Monitoring Report*, published in December 2021, the Mission already pointed out how long detention times in pretrial proceedings raise serious human rights concerns.

A similar increased pace of proceedings was recorded in the former EULEX *Olympus II Case*, which is connected to the aforementioned *Olympus I Case (Land Case)*. In the *Olympus II Case*, 16 defendants are charged mainly with money laundering based on an indictment filed in 2016. After the Court of Appeals (CoA) upheld an appeal by the Special Prosecution Office (SPRK) against the initial decision of the Basic Court (BC) of Pristina to dismiss the indictment in July

2021, the case was sent back for retrial to the first instance court on 2 November 2021. Since May 2022, hearings took place regularly and on 7 November 2022, the first instance court announced the judgment acquitting all the defendants.

In the former EULEX *Naser Kelmendi Case*, the defendant was initially indicted in 2014 for organised crime, aggravated murder, unauthorised possession, distribution or sale of narcotics and unauthorised production and processing of narcotics. The initial conviction was issued in 2018 and retrial proceedings began in 2019. This was followed by a significant period of inactivity until the beginning of 2022, when several court sessions were scheduled. The proceedings thus resumed during the reporting period, putting an end to almost three years of inactivity.

In the former EULEX *Grande I Case* and *Grande II Case*, a group of defendants, including late President Rugova's son, were accused, in 2016, of several criminal offences for having allegedly procured from the Embassy of Italy, through fraudulent means, Schengen visas for individuals from Kosovo. EULEX monitored a relatively slow pace of the main trial proceedings before and during the COVID-19 pandemic; yet later on, both cases started to record productive hearings. Since April 2021, hearings in the *Grande I Case* have been taking place regularly while hearings in the *Grande II Case* started being scheduled in April 2022, after the proceedings had been dormant for two years.

The former EULEX *City Club Case* has also progressed in the reporting period. The retrial started at the Basic Court of Gjakovë/Đakovica on 23 November 2020 and more than 20 hearings were conducted thereafter. The judgment was announced on 14 March 2022. The defendant was sentenced to an aggregated punishment of 24 years in prison for aggravated murder, attempted aggravated murder, causing general danger and illegal possession and use of weapons. In September 2022, EULEX was informed that the judgement was served to the parties and appealed.

The *Stenta Cases* are related to high-level corruption in the medical services and the failure of law enforcement agencies and the judiciary to safeguard the rights of citizens and secure reparations for the injured parties. The initial case was divided into three cases, *Stenta I, II, and III.* Due to the high number of defendants and because some of them were often absent from court hearings due to illness, *Stenta II* was also divided in two parts, *Stenta II.1* and *Stenta II.2*, the latter concerning the absent defendants. The Presiding Judge moved the *Stenta I Case* forward and scheduled regular hearings during spring and summer 2022, which enabled the retrial to conclude at the end of July. The judgment was announced on 1 August, with both defendants once more being acquitted. All other *Stenta* cases are still stalling.

## High-profile cases without significant progress

During the reporting period, some high-profile cases remained slow-paced or dormant. As indicated above, the *Stenta II.1 Case* was progressing until May 2022, although rather slowly, with numerous hearings being postponed because the defendants were absent. Additionally, due to the serious health condition of the Presiding Judge, no new hearings have been scheduled since. In the *Stenta II.2 Case,* in which six defendants are indicted, no productive hearings have been held since October 2021. The hearings were repeatedly being postponed mainly due to the absence of defendants, reportedly due to health reasons. The *Stenta III Case* has seen the least progress and no hearings have been scheduled since November 2021.

In the *Drenica I Case*, the proceedings have stalled since the Supreme Court (SC) sent the case back to the Basic Court of Mitrovica for retrial in June 2018. This is a former EULEX case in which high-profile defendants were charged with having committed war crimes against the civilian population between June and September 1998 in connection with the Kosovo Liberation Army (KLA) Likoc/Likovac Detention Centre in Skenderaj/Srbica. After June 2018, the Basic Court of Mitrovica tried to transfer this sensitive case to another court, which was rejected. More than four years have passed since the SC sent the case for retrial to the Basic Court of Mitrovica without any progress taking place.

The former EULEX *Land 4 Case*, where the indictment was filed in 2016 against a large group of defendants for illegal ownership of socially owned land, and which is connected to the *Olympus I Case* and the *Olympus II Case*, is another example of a high-profile case which has been dormant for several years. Although the high value of the case should have prompted the court to be more diligent in ensuring the efficient management of the main trial proceedings, no meaningful development in the case could be observed. The case is in the main trial stage and no productive hearings have been held since 2019. In 2022, two hearings were scheduled, yet both had to be adjourned due to, respectively, the absence of the prosecutor and a panel member and no additional hearings were scheduled thereupon.

The two remaining defendants in the former EULEX *Hospital Escape Case,* charged with abuse of position or authority, were acquitted in February following a retrial, whereas the verdict was appealed by the Special Prosecution Office (SPRK). The case had been severed, in February 2020, in order to speed up proceedings. It is noteworthy that the severed part, related to charges pertaining to intimidation of witnesses, has remained inactive, with not even one hearing being held.

No significant progress has been recorded since 2020 in the former EULEX *Medicus Case*. After more than a year of inactivity due to the difficulty in locating the considerable number of injured parties and witnesses, a hearing was scheduled on 1 March 2022, but had to be cancelled due to the strike of the administration staff in the Basic Court of Pristina. Additionally, the trial was delayed repeatedly, partly due to the judge's requests to be removed from the case for different reasons, which were eventually rejected by the President of the Basic Court. A hearing finally took place on 9 September and the case was expected to pick up pace. However, in a hearing held on 2 November, it was agreed by all parties that the indictment had to be amended, which will result in a further significant delay of the proceedings.

Additional details on all the cases mentioned above can be found in the Annex of Cases at the end of this report.

**Recommendations:**

- The prosecution offices and the courts should monitor more systematically the processing of high-profile cases, flag extremely long procedures and repeated retrials, identify the causes of these delays and remedy them.
- The Kosovo judiciary should prioritise cases attracting significant public and media interest, as well as cases involving high-level corruption and politicians or other public figures, in line with KJC's *Strategic Plan for the Effective Solution of Cases of Corruption and Organised Crime 2022-2024*[1].

## *2.2. Increased trend of productive hearings*

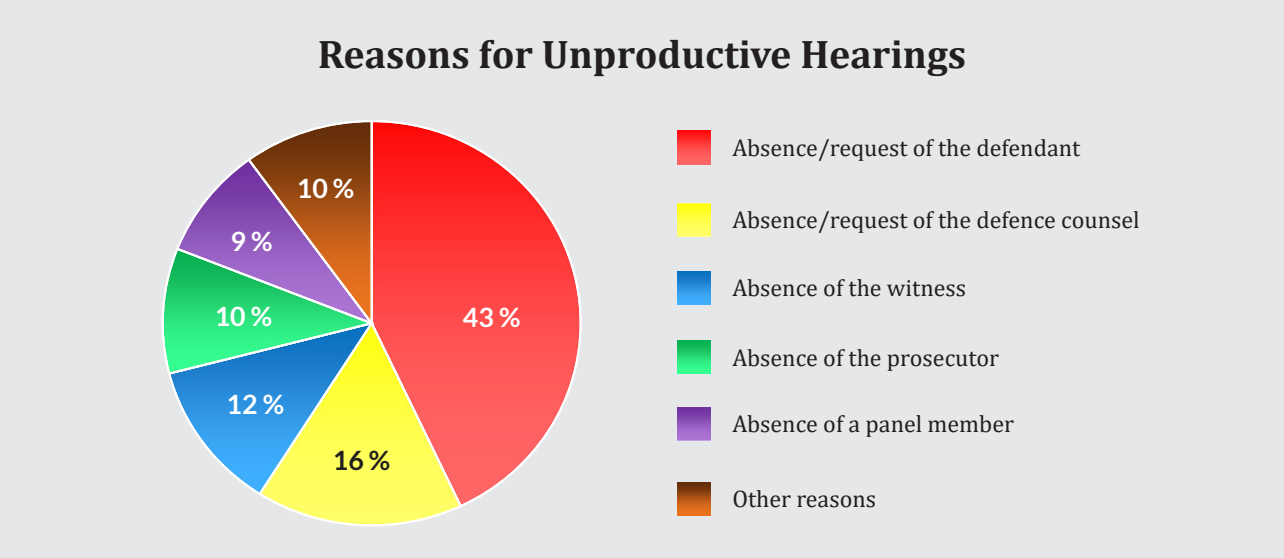
In order to guarantee the right to a fair trial within a reasonable time in line with Article 6 of the European Convention on Human Rights (ECHR), it is essential to limit to the extent possible the number of hearings that are adjourned without leading to any meaningful progress in the proceedings. A hearing can be considered 'productive' when it is held as scheduled and progress is made towards adjudication, for example, when requests for or objections against evidence are filed, defendants, injured parties or witnesses are examined, or opening and closing arguments are delivered. On the other hand, a hearing is considered 'unproductive' when adjourned without any meaningful progress.

Following the findings published in its previous *Justice Monitoring Reports*, EULEX continued to closely monitor the ratio of productive versus unproductive hearings in the cases it monitors. In the period November 2021 to August 2022, EULEX monitored a total of 352 hearings, out of which 91 were unproductive (26%). As pointed out in the previous *Justice Monitoring Report*, the ratio of unproductive hearings recorded by the Mission between March 2020 and October 2021 was 30%.[2] This decrease might be attributed to the commitment of the Kosovo Judicial Council (KJC) to address this issue following EULEX's recommendations on this matter.

The two main reasons leading to unproductive hearings during the reporting period remained the absence or the request of the defendant to adjourn the hearing (39 court sessions), followed by the absence or request of the defence counsels to adjourn the hearing, mostly claiming they needed more time to prepare the case or stating that they were ill (15 court sessions). Several hearings had to be adjourned due to the absence of prosecutors, judges, witnesses, experts or injured parties.

1 KJC 'Strategic Plan for the Effective Solution of Cases of Corruption and Organised Crime 2022-2024', https://www.gjyqesori-rks.org/wp-content/uploads/decisions/44297_Vendimi_KGJK_se_Nr_292_2021_Miratohet_Plani_Strategjik_per_Zgjidhjen_Efikase_te_Lendeve_te_Korrupsionit_dhe_Krimit_te_Organizuar_2022-2024.pdf, KJC website only in Albanian version, KJC, October 2021, (accessed 3 October 2022).

2 In the previous reporting period, many hearings were adjourned as a result of pandemic-related restrictions or due to parties allegedly being infected with the virus.




EULEX also observed that when a party was absent from a hearing, the reason for the absence was in most cases either not provided, or it was not justified by written evidence, an aspect that was often ignored by the courts. On a positive note, in the *Grande II Case,* the panel fined two defence counsels with EUR 200 each for their unjustified absence, which had hardly ever happened before. EULEX had strongly recommended, including in its last *Justice Monitoring Report*, that courts should use the punitive measures provided by the *Criminal Procedure Code* (CPC) to sanction the parties who cause unjustified delays in the proceedings[3].

Out of the total of 352 hearings monitored during the reporting period, 169 related to high-profile cases. In this group, 31% (53 hearings) were unproductive, which is relatively high considering that these cases should be adjudicated promptly due to the severity of the crimes or the profile of the defendants (in line with the KJC regulatory framework as mentioned above). On a positive note, the ratio of unproductive hearings in war crimes cases was lower, namely 21% (4 out of 19).

**Recommendations:**

- Judges should be more thorough in verifying the parties' reasons of absence and in applying the available measures stipulated in the *Criminal Procedure Code*, including punitive and disciplinary measures.
- The Kosovo Judicial Council and Court Presidents should keep track of cases where legal measures are not applied and hold the responsible judges accountable.
- The courts should hold prosecutors accountable for unjustified delays or absence, by notifying the Chief Prosecutor of their respective prosecution office.
- The courts should fine defence counsels for delaying proceedings and notify the Chamber of Advocates.

3 The Criminal Procedure Code, 04/L-123, which entered into force on 1 January 2013, Article 64, empowers the courts to fine a defence counsel for delaying the proceedings with an amount of up to EUR 250 and additionally obliges it to notify the Chamber of Advocates. When such delays are caused by a prosecutor, the courts are required to notify the Chief Prosecutor of their respective prosecution office. CRIMINAL NO. 04/L-123 PROCEDURE CODE (rks-gov.net) (accessed 16 September 2022). The Criminal Procedure Code, 08/L-032, published on 17 August 2022, which will enter into force on 17 February 2023, Article 65, provides the same measures, while raising the fine to EUR 1,000 EUR. (accessed 22 October 2022).

## *2.3 Enforcement of accessory punishments*

EULEX continued monitoring the enforcement of criminal sanctions, an important but often overlooked element in the chain of criminal justice. For the purpose of this report, EULEX focused on the enforcement of accessory punishments. Accessory punishments are aimed at strengthening the effect of the main punishments (both principal and alternative ones), and can only be imposed in conjunction with them.[4]

Article 59 of the *Criminal Code*[5] establishes a list of eight different types of accessory punishments, including the *prohibition on exercising public administration or public service functions* (paragraph 2.3.) and the *prohibition on exercising a profession, activity or duty* (paragraph 2.4.). Articles 62 and 63 further regulate these two accessory punishments. For example, these articles specify whether the accessory punishment is mandatory and determine the range of the period a person is prohibited from exercising public functions, depending on the type of crime and on whether the perpetrator was given an imprisonment sentence, a suspended sentence, or a fine. In the *Criminal Code* of 2019, new provisions were introduced in Articles 62[6] and 63[7], which made it mandatory to impose the two mentioned accessory punishments in, *inter alia,* corruption cases. Considering the importance of this category of crimes, EULEX focused its monitoring on the application and enforcement of accessory punishments imposed in conjunction with corruption related judgments.

As an overarching finding, EULEX observed inconsistencies and a lack of standardised practices in the enforcement of these two categories of accessory punishments. For example, based on inquiries in all Basic Courts (BCs), there appeared to be a general lack of understanding among the staff concerning the concept of accessory punishments and the staff's responsibilities in relation to their implementation. Moreover, the Mission found that the enforcement of criminal sanctions was not consistently treated as a responsibility of the Execution Officer for Criminal Sanctions in the BCs, and that this task was often dispersed among different offices or staff. In its previous *Justice Monitoring Report* of December 2021, EULEX stressed the need to better define the role and responsibilities of the Execution Officer for Criminal Sanctions in enforcing criminal sanctions, including the accessory punishments; the Mission's findings show that progress in this regard was insignificant.

4 Criminal Code, 06/L-074, 14 January 2019, Article 40, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413, (accessed 16 September 2022): Principal punishments are 1) punishment of lifelong imprisonment, 2) punishment of imprisonment and 3) punishment of a fine; Article 41: Alternative punishments are 1) suspended sentence, 2) semi-liberty sentence and 3) an order for community service work.

5 Criminal Code, 06/L-074, 14 January 2019, Article 59, paragraph 2, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413, (accessed 16 September 2022): The accessory punishments are:1) deprivation of the right to be elected, 2) order to pay compensation for loss or damage, 3) prohibition on exercising public administration or public service functions, 4) prohibition on exercising a profession, activity or duty, 5) prohibition on driving a motor vehicle, 6) confiscation of a driver license, 7) order to publish a judgment and 8) expulsion of a foreigner from Kosovo.

6 Criminal Code, 06/L-074, 14 January 2019, Article 62, paragraph 3, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413, (accessed 16 September 2022): The court shall prohibit an official person from exercising his/her function in public administration or public service functions for one (1) to ten (10) years after serving the imprisonment, if the person was convicted of any of the offenses covered in Chapter XXXIII (Corruption and criminal offenses against official duty) of this Code. 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.

7 Criminal Code, 06/L-074, 14 January 2019, Article 63, paragraph 4, https://gzk.rks-gov.net/ActDetail.aspx?ActID=18413, (accessed 16 September 2022): The court shall prohibit an official person from exercising a profession, independent activity, managerial or administrative duty of one (1) to ten (10) years, if the person was convicted of any of the offenses in Chapter XXXIII (Corruption and criminal offenses against official duty) of this Code.

EULEX also noted that most courts failed to apply two specific provisions in the *Law on Execution of Penal Sanctions* (LEPS), which address the implementation of the two aforementioned accessory punishments. Article 160 of the LEPS[8] stipulates that judgments including the accessory punishment of prohibition on exercising public administration or public service functions, shall be immediately sent to the Ministry of Public Administration,[9] which is the institution mandated to oversee the execution of this specific type of accessory punishments. In case the convicted person fails to comply with the accessory punishment, the Ministry is obliged to inform the competent court.

Similarly, Article 161 of the LEPS[10] stipulates that courts are obliged to immediately send judgments including the prohibition to perform profession, activity or duty, to, *inter alia,* the public or private enterprise where the convicted person was employed and to the Ministry of Labour and Social Welfare[11], which should supervise the execution of this specific type of accessory punishment. It was monitored that some courts communicated the sentence only to the public or private institution in which the convicted person was employed and not to the Ministry, while other courts abstained from informing the public institution, as it was assumed by these courts that the respective public institution was informed already as damaged party in the trial proceedings. However, this assumption is mostly wrong, as EULEX found that public institutions often play a very passive role in court proceedings in which they are the injured parties, notably in corruption cases.[12] One of the Basic Courts assumed that registering the accessory punishments in the Central Criminal Record System[13] was sufficient, which it is not. EULEX also noted that accessory punishments were often not duly or inaccurately registered in this Central Criminal Record System.

Both the Ministry of Internal Affairs and the Ministry of Finance, Labour and Transfers informed EULEX that none of them had ever received any judgment from the courts tasking them with the supervision of the execution of accessory punishments in their respective area of competence.

EULEX further observed that there was no system in place to collect and keep the relevant statistical data on the application and enforcement of accessory punishments by the Kosovo Judicial Council (KJC) at central level or by the Basic Courts, which made it difficult for the Mission to obtain data in order to conduct an assessment. In view of this, the Mission opted for examining the issue from a different angle, by identifying judgments of cases where the accessory punishment prohibition on exercising public administration or public service functions should have been imposed pursuant to Article 62, paragraph 3 of the *Criminal Code* in corruption related judgments[14]. The Mission then verified whether the accessory punishments,

8 The name of the law was changed from LEPS to LECS (Law on Execution of Criminal Sanctions). Article 160 LEPS is now Article 155 LECS.

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

10 The name of the law was changed from LEPS to LECS (Law on Execution of Criminal Sanctions). Article 161 LEPS is now Article 156 LECS.

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

12 The issue of monitored passiveness of public institutions as injured parties in corruption cases was identified by the Mission as a concerning trend in the previous Justice Monitoring Report of December 2021.

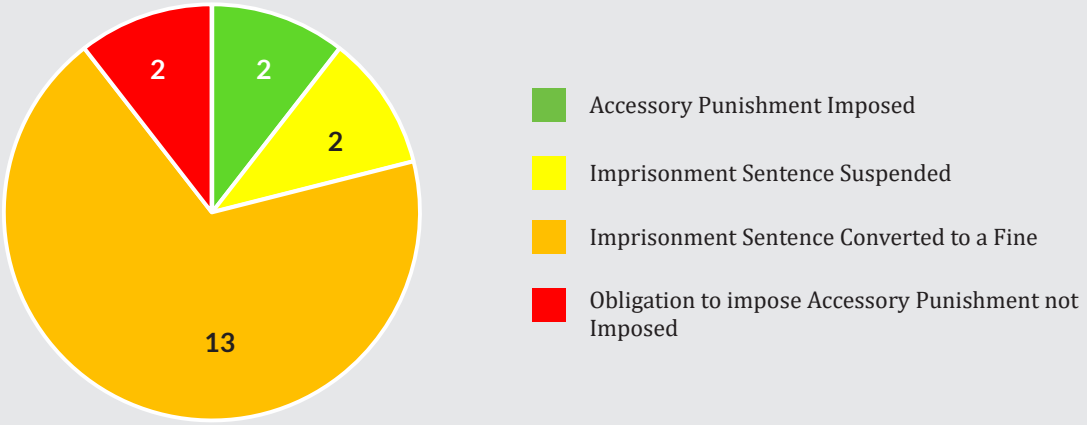
13 The current criminal record system in place is functioning based on KJC Regulation 124/2018 - Keeping Evidence on Convicted Persons and functions based on a coordination mechanism between KJC and the courts. However, with support from the EU, a new National Centralised Criminal Records system is currently being set up. It is a single, unified, more advanced, electronic system for keeping criminal records.

14 Criminal Code, 06/L-074, 14 January 2019, Article 62, paragraph 3, https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf, (accessed 14 September 2022): The court shall prohibit an official person from exercising his/her function in public administration or public service functions for one (1) to ten (10) years after serving the imprisonment, if the person was convicted of any of the offenses covered in Chapter XXXIII (Corruption and criminal offenses against official duty) of this Code.

mandatory in such corruption convictions in case of punishment by imprisonment, had indeed been imposed as required by law:

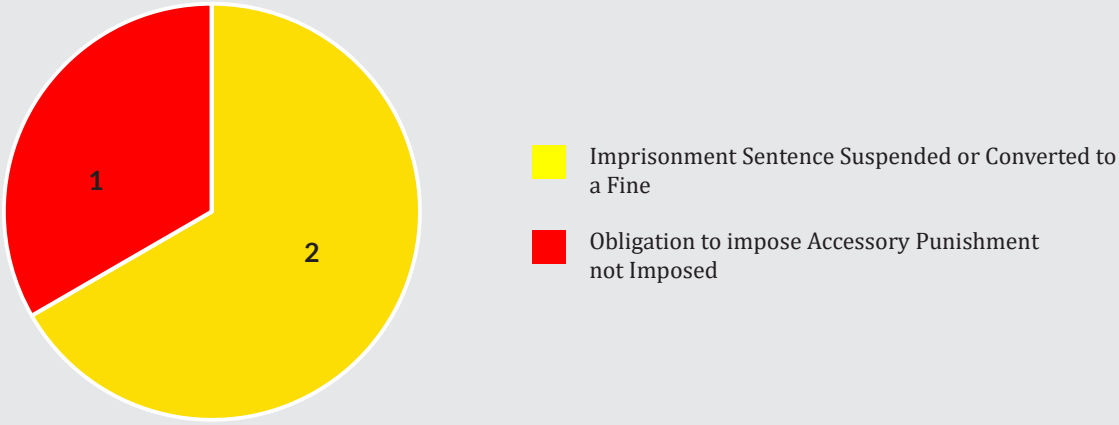
- Based on the assessment of 19 guilty judgments pursuant to Article 414 of the *Criminal Code* (abuse of official position), the Mission identified that accessory punishments were imposed in two judgments, while in two judgments the imprisonment sentence was suspended and in 13 judgments the imprisonment sentence was converted to a fine by which the mandatory accessory punishment was avoided. Moreover, there were two judgments where there was an obligation to impose an accessory punishment, but which was not imposed by the court, in violation of the law.

**Guilty Judgements - Art. 414 Criminal Code**



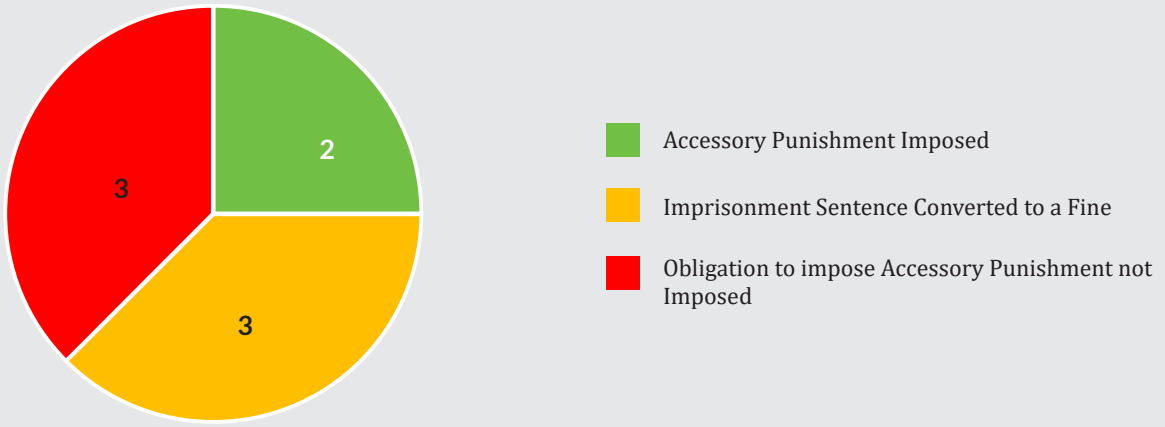

- Based on the assessment of three guilty judgments pursuant to Art. 418 of the *Criminal Code* (misappropriation in office), the Mission identified that no accessory punishments were imposed. In two judgments the imprisonment sentence was suspended or converted to a fine by which the mandatory accessory punishment was avoided. In one judgment there was an obligation to impose an accessory punishment, which was not imposed by the court, in violation of the law.

**Guilty Judgements - Art. 418 Criminal Code**



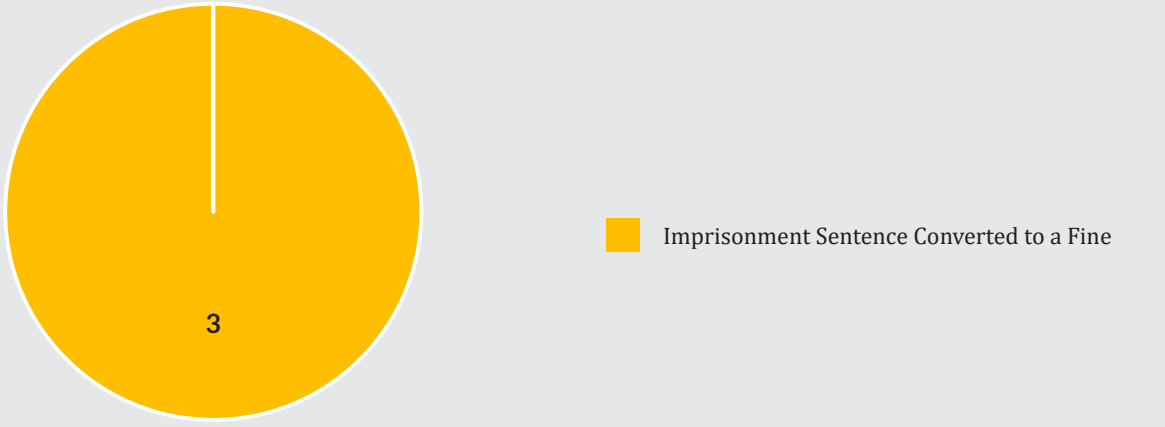
- Based on the assessment of eight guilty judgments pursuant to Article 421 of the *Criminal Code* (accepting bribes), the Mission identified that in two judgments accessory punishments were imposed, while in three judgments the imprisonment sentences were converted to a fine by which the mandatory accessory punishment was avoided. Moreover, there were three judgments in which there was an obligation to impose an accessory punishment, which was ignored by the court, in violation of the law.

**Guilty Judgements - Art. 421 Criminal Code**

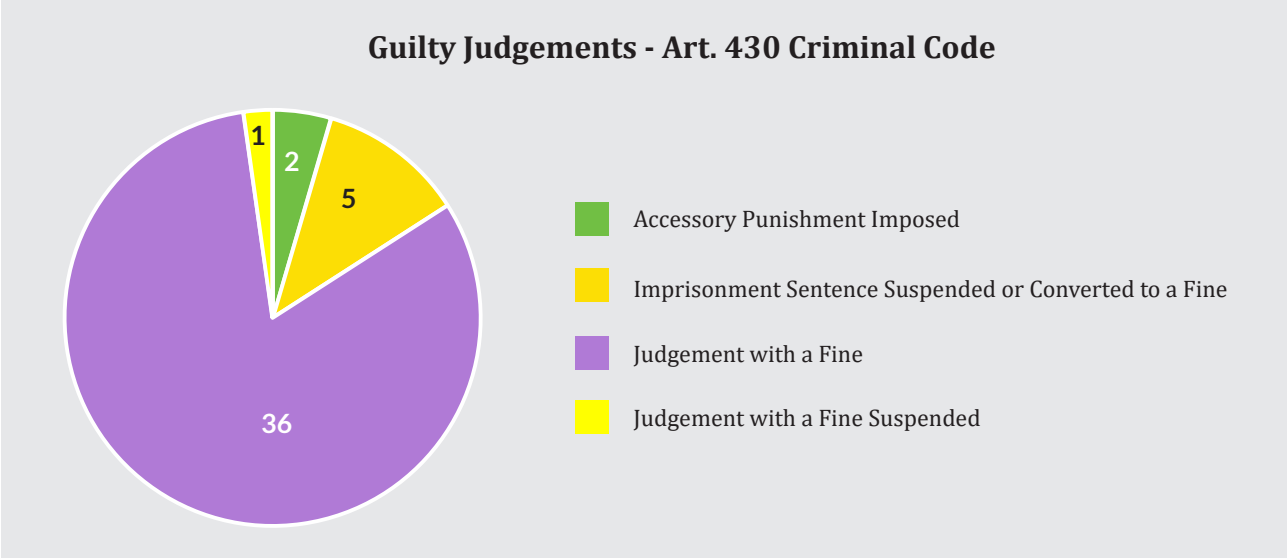



- Based on the assessment of three guilty judgments pursuant to Article 427 of the *Criminal Code* (falsifying official documents), the Mission identified that there was not one accessory punishment imposed, as in all three judgments, a six-months imprisonment sentence was converted to a fine, by which the mandatory accessory punishment was avoided. It is noteworthy that the range of imprisonment for this offence is six months to five years, implying that the minimum punishment was imposed in all three judgments. Also, a six-month imprisonment is the maximum period for which a conversion to a fine is allowed. In conclusion, in all three judgments, minimum prison sentences were imposed, and all were later converted to fines, thus in turn avoiding a mandatory application of an accessory punishment.

**Guilty Judgements - Art. 427 Criminal Code**



- Based on the assessment of 44 guilty judgments pursuant to Article 430 of the *Criminal Code (Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations),* the Mission identified that in two judgments accessory punishments were imposed, while in 36 judgments there was only a fine imposed as punishment. In five judgments, the imprisonment sentence was suspended or converted to a fine by which the mandatory accessory punishment was avoided, while one judgment with a fine was suspended.




**Recommendations:**

- The Kosovo Judicial Council (KJC) should ensure that there is a unified system in place for the enforcement of accessory punishments. To this end, the KJC should clarify all relevant aspects through sub-legal acts, in which the responsibilities of each actor are clearly specified.
- The KJC should establish an automated system of data collection for the accessory punishments and their enforcement through the Case Management Information System (CMIS). For this purpose, a specific data field in the CMIS should be created containing all relevant information such as the respective date of communication of the accessory punishment, the names of the institutions it was communicated to and that of the issuing officer.
- The KJC should ensure that the Central Criminal Record System contains the complete data related to accessory punishments. To facilitate this, a specific data field in this system should be created in order to include mandatory information about the existence of an accessory punishment, its nature and specific duration.
- The KJC should instruct the courts to timely communicate the accessory punishments to the respective institutions in compliance with Articles 160 and 161 of the LEPS (now Articles 150 and 156 in the new LECS) and should regularly follow the effective implementation of Articles 62 and 63 of the *Criminal Code*.
- The KJC should establish a monitoring mechanism to assess whether judges apply the mandatory accessory punishments pursuant to Article 62 and 63 of the *Criminal Code* and ascertain whether in corruption cases courts tend to convert imprisonment sentences to fines, leading not only to the avoidance of imprisonment sentences but also to the avoidance of the mandatory application of accessory punishments.

## *2.4 Scheduling of court sessions*

The excessive length of court proceedings and its impact on the right to a trial within a reasonable time as guaranteed under Article 6 of the European Convention on Human Rights, is a recurrent issue in Kosovo. The excessive and unjustified intervals between court sessions can be one cause of unreasonable delays. The scheduling of court sessions therefore becomes an important aspect in ensuring the efficient progress of court proceedings.

It is common practice for the courts in Kosovo not to schedule all the hearings at the beginning of the trial. In many cases, the date of the future hearings is scheduled after each court session, or even later.

There is much to be gained by keeping the main trial as concise as possible. For instance, the parties and trial panel would need less time for preparation before each session, the examination of parties, witnesses and experts could be more coherent, and overall, there would be less need of repeating actions in the proceedings. A plan for the scheduling of the entire main trial should therefore be adopted from the very start of the court proceedings. If that is not possible, the following session should be scheduled as soon as possible and preferably several sessions should be scheduled at the same time.[15] Scheduling several sessions ahead additionally makes it more likely that all parties attend them, given that they are informed of the dates well in advance. This in turn is conducive to avoiding further delays in the proceedings. Scheduling several consecutive hearings ahead has proven to be of specific relevance for trials with a large number of defendants, as such trials are disproportionally prone to suffering from unproductive hearings, and thus further delays, due to the absence of one or more defendant(s). Ultimately, the entire main trial should be planned and scheduled at an early stage with all actors committed to that specific main trial until it ends.

During the period November 2021 to July 2022, EULEX tracked the scheduling of court sessions in ongoing main trials monitored by the Mission. Out of 179 hearings at which a court session was scheduled, the following session was set within one month on 79 occasions (44%), within two months on 81 occasions (45%), and within more than two months on 19 occasions (11%). On 109 occasions (61%), only one follow-up session was scheduled, and on 70 occasions (39%) two or more follow-up sessions were scheduled.

**Recommendations:**

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

15 The importance of scheduling consecutive hearings is mentioned in the Kosovo Judicial Council's Strategic Plan for the Effective Solution of Corruption and Organised Crime Cases 2022-2024, approved on 18 October 2021.

## *2.5 Court administration - Case Management Information System*

EULEX continued to monitor the implementation of the Case Management Information System (CMIS) in the Kosovo courts. The CMIS is an electronic system which stores a variety of information regarding cases, facilitating a faster access to court files and case updates.

EULEX observed that the CMIS was introduced and functioning in all the courts, the Special Chamber of the Supreme Court for Privatisation Matters (SCSC) being the last one to introduce it. The initial CMIS training for SCSC staff started in April.

The positive aspects of the implementation of the CMIS were repeatedly corroborated by its users across the courts. Most judges confirmed the usefulness of the system in increasing transparency, accountability, and security in courts. However, some challenges remain. Judges complain about the need to perform additional procedural steps when using the system, while others encounter difficulties adapting to new technologies. A major problem for the SCSC is the registration in the system of many old cases, further burdening the work of the already understaffed court administration. While the CMIS provides statistics and allows the courts to generate a certain volume of data, it is still not capable of producing all information needed, notably on the nature of specific cases and on how old they are.

EULEX also assessed the implementation of the Automatic Case Assignment (ACA) module of the CMIS, designed to eliminate interference in the assignment of cases. The ACA has been functioning without any serious hindrances in the Basic Courts since February 2020, and in the CoA and the Supreme Court since December 2021 and March 2022 respectively. This has considerably diminished the possibility of manipulating the case assignment, which is hoped will increase the public's trust in the judiciary. This was a particular matter of concern in the past, as monitored by EULEX, with high-profile cases often being assigned to the same panel of judges in the Basic Court of Pristina, a clear breach of the mandatory blind case-assignment, which at the time was not yet automated.

The ACA system fully functions in the CoA and SC when it comes to automatically assigning three-member judge panels, but not yet in the Basic Courts, in which only single judges can be automatically assigned. Further development of the system has been going on since December 2021 and the feature enabling automatic assignments of three- judge panels in Basic Courts is currently in the testing phase. The closing of this gap would constitute a significant step forward since this inability of the system has resulted in a considerable number of cases still being assigned manually in the Basic Courts.

EULEX also continued to monitor the implementation of the electronic registers, a module introduced at the beginning of 2021 and aimed at replacing manual case registration as of January 2022. Monitoring by EULEX established that some court registry offices maintained the paper registry books in parallel with the CMIS, claiming that they 'needed them in order to be on the safe side' or 'just for the records'.

EULEX also assessed the interoperability of the CMIS between the Basic Courts (BCs) and the Basic Prosecution Offices (BPOs), which is in place since 30 September 2020. It was observed that the process of exchanging data was generally reliable during workdays, but that problems

still occurred in some BPOs/BCs, in particular during the weekends and in pre-trial cases. For instance, BPOs often send cases during weekends to courts in hard copies due to the unavailability of staff on call to upload the files in the CMIS, thus transferring the task of registering the files in the CMIS to the court staff.

Moreover, as previously reported by EULEX, the BPOs and the BCs continued to be affected by understaffing, often due to the lengthy recruitment procedures, and by the insufficient number of translators/interpreters, mainly for Serbian, and in Prizren also for Turkish.

A final three-year phase of the CMIS project (until May 2025), financed by the Norwegian Government, will aim to ensure the full and optimal usage of the CMIS system in all courts and prosecutors' offices, as intended, in order to further improve efficiency, accountability, and transparency in the justice system and ensure the sustainability of the CMIS. It will furthermore aim to assist the KJC and KPC in assuming full responsibility for securing the budget needed to finance the CMIS project in the future.

**Recommendations:**

- With the support of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC), the Basic Courts and the Basic Prosecution Offices should ensure an on-call system during weekends with staff able to use the CMIS.
- The KJC should ensure a more stable internet connection in courts.
- The Ministry of Justice and the KJC should ensure that the translation and interpretation services are better organised and should facilitate more efficient recruitment procedures for translators/interpreters.
- The KJC and the KPC should improve the recruitment processes for staff of the courts and the Basic Prosecution Offices, including a timely planning of replacing the retiring judges and prosecutors.

# 3. Findings of Thematic Monitoring

## 3.1 Anti-corruption

### 3.1.1 The Kosovo Police Special Investigation Unit

The Kosovo Police (KP) Special Investigation Unit (SIU) continues to play an essential role in investigating high-profile corruption cases, despite the fact that it still does not have a clear legal basis. The SIU was provided with a temporary legal status on 25 November 2020, based on a decision issued by the then Minister of Internal Affairs.[16] This decision reads that a Special Investigation Unit is established with a temporary mandate within the Investigation Department of the Kosovo Police, with full authority to continue the investigation of the cases of the former Anti-Corruption Task Force (ACTF), which was abolished on 19 October 2020 by the then Acting Director-General of the Kosovo Police.

The cooperation between the SIU and the Special Prosecution Office (SPRK) was formalised through an Exchange of Letters between the SPRK and the KP in late 2020. The position of the SIU will be further enhanced by the fact that its important role in combatting corruption is clearly outlined in Article 16 of the Draft *Law on the Special Prosecution Office*.[17] However, these positive developments need to be complemented with the provision of a proper legal basis for the SIU, which requires amendments in the *Law on Police*.

The Mission observed with concern that other entities within the KP do not feed the SIU with relevant information in a systematic manner and on a regular basis. For example, only a few cases were referred to the SIU by the Intelligence and Analysis Directorate of the KP and by the Kosovo Intelligence Agency, and almost all cases investigated by the SIU are self-initiated. Furthermore, EULEX established that the SIU's access to information held by other agencies, such as the Tax Administration, the Customs and the Financial Intelligence Unit, which is an independent unit within the Ministry of Finance, was limited and hampered by a lack of cooperation. The fact that the SIU does not have a legal basis contributes to this poor inter-agency cooperation, which hampers the SIU in initiating targeted investigations and slows down the investigative process.

Despite these challenges, over the last year nine indictments were filed by the prosecution based on SIU criminal reports, seven criminal reports were filed by the SIU to the prosecution, while four cases were closed at the investigation stage. The SIU currently has more than 50 corruption cases in its portfolio, almost half of which are of high-profile nature.

### 3.1.2 High-profile corruption cases sent for retrial by the Court of Appeals

High-profile corruption cases are often sent for retrial by the CoA with the argument that the experts' reports on which the first instance judgements relied, had either not been accurately drafted or not thoroughly considered by the court, which is showcased by the following two examples.

16 Decision 915/2020 on the establishment of the Special Investigation Unit within the Investigation Department, 25 November 2020.

17 Draft Law on Special Prosecution, https://www.kuvendikosoves.org/Uploads/Data/Documents/PLperProkurorineSpeciale_upXj2AuNhX.pdf, (accessed 12 October 2022).

In the case against Pal Lekaj, former mayor of Gjakovë/Đakovica and former Minister of Infrastructure, and Gani Rama, an official of the municipality, before the Basic Court of Gjakovë/Đakovica, both were charged for misappropriation in office and abuse of official position. On 19 February 2021, the court sentenced Gani Rama to one year and Pal Lekaj to one year and six months of imprisonment on probation. The defendants appealed the judgement and on 23 August 2021, the CoA decided to send the case back for retrial on the grounds that the court of first instance should evaluate anew the three expert financial reports. This was already the third retrial for Gani Rama and the first one for Pal Lekaj. On 21 January, both were acquitted. The Court based its conclusion mainly on two out of the three expert financial reports provided. On 22 August, the CoA confirmed the acquittal.

The second example is the *3% Case.* The defendants, former Kosovo Prime Minister Bujar Bukoshi and former Member of Parliament Naser Osmani, had allegedly embezzled public money in the amount of over EUR 150,000. On 13 July 2021, the CoA sent the case back for retrial to the Basic Court of Pristina. The retrial started and on 12 September, the Presiding Judge announced that three new financial experts would be appointed, which will additionally prolong the trial.

In the *Gjilan/Gnjilane Highway Case*, the financial expert matter might also result in the case being sent back for retrial by the CoA. In this case, the SPRK filed an indictment against four officials of the Ministry of Infrastructure before the Basic Court of Pristina in February 2021 for alleged offences in relation to a tender process for the construction of the Pristina-Gjilan/Gnjilane highway. The case was based on investigative actions undertaken by the former ACTF (now SIU). After an initial delayed start last year, the case progressed regularly this year and in September, reached the phase of examining financial experts. However, one expert requested to be dismissed due to alleged conflict of interest. The decision of the court is pending.

### *3.1.3 Sequestration and Confiscation*

The sequestration and confiscation of assets obtained through criminal activities are decisive tools in the fight against corruption and organised crime. While sequestration of assets describes the seizure of property during the investigation, confiscation is the permanent forfeiture of property after a final judgment of the court.[18] These instruments ensure that perpetrators are deprived of the possibility to enjoy the illegally acquired goods.

According to an official document by the Ministry of Justice of May 2020[19], obstacles to the proper implementation of asset sequestration and confiscation by the judiciary are mainly related to lack of coherence within the legal framework, insufficient numbers of specialised prosecutors and judges, a low number of indictments, insufficient number of judgments that include confiscation of property, and procrastination of court proceedings.[20]

18 The current Criminal Procedure Code mixes the terms sequestration and confiscation. The new Criminal Procedure Code, which was published on 17 August 2022 and will come into force on 17 February 2023, makes a clear distinction between the two instruments.

19 Concept Paper of the Ministry of Justice on the issue of unjustifiable acquired assets from May 2020.

20 The KJC's Strategic Plan for Efficient Solution of Corruption and Organised Crime Cases 2022-2024, which entered into force through a KJC Decision dated 18 October 2021, indicates as main objectives the increase of productivity and efficiency and the strengthening of the capacity of the judiciary in dealing with corruption and organised crime. The Strategic Plan is available at https://www.gjyqesori-rks.org/wp-content/uploads/decisions/44297_Vendimi_KGJK_se_Nr_292_2021_Miratohet_Plani_Strategjik_per_Zgjidhjen_Efikase_te_Lendeve_te_Korrupsionit_dhe_Krimit_te_Organizuar_2022-2024.pdf, (accessed 04 November 2022).

EULEX reached out to the Basic Prosecution Offices (BPOs), the Special Prosecution Office (SPRK) and to the National Coordinator for Combatting Economic Crimes with the Office of the Chief State Prosecutor in order to establish the extent to which sequestration and confiscation are being used in corruption and organised crime cases. Based on the data received,[21] the Mission observed that the SPRK and BPOs in fact use the instrument of sequestration during the investigation, whereas it could not be established whether this tool is being utilised to its full potential.[22] While the prosecution tends to request the sequestration, related pre-trial court decisions often remain pending for a long time, leading to an uncertain legal situation for all involved. Even if sequestration is performed, it is often the case that the next step, the request for confiscation, is either not submitted or not properly reasoned, which makes it impossible for the court to impose the confiscation.[23] The confiscation depends on the courts rendering a final judgment, yet these are still rare, especially in high-profile cases, thus confiscations rarely happen.

These observations are also reflected in a recently issued report[24] by the National Coordinator for Combatting Economic Crimes. According to this document, it is particularly the SPRK and the BPO Pristina that had more potential than smaller BPOs to utilise the confiscation instrument. The report suggests that the KPC draft a plan to enhance the implementation of this instrument, mainly involving the Chief Prosecutors.

**Recommendations:**

- The Ministry of Interior, in coordination with the Kosovo Police senior management, should take the lead in further clarifying and legalising the position of the SIU within the KP. This could be achieved by proposing amendments to the *Law on Police*[25].
- Kosovo Police senior management should enhance SIU's intelligence-led policing and financial investigation capacities. The SIU should maintain direct communication lines with the Intelligence and Analysis Directorate and the Kosovo Intelligence Agency in order to be fed with relevant intelligence.
- KP senior management should enhance SIU's inter-agency cooperation by establishing formal lines of communications with bodies such as the Tax Administration, Customs and the Financial Intelligence Unit.
- The National Coordinator for Combatting Economic Crimes in cooperation with the SPRK and all BPOs should integrate the established data collection system concerning sequestration and confiscation as reflected in the 'Report on the activities and recommendations of the national coordinator for combatting economic crime' into a comparable data collection system. The system should also grant direct access to the National Coordinator for Combatting Economic Crimes.

21 EULEX received information from the SPRK and the BPOs Gjakovë/Đakovica, Pejë/Peć, Pristina, Prizren, Ferizaj/Uroševac. The BPOs Mitrovica and Gjilan/Gnjilane did not provide data.

22 Statistics on these aspects are limited in the EU as well. The amounts recovered from proceeds of crime in the EU seem insufficient compared to the estimated proceeds, see paragraph 4 of the introductory part of Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU.

23 The conditions and procedure imposing the confiscation are mentioned in the Criminal Procedure Code, 04/L-123, 1 January 2013, Chapter XVIII, Confiscation and Forfeiture. Only Article 282 CPC refers to an exception when property is subject to automatic forfeiture, irrespective of the court's judgment, namely the property that is inherently dangerous or illegal.

24 The National Coordinator for Combatting Economic Crimes issues publicly available data in the form of quarterly reports (prokuroria-rks.org).

25 Law on Police, 04/L-076, 19 March 2012, KOSOVO (rks-gov.net, (accessed 16 September 2022).

- The Chief Prosecutors of the prosecution offices should take the leading role in making sure that the instruments of both sequestration and confiscation requests are used by every assigned prosecutor. The National Coordinator for Combatting Economic Crimes and the KJC should intensify their cooperation regarding the backlog of pending court decisions on requested sequestrations.
- The KJC should complement its *Strategic Plan for Efficient Solution of Corruption and Organised Crime Cases 2022-2024* with the objective to improve the implementation of sequestration and confiscation at the court level in all pending and upcoming cases of corruption and organised crime.
- KJC in cooperation with the KPC, the State Prosecutor`s Office and the Bar Association should take stock of the use of financial expertise in corruption cases in order to identify the reasons for expertise being inaccurately drafted or not being appropriately evaluated by courts, which often results in cases being sent back for retrial.

## *3.2 Corruption in the healthcare system*

Corruption can be defined as the abuse of entrusted power for private gain. This phenomenon erodes trust in the institutions among the population, weakens democracy, and hampers economic development while further amplifying social inequality and division.[26] Corruption is a criminal offence carrying a detrimental impact on the protection and enjoyment of human rights, and on the equal access to human rights-related goods and services, such as healthcare, education and justice. Corruption in the healthcare system is particularly heinous as it can directly affect the well-being and life of the poorest and most vulnerable. For instance, corruption in the procurement of drugs and medical equipment drives up costs and can lead to the use of sub-standard or harmful products, whereas unofficial payments for medical services can effectively exclude poor people from accessing services they are entitled to receive free of charge or at lower costs.[27]

Living in a corrupt society with a corrupt healthcare environment may cause healthcare professionals to act unethically, while patients might perceive this kind of behaviour as normal, which leads to an unstable and unreliable healthcare system.

In 2014, the United Nations Development Programme (UNDP) published a study[28] analysing the potential risks of corruption in the healthcare system in Kosovo. The identified risks were divided in three main categories: (1) informal payments (referring to payments made by the patients for medical services outside the official fees), (2) medical staff issues (related mainly to abusive appointments, that is politicised or otherwise inappropriate or not merit-based appointments, absenteeism of medical personnel or unjustified referrals of patients to private hospitals) and (3) procurement of medicines (procurement or theft of medicinal products and equipment).

26 Transparency International, 'What is Corruption', https://www.transparency.org/en/what-is-corruption, (accessed 16 September 2022).
27 The World Bank, 'Combating Corruption, October 2021, https://www.worldbank.org/en/topic/governance/brief/anti-corruption, (accessed 16 September 2022).
28 United Nations Development Programme, 'Corruption Risk Assessment in the Health Sector in Kosovo, Findings and Recommendations', UNDP Kosovo's project Support to Anti-Corruption Efforts in Kosovo (SAEK), December 2014, https://www.undp.org/kosovo/publications/saek-corruption-risk-assessment-health (accessed 16 September 2022).

The Mission's regular monitoring in the last years included several cases of alleged corruption in the healthcare system. The *Stenta Cases*, mentioned previously in the chapter on high-profile cases, include corruption charges against medical staff in both public and private institutions, engaged in patient referrals from public to private hospitals. One of the *Stenta Cases* involved the former Minister of Health and the Secretary of the Ministry, who were recently acquitted, in a retrial, of charges of having allegedly signed agreements for the provision of health services with two private hospitals without announcing a tender. The other ongoing *Stenta Cases* involve doctors at the University Clinical Centre of Kosovo (UCCK) in Pristina indicted for abuse of official position and taking bribes for having allegedly received money for referring patients to private hospitals, whereas doctors in the respective private hospitals were indicted for giving bribes.

In another case, at the Basic Court of Ferizaj/Uroševac[29], the defendants were indicted for having smuggled medicinal products from North Macedonia and then sold them to different pharmacies in Kosovo. They were also investigated for the criminal offence of giving bribes, which had to be terminated for lack of evidence.

Furthermore, in relation to alleged abusive appointments of medical staff by the management of health institutions, EULEX followed up on the indictment filed at the Basic Court of Gjakovë/Đakovica against the former Director of the Centre for Family Medicine in Rahovec/Orahovac[30]. The prosecutors accused him of having allegedly advertised in the medical centre the position of physiotherapist in disregard of the applicable regulations, and, after hiring a certain candidate, of having immediately changed his/her position of physiotherapist for one in the Department of Infirmary without fulfilling the legal criteria.

Corruption in the healthcare system can take the form of misuse of health budgets, mostly concerning irregular procurement procedures or other types of unjustified expenditures. Last year, the Kosovo Police initiated the investigation of the former Director of the Health Centre in Novo Brdo/Novobërdë and of the owner of a pharmaceutical company[31], providing medical products to the medical centre. It was alleged that the company was merely issuing invoices to the Municipality in order to obtain financial benefits, yet without delivering the medical products. In another case monitored by EULEX, and currently being tried at the Basic Court of Pristina[32], one former official of the Ministry of Health and one former employee of the Kosovo Agency for Medicinal Products are charged of manipulating advance payments for official duty trips abroad, having allegedly caused a damage to the Kosovo budget of over EUR 1 million.

The aforementioned cases represent only a few examples of alleged corruption in the healthcare system. According to information made available to EULEX by local institutions, there is no dedicated database in place to track corruption cases in the healthcare sector. This would be of particular importance, especially at the police level, which is the first step in the criminal justice chain after the filing of a criminal complaint or report. Furthermore, the Mission noted the particular challenges in gathering information or data on potential cases of alleged corruption related, for example, to informal payments. This is either due to a systematic underreporting of such cases which might indicate that such behaviour was socially accepted, at least to a certain extent, or it can be due to the local institutions not giving the proper attention to such cases,

29 Indictment no. PP/I. nr.35/20 filed by BPO Ferizaj/Uroševac.
30 Indictment no. PP.I. 175/2020, filed by BPO Gjakovë/Đakovica.
31 Case no. 2021-KE-260, KP Directorate of Economic Crimes and Corruption (DECC).
32 Avanci Case (PPS 19/19 – Basic Court of Pristina, Special Department).

when and if reported. In addition, the Health Care Inspectorate of Kosovo[33] confirmed that cases of informal payments were not being monitored by this institution, but it did provide statistical data on the number of cases of referrals to private hospitals or absenteeism of medical staff from public hospitals due to work obligations in private centres. In the period from January to August 2022, the Inspectorate conducted a total of 600 inspections and identified three cases of medically unjustified referrals of patients from public to private institutions, and six cases where health professionals were working in private clinics at a time when they were supposed to be present in public health institutions. Moreover, the Inspectorate reported that it had applied 110 sanctions for different irregularities in the above-mentioned period, including partial or total lack or expiration of the licence of the health institution or of the personnel, unjustified referral of patients from public to private institutions, absence from the workplace in the public health institutions and provision of health services in private health institutions, or providing health services in a health field in which the provider was not adequately qualified. Although these numbers might not seem high compared to the total number of inspections, when corroborated with the criminal cases exemplified above, it is clear that these are not isolated incidents and that they might indicate a pattern of behaviour.

Corruption in the medical system is intrinsically linked to the infringement of basic human rights, guaranteed by the Constitution of Kosovo and Kosovo laws, as well as the international instruments applicable in Kosovo, *inter alia*, the right to life, the right to security, prohibition of discrimination or the right to a fair trial. Local institutions should therefore strive to address this phenomenon in a more systemic manner.

**Recommendations**:

- The judicial institutions should develop instruments to identify and track corruption in the healthcare system (e.g., collect statistics on cases of corruption in this area).
- The Kosovo Police, the Special Prosecution Office and the Basic Prosecution Offices should create specific databases where all cases of corruption in the medical system are collected in order to provide a realistic and updated picture of this phenomenon and a starting point for tackling it.
- The Government of Kosovo should identify the factors that favour corruption in this particular field and develop mitigating strategies (e.g., raise public awareness, ensure sufficient budget allocations to health services, proper monitoring of public expenditures, etc.).

## *3.3 Crimes under international law*

The investigation, prosecution and adjudication of crimes under international law, such as war crimes and crimes against humanity, pose particular challenges compared to other criminal offences. These challenges are related to the large scale of the offences at stake, which may involve a high number of victims and perpetrators, the passing of time significantly reducing the available evidence, and the importance that accountability for these crimes carries in respect to transitional justice processes.

33 The Health Care Inspectorate of Kosovo is a public institution tasked with monitoring, inspecting, advising, providing recommendations and taking legal actions pertaining to irregularities within the healthcare system.

Due to the high number of cases still pending and the complexity of most of them, EULEX monitors regularly and closely not only court proceedings, but also the overall management and progress of the various investigations before they reach the trial stage.

The following are the main findings relating to the different stages of the criminal justice system during the reporting period.

### Investigation stage:

In 2021 and 2022, the Kosovo Police War Crimes Investigation Unit (WCIU) continued digitalising, analysing and actively investigating the cases that had been handed over by EULEX in 2018, as well as new cases.

In 2019, the Kosovo Police, in cooperation with the SPRK, identified and prioritised ten major war crime cases including large-scale ones like Mejë/Meja, Reçak/Račak and Qyshk/Ćuška. More than three years after these investigations were launched, no indictment has been filed. The entry into force of the new *Criminal Procedure Code* in February 2023, which includes a provision on trials *in absentia*, may lead to concrete developments in some of these cases.

In parallel with these large-scale investigations, the WCIU continued working on several smaller war crime cases, which are fundamentally easier to investigate and prosecute in comparison with large ones. EULEX monitored several developments, including in particular the filing of two indictments in December 2021 and March 2022, and the near finalisation at pre-trial stage of another three investigations (see Annex of Cases for more details)[34]. These achievements were reached despite the fact that the WCIU remained significantly understaffed and lacked sufficient material resources. Another significant problem observed by the Mission is the high turnover of experienced WCIU investigators, which is problematic in such a specialised field.

### Prosecutorial stage:

The SPRK War Crimes Department is currently staffed with four prosecutors. However, two of them are still dealing with trials in cases they were in charge of prior to their transfer to this department, rather than with war crime cases. Additionally, the prosecutors' responsibilities are divided along geographical areas, which sometimes leads to an imbalance in the workload. On the other hand, the allocation of prosecutors to geographical areas has a positive impact as well, as it allows them to develop area-specific knowledge and expertise.

It is concerning that both the WCIU and the SPRK War Crimes Department consider their cooperation unsatisfactory and assessed that it had deteriorated over the past year.

Regarding the opened investigations, where three persons were arrested by the KP on the suspicion of having committed three separate war crimes, it is noteworthy that at the time of reporting, all the investigations were completed, and the cases were pending the prosecution's decision to either terminate the case due to lack of evidence or file the indictments.[35]

34 Investigations against Duško Arsić, Časlav Jolić and Milorad Djoković and indictments against Svetomir Bačević and Muhamet Alidema.

35 In November, the SPRK filed an indictment against Duško Arsić.

### Court stage:

On 8 September 2022, after a ten-month main trial, the Special Department at the Basic Court of Pristina delivered a judgement in the proceedings against Svetomir Bačević, a Kosovo Serb indicted for having allegedly taken a hostage during the conflict in Kosovo, and sentenced him to five years of imprisonment. Unfortunately, the Court failed to deliver a short reasoning when announcing the judgement as required by the law[36]. For this reason, it is too early to assess how the Court dealt with several inconsistencies and controversies relating to the evidence which were monitored by EULEX during the main trial.

The main trial against Muhamet Alidema, a Kosovo Albanian indicted for having allegedly taken part in the Izbicë/Izbica massacre, is still ongoing. During the pre-trial stage, Alidema was kept in detention for a period of just under one year and the indictment was filed a day before the expiration of the one-year detention deadline. Shortly before the first initial hearing, he decided to change his Kosovo Albanian defence counsel with a Kosovo Serb one. This had implications on the start of the main trial due to the change of the language used in the proceedings. Nonetheless, this issue was handled professionally by the Court, ordering the translation of the whole case file into Serbian since the right for interpretation applies to all participants in the trial including the defence counsel, and not only to the defendant. The main trial in the case has not started yet.

As of September 2022, only the *Svetomir Bačević Case* was finalised at the first instance while two other cases were finalised at the Court of Appeals (CoA) and at the Supreme Court (SC) level.[37] EULEX analysed the judgments and concluded that they meet the criteria established by the *Criminal Procedure Code* (for example, they address the necessary elements of the crimes, the allegations of the parties, the alleged substantial violations of proceedings, etc.).

Additionally, the CoA issued a decision in the *Zoran Vukotić IV Case,* which EULEX has been monitoring since the indictment was filed in 2020. It was the first indictment for crimes against humanity filed by the SPRK. The CoA duly noted that the enacting clause of the first instance judgement was unclear and incomprehensible and sent the case back to the Basic Court of Pristina for retrial.

On the other hand, several cases of war crimes, currently being adjudicated before the Basic Court of Mitrovica and the Basic Court of Prizren, have not progressed at all. Former EULEX cases like *Drenica I*, *Vukotić I* and *Vukotić III* have been pending for many years without any progress. Another case pending for retrial before the Basic Court of Prizren is ongoing for over five years, four of which the defendant, Remzi Shala, has been in detention.

In conclusion, the KP and the prosecution made some tangible progress on several active smaller war crime investigations, which is a positive development considering the lack of personnel and technical resources. Moreover, in line with the Mission's recommendation, the judges improved the quality of their judgements and addressed all important issues and allegations of the parties. EULEX established that court trials in Pristina were being conducted in a professional and efficient manner. However, this does not entirely apply in other regions. Several cases are

36 According to the law in force at the date of the announcement, Criminal Procedure Code, 04/L-123, 1 January 2013, Article 366, paragraph 2, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2861, (accessed 16 September 2022). The corresponding provision in the Criminal Procedure Code 08/L-032, which was published on 17 August 2022 and will come into force on 17 February 2023, is set forth in Article 365, paragraph 2, ActDetail.aspx (rks-gov.net) (accessed 16 September 2022).

37 The judgments issued by the CoA in the cases of Zoran Djokić and by the SC in the Zlatan Krstić/Destan Shabanaj case. The judgment of the CoA in the case of Goran Stanišić was announced in October.

pending for many years without being even started. Investigations of cases where suspects are in detention are not finalised as timely as needed. Finally, the lack of international legal cooperation in criminal matters remains a significant challenge as it is slowing down the investigations in many cases concerning crimes under international law.

**Recommendations:**

- The SPRK and WCIU should improve their level of cooperation regarding ongoing investigations.
- The SPRK should prioritise the pre-trial investigations in cases where suspects are in detention.
- The Basic Court of Mitrovica should speed up the retrial of the *Drenica I Case* and the remaining *Vukotić Cases*, while the Basic Court of Prizren should prioritise the retrial of the *Remzi Shala Case*.
- The Government of Kosovo should allocate additional human and material resources to the KP WCIU and SPRK to enable them to deal with the high number of investigations.
- Kosovo authorities should continue to seek ways to improve regional cooperation, particularly with Serbia, where many suspects and witnesses reside.

## *3.4 Gender-based violence*

### General developments

The new Kosovo *National Strategy on Protection Against Domestic Violence and Violence Against Women 2022-2026,* to which the Mission contributed in an advisory role, was launched in January. The Strategy contains actions and measures aimed at providing protection for victims not only of domestic violence (as had been the case with the previous Strategy), but also for cases of other forms of violence against women, in accordance with the *Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence* (*The Istanbul Convention*). The Strategy is structured in four pillars (I. Prevention and identification of violence; II. Advancing and harmonising public policies with international standards; III. Institutional strengthening in prevention and addressing of domestic violence; IV. Providing general services and specialized support services to victims) and contains a total of 140 activities for its implementation.

During the reporting period, more than 30 of these activities were already under implementation and regular monthly meetings of the Inter-Ministerial Coordination Group on Domestic Violence were held with detailed reporting from the relevant stakeholders (Ministry of Justice, KP, prosecution, courts, Victim Advocacy Offices, Ministry of Health, Ministry of Internal Affairs and Ministry of Finance).

The launch of the *Strategy* and the activities unfolding within this context had a positive side effect on the use of the database for domestic violence cases established within the Office of the National Coordinator for Domestic Violence. More institutions started inserting the necessary data and the use of the database improved noticeably. The constant yearly increase of around 20-22% in reporting of domestic violence cases appears to continue, given that 2,069 cases were reported in 2020 and 2,456 in 2021, whereas 2,067 cases were reported until September 2022. However, further improvement is necessary, in particular the Basic Courts should ensure that complete and consolidated data is routinely filled in the database.

Currently there is still no unified system of reporting and collecting data in place on other forms of gender-based violence, particularly on sexual violence offences. This shortcoming was highlighted in EULEX's report *Assessment of the Handling of Rape Cases by the Justice System in Kosovo*, published in July 2022. This makes it difficult to collect accurate data and adequately respond to other forms of gender-based violence.

The Mission welcomed the decision by the Ministry of Justice to establish, in March 2022, a Working Group in charge of drafting a much-needed *Protocol for Referral of Sexual Violence Cases* and has been supporting its functioning since then. The Protocol, which will coordinate the work of all institutions involved in the referral and handling of sexual violence cases (e.g., KP, doctors, Institute of Forensic Medicine, prosecution, courts, Centres for Social Welfare, Victim Advocacy Offices), is expected to be finalised and launched during the '16 Days of Activism Campaign' in 2022.

At the time of drafting this report, the new *Law on Domestic Violence and Violence against Women*, aimed at aligning the previous *Law on Domestic Violence* with the *Istanbul Convention* standards, was still in the drafting stage at the Assembly of Kosovo Committee on Human Rights, Gender Equality, Victims of Sexual Violence During the War, Missing Persons and Petitions.

### Monitoring findings on cases of extramarital community with a person under the age of 16

During the reporting period, the Mission, in addition to focusing on the monitoring of cases of rape (Article 227 of the *Criminal Code*) which resulted in the publication of the above mentioned report in July, also looked specifically into cases of extramarital community with a person under the age of 16 (Article 240 of the *Criminal Code*).

Although this particular crime falls under the criminal offences against marriage and family, there are also implications concerning its connection with the criminal offence of rape, since under Kosovo legislation a person under the age of 16 cannot legally consent to sexual acts.[38] Article 240 of the *Criminal Code* (CC) sets a punishment of five to 20 years of imprisonment when the offence is committed against a child between the ages of 14 and 16, and at least ten years of imprisonment when the child is under the age of 14. These punishments are equal to the ones stipulated in Article 227 paragraphs 5 and 6 of the CC, regulating the crime of subjecting persons under the age of 16 years to a sexual act.

According to the KP statistics, 98 such cases were reported to the KP in 2020 and 2021. The KJC reported that the courts had received 73 cases in that period and solved 28, out of which

38 Criminal Code, 06/L-074, 14 January 2019, Article 225 paragraph 1, https://md.rks-gov.net/desk/inc/media/A5713395-507E-4538-BED6-2FA2510F3FCD.pdf (accessed 16 September 2022).

eight were concluded with acquittals, three with rejection of the indictment and 17 with guilty judgements.

In order to carry out a more in-depth analysis, the Mission examined 13 cases during the period 6 June 2021 to 22 January 2022. It was observed that all the victims were female and between the ages of 13 and 16 while all perpetrators were male and between the ages of 16 and 29. One of the main issues noted is related to the difficulty in detecting this phenomenon in its early stages. In the cases analysed, 9 of the 13 victims were pregnant, and the cases were reported to the KP only when they were in hospital.

EULEX also found a discrepancy between the range of punishment provided by the law and the often lenient sentencing imposed. When asked to confirm, the prosecutors and judges interviewed by the Mission expressed the view that the punishment determined by the *Criminal Code* was not the proper solution, since in the majority of cases the perpetrator and the victim lived together as a family. Consequently, a long prison sentence for the perpetrator would deprive the children born out of these relationships of a father for many years in addition to leaving the mother/victim alone without any economic support, considering that the father/husband was often the sole provider for the family. The interviewed judges confirmed that, since the courts were bound to take into consideration the best interests of the child, a prison sentence was rarely imposed.

Specifically, in a case from the Basic Court of Gjilan/Gnjilane from February 2022, the perpetrator was 31 years old and the victim 15. At the time of the verdict, they were legally married as the girl had turned 16 years and they had a seven-month-old baby. The perpetrator was convicted to a six-month prison sentence that was converted into a fine. In a case from the Basic Court of Gjakovë/Đakovica from January 2021, the indictment was withdrawn by the prosecutor because the parties had a child together and had married in the meantime. The perpetrator was 20 and the victim was 15 years old when the cohabitating relationship started.

Furthermore, EULEX found that the minimum sentence required by the law was not being imposed even in cases in which the parties did not have children together. For instance, in a verdict issued by the Basic Court of Gjilan/Gnjilane in March 2021, the 18-year-old perpetrator was convicted to three years of prison for extramarital community with a 13-year-old girl. In August 2021, the same court rendered a decision in a similar case with a 25-year-old man and a 13-year-old girl. The perpetrator was convicted to two years and six months in prison. The mitigating circumstances in both cases were the admission of guilt, the repentance and the apology given to the victim. In the first case, it was the perpetrator's promise to marry the victim that was considered a mitigating circumstance. In the second case, the mitigating circumstance was that the perpetrator had entered the extramarital community with the consent of the victim's parents. This is of serious concern especially because, according to Article 240 paragraph 2 of the CC, a parent, an adoptive parent, guardian, or another person who permits or induces the cohabitation in extramarital community are subject to the same punishment as the perpetrator. However, the BPOs and courts informed the Mission that parents had been indicted in just a very small number of cases. On the contrary, as the aforementioned case showcases, the permission from the victim's parents was seen as a mitigating circumstance.

Apart from being illegal under the CC, extramarital communities before the age of 16 violate many of the victims' basic human rights, including the right to education, to freedom from violence, access to reproductive and sexual healthcare, to employment, freedom of movement,

and the right to consensual marriage, all rights enshrined in the international human rights instruments applicable in Kosovo according to Article 22 of its Constitution[39]. The victims are deprived of their childhood, their education, their health is jeopardised by early pregnancies and child deliveries, and their safety is threatened as they become dependent on the perpetrator and, hence, more likely to be exposed to domestic violence and other forms of violence against women and girls. Additionally, since certain perpetrators are only 16 years old, there is also a question of whether they themselves are victims of relationships arranged by the families. Because of the consequences of such criminal offence, prevention and early detection of the crime is crucial. A holistic approach, involving all relevant stakeholders, is necessary to address this phenomenon.

**Recommendations**:

- The Government of Kosovo and other relevant stakeholders (Kosovo Police, prosecution, courts, Victim Advocacy Office, Centres for Social Welfare) should continue with the implementation of the *National Strategy on Protection Against Domestic Violence and Violence Against Women 2022-2026*.
- The basic courts and the Office of the National Coordinator for Domestic Violence should continue cooperation for an effective and accurate inclusion of the data on domestic violence into the database.
- The Working Group in charge of drafting the *Protocol for Referral of Sexual Violence Cases* should ensure its timely finalisation and all measures should be put in place by the relevant institutions (Kosovo Police, prosecutors, courts, Victims' Advocates Office, Centres for Social Welfare, Institute of Forensic Medicine, Ministry of Justice, Ministry of Health and Ministry of Internal Affairs) for its immediate implementation.
- The Assembly of Kosovo Committee on Human Rights, Gender Equality, Victims of Sexual Violence During the War, Missing Persons and Petitions should finalise the draft of the new *Law on Domestic Violence and Violence against Women* and forward it for further procedure in the Assembly.
- The Ministry of Internal Affairs, the Ministry of Justice, the Office of the National Coordinator for Domestic Violence and the Centres for Social Welfare should organise outreach campaigns to tackle extramarital community with a person under the age of 16. The campaigns should target the younger population and their parents, especially in remote Kosovo regions and from communities with less access to information in order to raise awareness about the phenomenon and the possible consequences for both victims and perpetrators.
- The Kosovo Prosecutorial Council should develop and implement unified guidelines for Kosovo Police specifically for the investigation of the crime of extramarital cohabitation with persons under the age of 16.
- The Kosovo Police should investigate and pursue criminal liability of the parents involved in their children's extramarital community in line with the legal provisions.

39 The UN Universal Declaration of Human Rights (UDHR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols, the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Convention on the Rights of the Child, the Council of Europe Convention on Preventing and Combatting Violence Against Women and Domestic Violence (the Istanbul Convention).

- The Kosovo Judicial Council, the Kosovo Prosecutorial Council and the Kosovo Police should produce accurate, accessible and comparable statistics on extramarital cohabitation with persons under the age of 16 so both the frequency of this crime and the way these cases were addressed by the prosecution and the courts can be detected and analysed properly.
- The courts must pursue unification in sentencing and apply sentencing as prescribed in the *Criminal Code*.
- The Centres for Social Work and the Victim Advocacy Office should be given adequate resources by the Government to support the victims during the entire judicial cycle.

## *3.5 Prosecution of terrorism cases*

Following the return to Kosovo of individuals who had left for conflict zones in the Middle East over the past ten years,[40] authorities continued to investigate, prosecute and adjudicate related alleged criminal offences, including during the reporting period.

On 17 July 2021, Kosovo repatriated 11 individuals from Syria: six men, one woman and four children. Upon their return, the six men were placed in pre-trial detention and the woman in house arrest, owing to the suspicion that they had committed terrorism-related criminal offences. All security measures were later lifted. In November and December 2021, the Special Prosecution Office (SPRK) filed seven indictments at the Special Department at the Basic Court of Pristina[41] against all the adults. They were charged with 'participation in a terrorist group' in accordance with the 2012 *Criminal Code (*CC)[42] for travelling to Syria in 2014 to join ISIS. The men had allegedly received military training, were equipped with weapons and participated in battle. One of them was allegedly a sniper instructor. The woman travelled with her husband to Syria to join ISIS and allegedly provided support in the household.

Five defendants pleaded guilty at the initial hearing, or at the main trial, and two pleaded not guilty. As of March 2022, all cases were finalised at the first-instance level and all the accused were found guilty of participation in a terrorist group; the men were sentenced to imprisonment ranging from two years and six months to four years and six months, while the woman was sentenced to a two-year suspended sentence. The time spent in custody in Syria was taken into account only in relation to one defendant (the one who had received the longest sentence). All the punishments imposed by the court were below the minimum sentence prescribed for the relevant offence by the *Criminal Code (*CC*)*, namely five years. The guilty plea of five defendants was used as the main mitigating circumstance when imposing the sentences[43].

40 According to the Kosovo 'Strategy on prevention of violent extremism and radicalisation leading to terrorism 2015-2020', 300 individuals had left Kosovo as of 2015 (see page 11 of the strategy). A report of the Kosovo Centre for Security Studies titled 'UNPACKING KOSOVO'S RESPONSE TO RETURNEES FROM THE WAR ZONES IN SYRIA AND IRAQ', released in January 2020, indicates that the estimated number of individuals having left Kosovo for Syria and Iraq was 403. The same report mentions that the number of those repatriated as of then was around 250 (see page 9).

41 The Special Department was established by the Law on Courts, 06/L-054, which entered into force at the beginning of 2019. It is a specialised department in the Basic Court of Pristina and Court of Appeals which exclusively handles cases from the Special Prosecution Office (SPRK), i.e., the most serious criminal cases

42 Criminal Code, 04/L-082, 1 January 2013, Article 143, paragraph 2: 'Whoever participates in the activities of a terrorist group shall be punished by imprisonment of five (5) to ten (10) years', with correspondent in the Criminal Code, 06/L-074, 14 April 2019, Article 136 paragraph 2.

43 Criminal Code, 04/L-082, 1 January 2013, Article 74, paragraph 3.10, with correspondent in the Criminal Code, 06/L-074, 14 April 2019, Article 70, paragraph 3.10.

The Basic Court verdicts pertaining to the six male defendants were appealed. Between March and May of this year, the Court of Appeals (CoA) confirmed the judgments against two defendants, increased the sentence of imprisonment from two years and six months to three years against one defendant, amended the judgment regarding two defendants only in relation to the period that should be counted as time spent in detention while in Syria and sent one case back to the Basic Court for retrial.

From a procedural point of view, EULEX established that these cases were handled efficiently and expeditiously by both the SPRK and the Special Department at the Basic Court of Pristina. No significant delays were observed, which is of particular importance given that most of the defendants were in detention.

However, from a substantive point of view, the Mission noted that the sentences imposed by the Basic Court and later confirmed by the CoA were arguably lenient, and in all cases below the minimum set by the applicable criminal law.[44] While this is allowed by the *Criminal Procedure Code (CPC)*, legitimate questions could be raised with regard to the proper balancing by the court of mitigating and aggravating circumstances in criminal proceedings for offences of similar gravity.

Another matter worth highlighting is the conflicting assessments by the courts on whether the time spent in custody in Syria should be taken into account when calculating the remaining time to be served after a final conviction, a matter that requires consistency to ensure equal application of the law.

**Recommendations:**

- The Kosovo Police, the SPRK and the Special Department at the Basic Court of Pristina should continue their efficient handling of terrorism cases concerning returnees from the conflict zones in the Middle East.
- The courts should revisit the practice of the arguably lenient sentencing policy in terrorism cases concerning returnees, with due consideration given to the need for consistency in sentencing.

## *3.6 Freedom of expression - crimes against journalists*

When journalists are victims of criminal offences, rule of law institutions need to take appropriate actions to ensure that freedom of expression is not affected. Taking this into account, EULEX assessed the legal framework and the handling of several monitored crimes against journalists in Kosovo.

According to the European Commission Kosovo 2022 Report, 'as regards freedom of expression, Kosovo has some level of preparation and benefits from a pluralistic and lively media environment. However, concerns remain regarding public smear campaigns, threats and physical attacks on journalists'.[45]

44 The same observation was made in a previous report in relation to the returnees in 2019, see EULEX, Justice Monitoring Report, Findings and Recommendations September 2019 – Mid-March 2020, pages 11-12.

45 European Commission, 'Key findings of the 2022 Report on Kosovo', *EC Country insights*, Brussels, EC Press corner, 2022, https://ec.europa.eu/commission/presscorner/detail/en/country_22_6090, (accessed 14 October 2022).

In recent years, Kosovo prosecutorial and judicial authorities undertook important measures to address crimes against journalists, including the appointment of specialised prosecutors and judges, the collection of statistics and the prioritisation of these cases. At each of the Basic Prosecution Offices (BPOs), one prosecutor is appointed as coordinator for cases of crimes against journalists. The coordinator acts as focal point, collects data and reports to the Kosovo coordinator at the Office of the Chief State Prosecutor. Internal instructions prescribe the prioritisation of such cases, which is also set out as one of the objectives in the *Strategic Plan of the Prosecutorial System 2022-2024*[46].

During the reporting period, EULEX requested information on eight cases of crimes committed against journalists reported to the Kosovo Police from October 2021 to March 2022 (out of which five reached the courts until the reporting date). Given the low number of cases identified, EULEX requested information about cases from previous years from the BPOs and the Basic Courts (BCs), in order to better be able to analyse the length and the outcome of proceedings in this type of cases[47]. The data gathered shows that the most common criminal offences committed against journalists were threats and harassment through telephone or social media. However, EULEX also monitored three cases of more severe attacks against journalists, all of which are still in the investigation stage. One case concerns a beating of a journalist outside her home by multiple perpetrators in May 2017, the second one is a case of shooting at a parked car owned by a journalist in October 2020, whereas the third one is a case of beating a journalist outside his home in February 2021. Out of the total number of cases, in 18 cases the victim was male and in three cases the victim was female (in two of these cases the charges are threat and in one of them grievous bodily injury). The victims worked for the following media outlets: Bota Sot, Kossev, RTV Dukagjini, Zeri, Jepi Zë (three cases), Insajderi, Koha Vision, Korrespodenti, Sinjali (two cases), Objektiv, Gazeta Express, Gazeta Shneta, T7, Infokus, Paparaci and Gazeta Metro. In two cases the media outlet is not known.

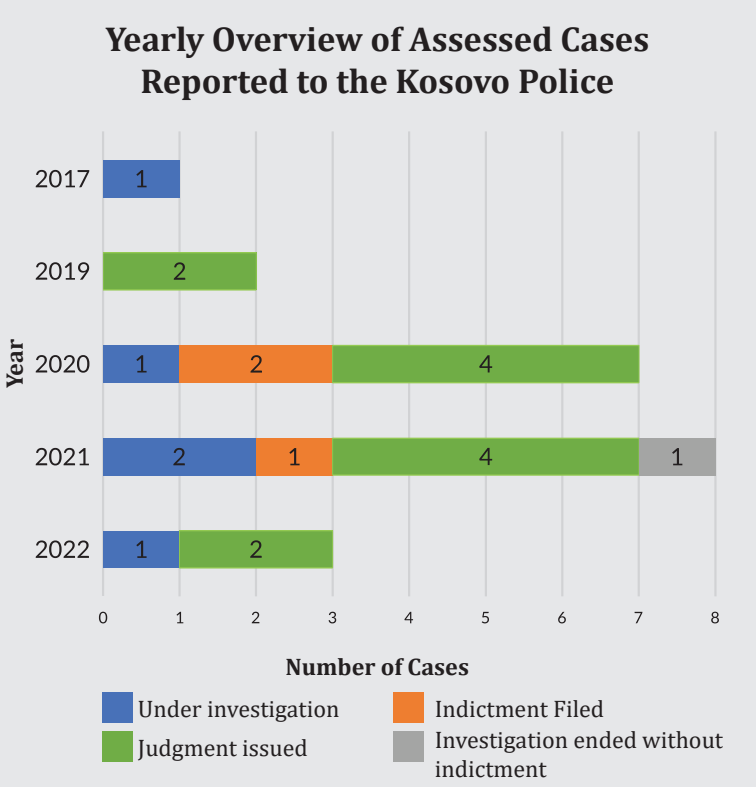
EULEX found that in cases at the investigation stage, police and prosecution generally acted quickly upon receiving a report about an incident, which at times resulted in an indictment being filed shortly after the case had been reported to the police. Indictments were filed in 7 out of the 11 cases initiated during 2021 and 2022 and all of them were filed within three months after the criminal report had been filed. However, when a suspect was not identified at an early stage in the investigation, the cases were not prioritised. For instance, in a case where a journalist was severely assaulted, it took almost nine months before the analysis of the samples from the crime scene was finalised. It is concerning that in this case, likewise in the other two monitored cases of more severe attacks, no substantial progress could be observed.

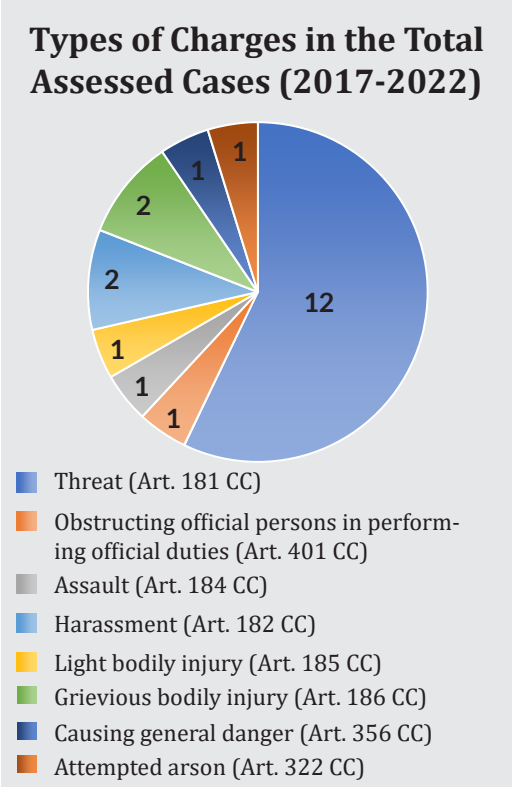
46 Kosovo Prosecutorial Council, 'Strategic Plan of the Prosecutorial System 2022-2024', 2022, https://prokuroria-rks.org/assets/cms/uploads/files/STRATEGIC%20PLAN%20OF%20THE%20PROSECUTORIAL%20SYSTEM%202022-2024STRATEGIC%20PLAN%20OF%20THE%20PROSECUTORIAL%20SYSTEM%20(2022-2024).pdf (accessed 16 September 2022).

47 On 2 November, *Prishtina Insight* published an article titled 'BIRN Investigation: Courts Ignore Aggravating Circumstances when Journalists are Attacked', which analysed court judgments in cases of threats and attacks against journalists in recent years and files opened by the State Prosecutor's Office which were being processed in the courts for attacks and threats against journalists. A comparison of the data on the number of indictments filed in 2020 and 2021 shows a discrepancy between this report and that issued by BIRN. Both BIRN and EULEX were informed that four indictments were filed in 2020 and eight in 2021. However, since EULEX was not provided with additional information on two of these cases, this report analyses only three indictments from 2020 and seven from 2021. Comparing the two reports, a discrepancy becomes apparent regarding the number of judgments analysed: BIRN analysed five criminal cases in which the victims were journalists, which have been judged in the first instance in the courts of Kosovo from 2016 until today, whereas this report analyses 11 judgments issued from 2020 until now. This substantial difference in the number of judgements analysed is likely due to the fact that the Mission had additionally reached out to prosecution offices and courts in order to receive information on judgements.

Regarding the monitored cases that reached the court phase, four out of the five cases reported from October 2021 to March 2022 resulted in convicting judgments within a few weeks, in some cases within a few days, after the indictment was filed. It is noteworthy that in all four cases, the prosecutor had filed the indictment while the suspect was detained. In the fifth case, in which the suspects were not in detention on remand, a judgment against three out of four defendants was issued seven months after the indictment was filed. Based on additional data on cases initiated before October 2021, it can be concluded that when the suspect was not in detention, the cases were not treated with priority by the court[48]. According to the *Criminal Procedure Code* (CPC)[49], the initial hearing should be scheduled within 30 days of the indictment being filed, a deadline rarely met in any of the cases.

The sentences imposed in the verdicts EULEX was able to examine after requesting them from the relevant courts were assessed as reasonable, considering the seriousness of the offence but also the mitigating circumstances, such as the guilty plea or the lack of prior convictions. The fact that the crime was committed against a journalist was in some cases considered an aggravating circumstance. In other cases, the motive of the crime was either not elaborated on or was outbalanced by mitigating circumstances. In cases regarding threat, either a fine or a suspended sentence were imposed, which is reasonable given that in all cases the threats were committed through telephone or social media and not in person. In most cases, the content of the threat was apparently the most important criterion for deciding on whether a fine or a suspended sentence was imposed. In the case of attempted arson, the sentence issued was below the minimum (imprisonment of ten months, whereas the minimum is one year). The fact that it was an attempted criminal offence, as opposed to a completed criminal offence, allowed the court to reduce the sentence and it also took into account the defendant's guilty plea and lack of prior convictions as mitigating factors.




48 Exemplary: PP II nr. 5954/21, PP II nr. 5849/20, PP II nr. 4308/20 (all at the Basic Court of Pristina).

49 Criminal Procedure Code, 04/L-123, 1 January 2013, Article 242, paragraph 4, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2861 (accessed 14 October 2022)..

**Recommendations:**

- The Kosovo Police should further prioritise the investigations in cases of attacks against journalists and prosecutors should ensure that investigations are not being unnecessarily delayed.
- The courts should prioritise the cases of attacks against journalists and schedule the initial hearing within the 30-day deadline set by the *Criminal Procedure Code*.
- The courts should take into consideration the motive of the crime and provide reasoning for how this factor is weighed against other circumstances when determining the sentence.
- The system of coordinators within the prosecutorial system should be maintained to ensure the collection of data on the progress of cases.
- Coordinators/focal points should be appointed at each Basic Court. They should be responsible for collecting data on cases and reporting to the Kosovo coordinator in order to ensure that the data is complete.

## *3.7 Juvenile justice: application of 'diversion measures' for juvenile offenders*

During the reporting period, the Mission assessed the application of 'diversion measures' to juvenile offenders.

International human rights standards such as the *UN Convention on the Rights of the Child*, which forms part of Kosovo's legal framework in line with Article 22 of the Constitution, require the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the criminal law and separate from those for adults.

The rationale for having a separate juvenile justice system is that 'children differ from adults in their physical and psychological development, and their emotional and educational needs' and 'such differences constitute the basis for the lesser culpability of children in conflict with the law'.[50]

The main objectives of juvenile justice systems are the promotion of the well-being of the juvenile and the guarantee of her/his best interests during the whole proceedings or actions taken against her/him.[51] A key feature of a human-rights compliant juvenile justice systems is that of 'diversion' from the criminal justice system, whereby juveniles who come in contact with the law are removed from the criminal justice processing and redirected to alternative paths, including community support services or social services.

The legal framework of the Kosovo juvenile justice system is fully in compliance with relevant international standards. *The Juvenile Justice Code of Kosovo* (JJC), chapter IV, regulates specifically 'diversion measures' and stipulates that the purpose of these measures 'is to prevent, whenever possible, the commencement of court proceedings against a juvenile offender, to assist the positive rehabilitation and reintegration of the juvenile into his community and thereby prevent recidivist behaviour'.[52] The application of 'diversion measures' also leads to positive effects in terms of overall efficiency, as it avoids increasing the backlog of cases in the justice system.

The different types of 'diversion measures' that can be applied to juveniles are listed in Article 20 of the JJC and range from reconciliation between the juvenile and the injured party, including an apology by the juvenile, compensation to the injured party, performance of unpaid community

50 UN Committee on the Rights of the Child (CRC), *General Comment no. 10 (2007), Children's rights in juvenile justice*, 25 April 2007, page 24, https://www.refworld.org/docid/4670fca12.html, (accessed 20 October 2022).

51 United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules')*, 10 December 1985, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) - United Nations and the Rule of Law, (accessed 14 October 2022).

52 Juvenile Justice Code, 06/L-006, 2 November 2018, Article 4, B5AFE545-3908-4F63-98E0-0A8DD593B499.pdf (rks-gov.net), (accessed 5 October 2022).

service and engagement in charity activities.[53] The conditions for applying 'diversion measures' by prosecutors are stipulated in Article 21 of the same Code.[54] The prosecutors choose the applicable 'diversion measure' based on the juvenile's personal background as assessed by the Kosovo Probation Service (KPS), while the latter ensures the enforcement of the prosecutors' decision.

EULEX analysed the imposition of 'diversion measures' in Kosovo in the period 2019 – 2021. It should be borne in mind that such measures should be considered as the first option by prosecutors in those cases where the law allows it. The data obtained from the Basic Prosecution Offices (BPOs) and from the Kosovo Probation Service (KPS), the institution in charge of implementing 'diversion measures', revealed a decrease in the number of 'diversion measures' applied during these three years.

KPS Annual Reports showed that 888 'diversion measures' were applied by BPOs to juvenile offenders in 2019, decreasing to 544 in 2020 and to 386 in 2021.

Out of 16 measures listed in the *Juvenile Justice Code*, the most applied one was 'reconciliation between the juvenile and the injured party'. This represents half of the measures applied per year by the BPOs during the monitored period. The underlying reason for the wide use of this measure appears to be that no additional factors, apart from the offender's willingness, need to be considered, which is different when other 'diversion measures' are applied. Based on the data gathered by EULEX, it is apparent that juvenile prosecutors consider this as the most effective measure to prevent reoffending and it has been applied in a large variety of criminal offences.

EULEX compared the yearly number of 'diversion measures' with the opened cases involving juvenile offenders to assess the frequency of the application of the measures. According to the Kosovo Prosecutorial Council (KPC) annual reports, 2,027 criminal reports were opened for juvenile perpetrators in 2019, and 'diversion measures' were applied in 43% of them.[55] In 2020, there were 1,356 criminal reports involving juveniles and 'diversion measures' were applied in 40% of the cases.[56] In 2021, there were 1,749 juvenile criminal reports, yet 'diversion measures' were applied only in 22% of them[57].

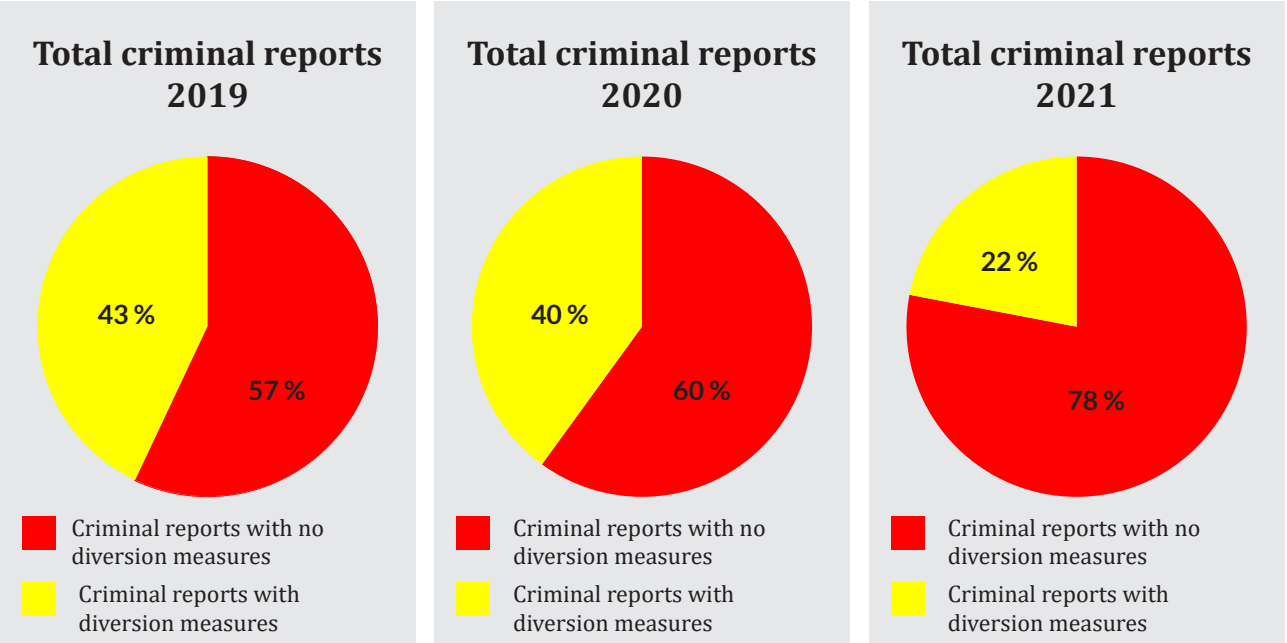
53 Juvenile Justice Code, 06/L-006, 2 November 2018, Article 20, B5AFE545-3908-4F63-98E0-0A8DD593B499.pdf (rks-gov.net), (accessed 5 October 2022):
'1. The diversion measures that may be imposed on a juvenile offender are: 1.1. reconciliation between the juvenile and the injured party, including an apology by the juvenile to the injured party; 1.2. reconciliation between the juvenile and his family; 1.3. compensation for damage to the injured party, through mutual agreement between the injured party, the juvenile and his legal representative, in accordance with the juvenile's financial situation; 1.4. regular school attendance; 1.5. acceptance of employment or training for a profession appropriate to his abilities and skills; 1.6. performance of unpaid community service work, in accordance with the ability of the juvenile offender to perform such work. This measure may be imposed with the approval of the juvenile offender for a term ten (10) up to sixty (60) hours. 1.7. education in traffic regulations; 1.8. psychological counselling; 1.9. engagement in charity activities; 1.10. payment of a certain amount of money destined for charity purposes or the program for victim compensation in compliance with the financial situation of the juvenile; 1.11. engagement in sport and recreation activities; 1.12. counselling between families of juveniles; 1.13. to refrain from any contact with certain individuals that might have negative influence on the juvenile, 1.14. to refrain from frequenting certain places or locations likely to have a negative influence on the juvenile; and 1.15. to abstain from the use of drugs and alcohol; 1.16. police warning'.

54 Juvenile Justice Code, 06/L-006, 2 November 2018, Article 21, B5AFE545-3908-4F63-98E0-0A8DD593B499.pdf (rks-gov.net), (accessed 5 October 2022): '1. Diversion measures may be imposed by the prosecutor on a juvenile who has committed a criminal offence punishable by a fine or by imprisonment of three (3) years or less or for criminal offence carelessly committed punishable by imprisonment up to five (5) years, save those which bring death as a consequence. 2. Police warning measure from paragraph 1, sub-paragraph 1.16 of Article 20 of the present Code may be imposed to a juvenile as an offender for the first time for criminal offences punishable by fines or imprisonment up to three (3) years. 3. The police warning as a diversion measure shall be imposed by the police officer with the permission of the state prosecutor for juveniles. The police shall keep record of police warnings imposed, which shall not have the character of records as those of sentenced juvenile and may not be used in any way that might harm the juvenile. 4. The conditions for the imposition of a diversion measure are: 4.1. acceptance of responsibility by the juvenile for the criminal offence; 4.2. expressed readiness by the juvenile to make peace with the injured party; and 4.3. consent by the juvenile, or by the parent, adoptive parent or guardian on behalf of the juvenile, to perform the diversion measure imposed. 5. The failure of the juvenile to perform the obligations of a diversion measure shall be reported promptly by the Probation Service to the competent authority which may decide to recommence the prosecution of the case'.

55 KPC annual reports, 2019, 2020 and 2021, Sistemi Prokurorial (prokuroria-rks.org), (accessed 16 September 2022).

56 This includes 108 cases in which diversion was applied in 2020 but which were carried over from the previous year(s).

57 This includes 62 cases in which diversion was applied in 2021 but which were carried over from the previous year(s).




The KPC annual reports do not provide gender disaggregated data, whereas the KPS started publishing statistics of the 'diversion measures' applied using sex-disaggregated data as of 2020. In 2020, 399 'diversion measures' were applied to boys and 49 to girls. The reconciliation between the juvenile offender and the injured party was applied to 233 boys and to 24 girls. In 2021, there were 294 'diversion measures' applied to boys and 30 to girls. Out of this, the 'reconciliation measure' was applied to 177 boys and to 20 girls.

The second most applied measure was 'performance of unpaid community service'. In 2020, it was applied 57 times to boys and five times to girls, and in 2021, it was applied 18 times to boys and once to a girl. The third most applied measure was 'psychological counselling', which was applied by the juvenile prosecutors in 2020 to 37 boys and two girls, while the same measure was applied to 43 boys and three girls in 2021[58].

In addition to the above, the following measures were applied during the monitored period: 'regular school attendance', 'compensation for damage to the injured party through mutual agreement', 'engagement in charity activities', the obligation to refrain from any contact with certain individuals that might have negative influence on the juvenile, or to abstain from the use of drugs and alcohol.

While these measures are applied by the prosecutor upon consultation with the KPS, there is one 'diversion measure' that can be applied by the police, with the approval of the prosecutor, namely the 'police warning'. This measure was introduced in Kosovo in 2018 when the new *Juvenile Justice Code* entered into force, and raised many concerns among the practitioners, who feared that the police was not sufficiently trained and skilled to impose such a measure.[59]

58 According to the KPS annual reports.

59 Juvenile Justice Code, 06/L-006, 02 November 2018, Article 21, B5AFE545-3908-4F63-98E0-0A8DD593B499.pdf (rks-gov.net), (accessed 16 September 2022):
Police warning measure [...] may be applied to a juvenile as an offender for the first time for criminal offences punishable by fines or imprisonment of up to three (3) years. The police warning as a diversion measure shall be imposed by the police officer with the permission of the state prosecutor for juveniles. The police shall keep record of applied police warnings, which shall not have the character of records as those of sentenced juveniles and may not be used in any way that might harm the juvenile.

The 'police warning' is meant to be used in petty criminal cases when the police and prosecutor decide that further investigation is not needed and that a warning would suffice for a juvenile to understand the gravity of the criminal act, to repent and refrain from similar behaviour in the future. Since its enforcement in 2018, this measure has been applied rarely.

**Recommendations:**

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

## *3.8 Property rights*

According to the *European Convention on Human Rights* (ECHR), every natural or legal person is entitled to the peaceful enjoyment of his or her possessions.[60] During the reporting period, the Mission monitored 50 civil cases related to different property disputes, such as restitution of property, confirmation of ownership, illegal occupation, fraudulent transaction, compensation of damages and execution of judgments filed by Kosovo Serb claimants, almost all of whom reside outside of Kosovo.

The Mission established that the most concerning finding was the extensive duration of the proceedings. The cases had often been pending for seven or eight years, some of them even ten years, with the oldest pending case having been filed in 2002. Article 6 (1) of the ECHR requires that every case should be adjudicated 'within reasonable time',[61] while in very few cases hearings were held in the reporting period.

The huge backlog of 70,000 pending civil cases in the courts is one reason for these delays. Additionally, higher-instance courts often send cases for retrial, which further delay the

60 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted on 20 March 1952, Article 1, European Convention on Human Rights (coe.int) (accessed 04 November 2022): 'Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law'.

61 Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 6 (1), adopted on 4 November 1950, European Convention on Human Rights (coe.int) (accessed 04 November 2022): 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice'.

proceedings. Many of the 50 monitored cases were slowed down at the level of the CoA. Different, at times disturbing administrative practices make the civil proceedings additionally cumbersome and therefore lengthier. For instance, when an incomplete civil claim is filed, it was monitored that the court often requests the missing documents long after the claim was received, at times even after the assigned judge was handed the case. This further delays the court procedure, especially in cases in which the claimants are Kosovo Serbs who do not reside in Kosovo and thus often receive documents and court summons with considerable delays.

Insufficient translation resources in courts additionally contributed to significant delays. In some cases, documents were not translated, or court sessions were not scheduled because no court translator/interpreter was available. In one case, no court translator/interpreter was appointed for three years, causing this significant delay. In another case, a court decision was not translated into Serbian for more than a year, and could thus not be delivered to the party, causing unreasonable delays in the enforcement procedure.

Civil proceedings concerning land transactions are often subject to delays given the specific situation of land registries. Since land transactions between Kosovo Serbs and Kosovo Albanians were not encouraged during Yugoslav times, they were often not properly registered although the deal was agreed and the money paid. This at times makes procedures cumbersome since it is difficult to verify transactions.

Additional causes for the extensive duration of proceedings in property disputes are connected to the difficulty in finding court experts, the frequent changes of the assigned judges, issues related to summoning the legal heir/representative of a deceased party and the inter-ethnic sensitivities in some of the monitored cases.

**Recommendations:**

- The KJC should set up a norm defining the minimum number of cases that need to be finalised by each judge within a given time frame.
- The KJC should strengthen translation and interpretation capacity of the courts for Serbian language.
- The system of court experts should be improved. A first step would be for the KJC to declare as ineligible for private expertise an expert who refuses without justification the cooperation with the court.
- More due diligence should be given by the courts to ethnically sensitive cases since it is of serious concern that many monitored cases are still pending, in some cases even two decades after the claim had been filed, and are either not progressing or progressing extremely slowly.

## 3.9 Privatisation and liquidation

EULEX monitored the work of the 'Special Chamber of the Supreme Court' (SCSC), which operates within the Supreme Court[62] and has exclusive jurisdiction over all cases related to the decisions, activities, or performance of the Privatisation Agency of Kosovo (PAK) and the Kosovo Trust Agency (KTA). It also has jurisdiction in the privatisation and liquidation process of enterprises or corporations, including claims of former employees and related to the properties under the administration of the PAK.

The implementation of the *Law on the SCSC on Privatisation Agency Related Matters* is still not fully completed, although more than three years have elapsed since its adoption on 30 May 2019. Only one appellate panel is in place, whereas the law requires two.[63] The justification provided is that a second panel could not be created due to the lack of judges.

Concerning the backlog of cases in the SCSC, EULEX observed a slight numerical decrease in solved cases and preliminary injunctions, from 16,898 in March 2021 to 16,027 in March 2022. In parallel, the PAK, which is the main contributor to the caseload, was instructed by the current Government to decrease privatisation activities, which in turn significantly lowered the quantity of new cases.

Nonetheless, the SCSC will not be able to solve most of the cases within a reasonable time. The main causes for this are the insufficient court staff (judicial and administrative) and the lack of a norm established by the KJC and indicating the minimum number of cases every judge should finalise within a certain time frame.

EULEX assessed around 80 SCSC judgements in order to gain an overview of the quality of judgements and decisions issued by this court. The main issue observed in the analysed cases relates to the reasonings provided by the Court.

In one case, the first-instance judgment contained four pages of reasoning quoting various legal articles, but without providing a proper analysis of why the legal provisions were applicable in the case. It was thus impossible to identify the reasons for the complaint having been rejected as ungrounded[64], an issue that was not remedied by the appellate panel.

In another case, where the first instance judgment omitted to analyse the documentary evidence presented by the claimant (as observed by EULEX), the appellate panel in its reasoning concluded that 'The ruling on his personal income is not sufficient evidence for him to be included in the final list of eligible employees[65]', without any further explanations.

In a different case, where the reasoning of the first-instance judgement was missing completely, the appellate panel provided its own conclusive reasoning and rejected the appeal on the basis that the appellant achieved the retirement age and thus was not eligible for the privatisation proceeds.

62 Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, 06/L–086, 12 July 2019, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=20290, (accessed 13 October 2022).

63 Law on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters, 06/L–086,12 July 2019, Article 4, paragraph 10, https://gzk.rks-gov.net/ActDetail.aspx?ActID=20290, (accessed 16 September 2022).

64 Regarding the content of the reasoning of a judgment, please refer to ECtHR, Case of Hiro Balani v. Spain, Judgment of 9 December 1994.

65 This concerns a list of employees deemed eligible to receive a share of the proceeds from the privatisation of the company

Furthermore, another issue observed by EULEX was that in many cases the SCSC decided to proceed without holding a hearing on the grounds that the parties were given the opportunity to submit their statements in writing. However, this is not according to the principle of public court hearings.[66] Currently, especially since most of the COVID-19 measures were lifted, there is no reason that would justify an exception to this rule in these cases.

In conclusion, most of the recommendations listed in EULEX's previous *Justice Monitoring Report* were not implemented. Only two new judges were recruited, which is insufficient to clear the sizeable backlog within a reasonable period of time.

**Recommendations:**

- The SCSC should adopt a long-term backlog clearing strategy.
- The SCSC should adopt a sound plan to mitigate the lack of a sufficient number of judges and legal officers. The recruitment of staff for these positions should be prioritised.
- The KJC should set up a norm on the number of cases that are expected to be finalised by the SCSC judges within a given time frame.
- The SCSC should continue using the templates for dealing with mass claims and task legal officers to conduct the relevant preparatory work, for example pre-filling the template, as a tool to effectively reduce the backlog in a relatively short period of time.
- The KJC should strengthen the translation and interpretation capacity of the court in Serbian language, since most of the cases concern parties who need translation/ interpretation.
- The SCSC should pay more attention to the reasoning and structure of its decisions. The reasoning should be diligent, and in accordance with the relevant jurisprudence of European Court of Human Rights (ECtHR). The reasoning should be understandable for the parties, answer all the issues raised during the proceedings and avoid contradictory statements.

in question.

66 Criminal Procedure Code, 04/L-123, 01 January 2013, Article 293, https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2861, (accessed 27 October 2022).

# Annex I – List of monitored and referenced cases

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

## Former EULEX Cases[67]

### Olympus I Case (PKR 610/2016), also known as the 'Land Case'

On 24 October 2016, the prosecution filed an indictment before the Basic Court of Pristina against Azem Syla et al. It concerns 19 remaining defendants who are currently standing trial. The case is about the unlawful ownership of a large amount of socially owned property in the period since 2006. The group allegedly managed to register the ownership of properties in their favour through corruptive actions making use of persons in key positions at courts, the Cadastral Office and the Kosovo Property Agency (KPA). The estimated overall market value of the properties is over EUR 25 million. From November 2018, the Basic Court of Pristina regularly conducted sessions until the COVID-19 related lockdown in mid-March 2020. After the Presiding Judge moved to the Court of Appeals (CoA) at the end of 2020, the case was assigned to a new Presiding Judge at the beginning of 2021 and the trial had to start from the beginning due to the time lapse that had passed since the previous hearing. In 2022, an additional delay was caused by the need to appoint a new judge once again, necessitating, again, the restart of the main trial. Two defendants had been on pre-trial detention (one for more than seven years and the other for more than six years), until they were finally released to house arrest in June 2022. The trial continued with regular hearing and the panel decided to appoint a psychiatric expert to evaluate whether one of the defendants was mentally capable to stand trial.

### Olympus II Case (PKR 611/2016)

On 24 October 2016, the prosecution filed two indictments before the Basic Court of Pristina regarding the cases Olympus I and Olympus II in relation to an alleged large organised criminal group having unlawfully gained ownership of a large amount of socially owned property in the period 2006 to 2016. The charges of the indictment of the Olympus II Case against Baki Abdullahu, Haki Hyseni and other 15 defendants are limited to money laundering. On 3 February 2020, the court attempted to hold the first hearing, but the legal conditions were not met due to the absence of five defendants, with one of them allegedly living abroad. The hearing of 17 March 2020 was suspended due to the pandemic. After long delays, the initial hearing in this case was held on 31 May 2021. Following the second hearing in this case, the judge issued a ruling to dismiss the indictment on 22 July 2021. This ruling was appealed by the Special

67 EULEX war crime cases are covered in the next section.

Prosecution Office (SPRK) and overturned by the Court of Appeals (CoA) on 20 October 2021, which sent the case back to the court of first instance. There are currently 16 defendants in the case (one passed away in the meantime), mainly charged with money laundering. Hearings took place regularly since May 2022. The announcement of the judgment took place on 7 November 2022, all the defendants being acquitted, while the seized properties will be released.

## Naser Kelmendi Case (PKR 32/2019)

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

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

On 16 December 2016, the prosecution filed an indictment against a group of 20 defendants, including Ukë Rugova, former President Rugova's son, before the Basic Court 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 citizens from the Embassy of Italy in Kosovo, thus acquiring considerable material profit for themselves.

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

Both cases had been conducted by the same Presiding Judge, who was demoted from the Serious Crimes Department in September 2020, thus both cases needed to recommence and were reassigned to a new Presiding Judge. *Grande I* recommenced on 16 April 2021, with hearings taking place regularly. During the last hearing, on 10 May 2022, the defendants gave their final statements and one of them informed the court that he had been acquitted by an Italian court for the same criminal offences, yet the alleged judgment has not yet been delivered to the Basic Court of Pristina.

*Grande II's* current court proceedings are still in the evidentiary stage. The hearing scheduled on 6 May 2021 was unproductive. Thereafter no further hearings took place until 6 April 2022, when the court hearings resumed.

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

On 21 July 2017, the prosecution filed an indictment against Granit Elshani (in detention since October 2016) before the Basic Court of Pejë/Peć. He was accused of having killed, in January 2010, in the City Club in Pejë/Peć, one person and injured two persons, including Valdet Kelmendi, the actual target. This attack was seen as related to a blood feud between the Elshani and Kelmendi families, which had been going on for 15 years and in the course of which around two dozen persons from both families had been killed. On 30 May 2018, the Basic Court of Pejë/Peć (P 253/2016) sentenced the defendant to an aggregated punishment of 25 years in prison for aggravated murder, attempted aggravated murder, causing general danger and illegal possession and use of weapons. The defendant appealed against the verdict and on 16 October 2018, the CoA (PAKR 434/2018) annulled the first-instance judgement. The retrial commenced in January 2019. Since then, the court conducted sessions regularly until the COVID-19-related lockdown in mid-March 2020.

In late summer 2020, the court continued the trial and conducted several sessions; the announcement of the judgement was scheduled for 21 September 2020, but instead of doing so, the Presiding Judge reopened the main trial, reasoning that the evidentiary procedure had not been exhausted. The Presiding Judge retired in October 2020, and thereafter the Basic Court of Pejë/Peć transferred the case to the Basic Court of Gjakovë/Đakovica, as the former did not have enough judges at the Serious Crime Department. The case had to recommence in November 2020 (PKR 191/2020) and since then, sessions have been conducted regularly. The main trial was concluded with the judgment being announced on 14 March 2022. The defendant was sentenced to an aggregated punishment of 24 years in prison for aggravated murder, causing general danger and illegal possession of weapon. The written judgment was announced on 2 June. Both parties appealed the verdict and the case is currently at the CoA.

### Land 4 Case (PKR 130/2016)

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

## Hospital Escape Case (PKR 685/2016)

On 17 November 2016, the prosecution filed an indictment before the Basic Court of Pristina against defendants Emrush Thaqi, Sami Lushtaku and others, for allegedly being part of a larger group of defendants involved in the escape from the University Clinical Centre of Kosovo (UCCK) in Pristina in May 2014. The indictment charged the 24 defendants with the alleged commission of different criminal offences, such as escape of persons deprived of liberty, facilitating the escape of persons deprived of liberty, abusing official position or authority, unlawful release of persons deprived of liberty, providing assistance to perpetrators after the commission of criminal offences, falsifying documents, obstruction of official testimony or procedure, intimidation during criminal proceedings and participation in an organised criminal group. After several failed attempts, the initial hearing took place on 6 December 2017. During the trial, at the end of 2019, defendant Myrvete Hasani, Sami Lushtaku's wife, pleaded guilty for facilitating the escape of persons deprived of liberty in co-perpetration and was sentenced to six months of imprisonment, which was then converted into a fine of EUR 3,500 as part of a plea agreement. On 20 February 2020, the court, aiming to speed up the procedure, decided to sever the proceedings against some of the defendants in relation to the counts of witness intimidation. No progress has been recorded in this severed part ever since.

On 14 April 2020, the Basic Court of Pristina announced its verdict in the main case, acquitting Sami Lushtaku and the other two high-profile defendants of the *Drenica Case*, Sahit Jashari and Ismet Haxha, of fleeing from detention at the University Clinical Centre of Kosovo (UCCK) in Pristina from 20 to 22 May 2014. The prison guards accused of assisting their escape were also acquitted. The defendant Sami Lushtaku and three other accused, who were employees of the Dubrava Detention Centre, were found guilty and sentenced for the two other escape instances dated 21 August and 22 September 2015. Sami Lushtaku was sentenced to a fine of EUR 12,000, while the prison guards were fined EUR 1,000 each.

On 30 October 2020, the CoA ruled that the SPRK's appeal was partially grounded and sent the case of two of the defendants, who had been acquitted at first instance, for retrial at the Basic Court of Pristina. These were Emrush Thaci, former Director of the Pristina Detention Centre, charged with abuse of position, and Nexhib Shatri, a doctor in the Dubrava Detention Centre, also charged with abuse of position in conjunction with falsifying documents and facilitating the escape of persons deprived of liberty. The CoA also partially granted the appeal of the SPRK regarding the sentences of the three Dubrava correctional officers and modified them to suspended sentences of six months of imprisonment, while the Basic Court had imposed only fines of EUR 1,000. The CoA verdict also confirmed the statutory limitation of the offences against the three high-profile defendants Sami Lushtaku, Sahit Jashari and Ismet Haxha, of fleeing from detention at the University Clinical Centre of Kosovo (UCCK) in Pristina from 20 to 22 May 2014. The rest of the first-instance judgement remained unchanged.

On 16 March 2021, the initial hearing in the retrial of Emrush Thaci and Nexhib Shatri was held at the Basic Court of Pristina and hearings had been conducted regularly until both were acquitted on 21 February 2022. This judgement was appealed by the prosecutor.

## Medicus Case (PKR 315/2018)

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

On 8 March 2016, Arban Dervishi and on 5 April 2016, Lutfi Dervishi filed requests for the protection of legality against the CoA verdict. On 7 March 2016, Sokol Hajdini also filed an appeal against the same CoA judgement. On 20 September 2016, the Supreme Court (EULEX majority panel) acquitted the defendant Sokol Hajdini of charges of organised crime and found him guilty of the criminal offence of grievous bodily harm. On 15 December 2016, the Supreme Court, with a panel now composed of a majority of local judges, issued the decision on the requests for protection of legality filed by Arban and Lutfi Dervishi. The decision annulled the convictions concerning Lutfi and Arban Dervishi and Sokol Hajdini and sent the case back to the Basic Court of Pristina for a retrial. The other defendants had either been previously acquitted, or the charges had been rejected. On 11 January 2017, the Basic Court of Pristina imposed detention on remand against Lutfi Dervishi, and issued an international arrest warrant against Arban Dervishi, who was at large.

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

On 6 November 2018, the CoA, deciding on the appeals of the defendants Lutfi Dervishi and Sokol Hajdini against the judgement of the Basic Court of Pristina of 24 May 2018, annulled the verdict and sent the case for a second retrial. The judgement of Sokol Hajdini was annulled since the crime had reached the absolute statutory limitation. Arban Dervishi returned to Kosovo in 2019 and the international arrest warrant against him was suspended.

On 20 January 2020, the first session in the second retrial against the defendants Lutfi and Arban Dervishi was postponed. The hearing was scheduled on 2 March 2020 but was not held due to pandemic-related restrictions. The following hearing took place on 27 October 2020, after which the trial was postponed for an indefinite period of time in order to provide for time for locating witnesses/injured parties. After more than a year of inactivity due to the difficulty in locating the considerable number of witnesses, a hearing was scheduled to take place on 1 March 2022, but had to be cancelled due to a strike of the administration staff at the court. Additionally, the judge had made several requests to be excluded from the case for different reasons, all rejected by the President of the Basic Court of Pristina. A new hearing was

scheduled for 9 September 2022, when the retrial had to start from the beginning given that the last productive session had taken place in 2020. To this end, further sessions are being planned.

## Former EULEX War Crime Cases

### Drenica I Case (PKR 74/2018)

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

On 11 June 2018, the Supreme Court sent the case for retrial to the Basic Court of Mitrovica (after the Constitutional Court judgement of 7 June 2018 had overturned the Supreme Court judgement of 19 July 2017 in relation to the *Drenica II Case* and had sent it for reconsideration) and both convicted defendants were released from serving the punishment. However, both Jahir Demaku and Sylejman Selimi remained in prison to serve the punishment imposed in relation to the Drenica II verdict, until they were conditionally released by decisions of the Conditional Release Panel of 24 October 2018 and 25 January 2019. Following the creation of the Special Department at the Basic Court of Pristina[68], the Basic Court of Mitrovica sent the case to the Special Department at the Basic Court of Pristina, considering that it was no longer under its jurisdiction. In April 2019, the Special Department at the Basic Court of Pristina returned the case to the Basic Court of Mitrovica, arguing that the latter had already started the adjudication of this case and should therefore complete it. On 6 November 2019, two panel members of the trial panel in the Basic Court of Mitrovica were appointed but the initial hearing scheduled for 26 December 2019 was postponed until 25 March 2020, following a request of the prosecutor. Due to the pandemic-related restrictions, the hearing of 25 March 2020 did not take place. The hearing scheduled for 7 December 2020 was cancelled as well once it was confirmed that the Presiding Judge had been infected with COVID-19. The judge's retirement, at the end of April 2021, caused additional delays. In summary, more than four years have passed since the Supreme Court sent the case for retrial to the Basic Court of Mitrovica on 11 June 2018 without any progress taking place.

68 The Special Department was established by the Law on Courts, 06/L-054, which entered into force at the beginning of 2019. It is a specialised department in the Basic Court of Pristina and Court of Appeals which exclusively handles cases from the Special Prosecution Office (SPRK), i.e., the most serious criminal cases.

### Zoran Vukotić I Case (P 57/2019)

On 20 April 2017, the prosecution filed an indictment before the Basic Court of Mitrovica against Zoran Vukotić. He was accused of having allegedly participated, as a member of the Serbian police forces and as a prison guard, in co-perpetration with other unidentified members of the Serbian police, in the illegal detention of a large number of civilians, Kosovo Albanians, in the Smrekovnica prison in the Mitrovica region, from May to early June 1999, where he had reportedly submitted them to torture and other inhumane treatment. On 25 May 2018, the Basic Court of Mitrovica rendered the judgement finding the defendant guilty and imposed a punishment of six and a half years of imprisonment. The judgement was appealed by the defendant. On 30 January 2019, the Court of Appeals partially annulled the judgement of the Basic Court of Mitrovica, and the case was sent to the Basic Court for a partial retrial. No sessions were held after this date.

### Zoran Vukotić III Case (P 86/2017)

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

## Non-EULEX Cases[69]

### Stenta Cases (PKR 40/2018)

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

Based on a ruling by the Basic Court of Pristina, the case was severed due to the large number of defendants involved.

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

69 Non-EULEX war crime cases are covered in the next section.

In *Stenta II*, 45 defendants, almost exclusively doctors, were indicted for abuse of official position in co-perpetration and for accepting bribes. Subsequently, this case was severed in two parts: Stenta II.1, with most of the defendants, and Stenta II.2, with only six defendants who, in the course of the trial, have been partly absent due to health issues. In the latter, the hearings have been continuously postponed mainly since defendants have been absent due to health reasons. On the other hand, Stenta II.1 recommenced with a productive session in December 2021 and was moving forward until May 2022, albeit in a slow pace with numerous hearings being postponed due to the absence of defendants. Additionally, a new Presiding Judge had to be assigned to the case due to health issues of the former one, which caused further delays.

Finally, the *Stenta III* case is related to the rest of the defendants (natural persons and legal entities). They are facing charges of giving bribes, irresponsible medical treatment, unlawful exercise of medical activity and tax evasion, individually and in co-perpetration. Some of the defendants are foreign citizens (e.g., Turkey and North Macedonia). After a lengthy period for the confirmation of the indictment, the opening session of the main trial was supposed to take place in October 2020, but it was adjourned and postponed indefinitely because the defence claimed the lack of access to the case file. In November 2021, sessions were again scheduled but were adjourned due to issues pertaining to the translation of the case documents for the foreign defendants. Therefore, the case is dormant since the translation of the case file is still pending.

## Avanci Case (PPS 19/19)

On 6 October 2020, the prosecution filed an indictment before the Basic Court of Pristina against Mendim Sojeva and Ganimete Gashi-Ahmeti, one official of the Kosovo Agency for Medicinal Products (KAMP) and the other one an employee of the Ministry of Health (MoH), for the alleged criminal offences of misappropriation in office and intrusion into computer systems. According to the prosecutor, the alleged damage to the budget amounts to over EUR 1 million obtained through wrongful handling of advance payments for official duty trips abroad. The main trial is currently in the phase of administration of evidence. By the end of the reporting period, numerous hearings had taken place, where many witnesses were summoned to testify, most of them having been suspects at the beginning of the investigation (but were later cleared of the charges since no evidence was found against them regarding any illicit activity). The case was active since the indictment was filed and regular hearings were being scheduled. However, despite the low number of defendants, the number of testimonies and pieces of material evidence is large, which contributes to a longer duration of the proceedings.

## Gani Rama and Pal Lekaj Case (PKR 110/2021)

On 25 May 2016, the prosecution filed an indictment against Gani Rama before the Basic Court of Gjakovë/Đakovica. In his capacity as an official of the Municipality of Gjakovë/Đakovica during the period 2008-2012, the defendant had allegedly exceeded his official duty powers in relation to subsidies and procurement for his own or other persons' benefit, thereby causing damages to the municipal budget totalling EUR 218,956.67. On 13 February 2017, the Basic Court acquitted the accused on the grounds that it was not possible to prove that he had committed the criminal offence for which he was charged. This decision was appealed by the prosecution and the CoA returned the case for retrial. On 9 February 2018, the Basic Court again acquitted the defendant,

on the same grounds as in the first trial. The prosecution appealed again and on 1 November 2018, the CoA approved the appeal and returned the case for a second retrial, reasoning that the court of first instance had based its judgement entirely on the opinion of the financial expert, who had not provided a clear and concrete opinion regarding the position held and the powers exercised by the defendant at the time the alleged offences were committed.

On 7 November 2019, the second retrial commenced, after the court had merged it with the case against the former mayor of Gjakovë/Đakovica and Minister of Infrastructure Pal Lekaj et al. (PKR 16/2018). Pal Lekaj was also charged with the criminal offence of abuse of official position or authority. Since the commencement of the merged trial, regular sessions were conducted until the COVID-19 related lockdown in mid-March 2020. Sessions recommenced in summer 2020 and on 19 February 2021. The court sentenced Pal Lekaj and municipal official Ismet Isufi to one year and six months imprisonment on probation each and Gani Rama to one year imprisonment on probation. Veli Hajdaraga was sentenced to one year and eight months imprisonment on probation and a fine in the amount of EUR 8,000 for the criminal offences of subsidy fraud and tax evasion. The imprisonment sentences would not be executed if they did not commit another criminal offence within the verification period of two years. Pal Lekaj, Ismet Isufi and Gani Rama were prohibited from exercising functions in public administration or public services during a period of two years from the day the judgement enters into force. All four defendants were obliged to jointly compensate the Municipality of Gjakovë/Đakovica in the amount of EUR 69,786 within one year from the day the judgement becomes final. Finally, the court obliged Veli Hajdaraga to compensate the tax authorities in the amount of EUR 21,283 (unpaid tax) and further EUR 3,435 (pension contribution). The defendants meanwhile appealed the judgement and on 23 August 2021 the CoA decided a new retrial for which the initial hearing was scheduled on 27 October but did not take place. Court hearings were then held on 8 November 2021, 13 December 2021 and 18 January 2022. On 21 January 2022, the judgment was announced and all defendants were acquitted. After the appeal from the prosecution, the Court of Appeals confirmed the acquittal on 22 August 2022.

### Gjilan/Gnjilane Highway Case (PPS 34/2019)

In February 2021, the prosecution filed an indictment against four officials at the Ministry of Infrastructure before the Basic Court of Pristina for wrongdoings in relation to a tender process for the construction of the Pristina-Gjilan/Gnjilane highway. The defendants are Betim Reçica (former Secretary of the Ministry of Infrastructure), Isa Berisha, Leonora Limani and Mirdit Emini, all officials of the Ministry of Infrastructure involved in the procurement process. Betim Reçica is charged with several criminal offences, including trading in influence, abusing official position or authority and money laundering. The other three defendants are charged with abusing official position or authority. This case resulted from the investigative action by the former Anti-Corruption Task Force (ACTF). There were several attempts to start the main trial since September 2021, but only on 10 January 2022, the main trial eventually started. After the opening statements, regular court sessions were scheduled with a many witnesses summoned as part of the evidentiary proceedings. The sessions were all productive and by the end of the reporting period the trial was approaching the end of witness examination.

### 3 % Case (P 2022/2017)

On 28 April 2017, the prosecution filed an indictment before the Basic Court of Pristina against Bujar Bukoshi (former Prime Minister of Kosovo), Naser Osmani (former MP) and Atdhe Gashi (former advisor to Bujar Bukoshi). The defendants allegedly embezzled money related to the budget concerning the '3% donations' (a voluntary contribution, mainly by diaspora in support of Kosovo) during the period 2006-2015 (Bujar Bukoshi allegedly around EUR 91,000; Naser Osmani and Atdhe Gashi together around allegedly EUR 154,000). The case against Bujar Bukoshi was later separated as given his serious health condition, he is being treated abroad. On 3 December 2018, the court dismissed Naser Osmani's and Atdhe Gashi's request to dismiss the indictment. The CoA rejected their appeals on 17 January 2019. On 15 August 2019, the trial commenced with regular sessions until the end of October 2019. The case continued on 31 January 2020 and proceeded further only in July 2020 due to the delay in the delivery of a report by a financial expert (which had been requested by the judge). The case experienced further delays due to the COVID-19 pandemic. Only at the end of October and beginning of November 2020, the court was able to hold two sessions, followed by a session held on 11 November in which the court announced the judgment in this case. The judge found the defendants Naser Osmani and Atdhe Gashi guilty of the criminal offence of embezzlement of money. Both were sentenced to three years of imprisonment and were ordered to return the amount of EUR 154,132.47 to the Kosovo budget. As to the criminal offence of tax evasion, the judge rejected to issue a judgment due to the absolute statutory limitations of the criminal offence. The case is pending at the Court of Appeals.

## Non-EULEX War Crimes Cases

### Svetomir Bačević Case (PPS 108/2020)

On 9 November 2021, the prosecution filed an indictment before the Special Department at the Basic Court of Pristina[70] against Svetomir Bačević for having allegedly committed a war crime against the civilian population. The indictment claimed that the defendant, without being a member of the Yugoslav armed forces, took a civilian hostage in the period July-August 1998 in the village of Bellopojë/Belo Polje. The trial started with the initial hearing on 17 November 2021. On 8 September 2022, the Special Department at the Basic Court of Pristina announced the judgment which found the defendant guilty as charged and sentenced him to five years of imprisonment.

### Muhamet Alidema Case (PPS 42/2021)

On 29 March 2022, the prosecution filed an indictment against the defendant Muhamet Alidema before the Basic Court of Pristina, charging him with three counts of committing war crimes against the civilian population as a member of the Yugoslav armed forces during the armed conflict in Kosovo. The indictment claimed that (1) on 28 March 1999, in the village of Izbicë/Izbica, the defendant participated in and contributed to the killing of civilians, that (2) two

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months later and at the same location, together with other members of the Yugoslav armed forces, he exhumed the bodies and then transported them with several trucks in an unknown direction and that (3) on 28 March 1999, in the same village, together with other members of the Yugoslav armed forces, he inflicted inhuman treatment, violation of bodily integrity and health and conducted displacement, looting and destruction of the property of the civilian population.

On 12 April 2022, the Special Department at the Basic Court of Pristina held the first initial hearing and later rendered a ruling confirming the indictment against the defendant. The second initial hearing was conducted on 13 July and the ruling of the Presiding Judge on the objections to evidence was still pending.

### Duško Arsić Case (PPS 118/2021)

On 8 December 2021, at the Common Crossing Point Rudnica/Jarinjë, the Kosovo Police arrested Duško Arsić, who was suspected as a perpetrator of a war crime during the armed conflict in Kosovo. On the same day, the SPRK War Crimes Department issued the ruling on initiation of the investigation, charging Duško Arsić with two counts, both war crimes against the civilian population according to Article 142 in conjunction with Article 22 of the *Criminal Code* of Yugoslavia (CCSFRY). The indictment states that the defendant took part in the eviction and forced displacement of inhabitants of Pristina and the surrounding area, then took part in pillaging and burning houses and mistreating civilians. He allegedly committed this crime between January and June 1999 in co-perpetration with other members of the Yugoslav armed forces. The second count in the indictment relates to the alleged detention, abuse and torture of a 15-year old minor on 20 April 1999, the severe consequences of which were still present. At the end of the reporting period, the case was still pending at the investigation stage.

### Časlav Jolić Case (PPP 23/2022)

On 2 June 2022, the Kosovo Police arrested Časlav Jolić, who was suspected of having committed war crimes against the civilian population during the armed conflict in Kosovo according to Article 142, in conjunction with Article 22 of the Criminal Code of Yugoslavia (CCSFRY), and Article 3 of the Geneva conventions. On two occasions, first at the end of March 1998 and second in May 1998, he was suspected of having beaten up a Kosovo Albanian civilian, whereas the second time the victim was unconscious for 20 minutes as a result of the beating. On the same day, the SPRK War Crimes Department issued a ruling on initiation of the investigation. At the end of the reporting period, the case was still pending at the investigation stage.

### Milorad Djoković Case (PPS 47/2022)

On 27 June 2022, the Kosovo Police arrested Milorad Djoković, who was suspected of having committed war crimes against the civilian population. A day later, the Special Department at the Basic Court of Pristina ordered detention on remand for the defendant. He is suspected of having taken part, as member of the Yugoslav armed forces, in an operation in the village of Ozdrim/Ozrim on 7 May 1999, in the course of which nine Kosovo Albanians were killed and five others disappeared. Currently the case is still pending at the investigation stage.

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

In October 2016, the prosecution filed an indictment before the Basic Court of Prizren against Remzi Shala for war crimes against the civilian population during the armed conflict in Kosovo. The defendant was a member of the KLA and had allegedly, together with up to six other unidentified KLA members, abducted and killed a person on 26 June 1998. On 3 July 2019, the Court found the defendant guilty of the criminal offence of war crimes against civilians and sentenced him to 14 years of imprisonment. The defendant appealed the verdict. On 26 November 2019, the CoA partially approved the appeal and amended the judgement changing the sentence to ten years of imprisonment. The other part of the judgement remained unchanged, while the appeal of the injured party was rejected as ungrounded. The defendant's defence counsel filed a request for protection of legality against this verdict on the basis of violation of the criminal law and essential violations of the provisions of the criminal procedure. On 2 March 2020, the Supreme Court followed the request and annulled both verdicts and sent the case for retrial at the Basic Court of Prizren, where it is currently ongoing.

### Zoran Djokić Case (PPS 23/2018)

On 31 May 2019, the prosecution issued an indictment for war crimes before the Special Department of the Basic Court of Pristina against Zoran Djokić. It was alleged that on 28 March 1999, in Pejë/Peć, acting together with a Serbian organised criminal group, wearing police, paramilitary and military uniform, in order to cause great suffering, violated the bodily integrity or health of Kosovo Albanians and applied measures of intimidation against the vulnerable civilian population by robbing, killing and expelling the civilian population. On this occasion, he allegedly entered the houses of Kosovo Albanians, forced them to leave their residences with their families, inflicted mental suffering on them, confiscated money and valuables, and physically and mentally abused them.

The main trial started on 4 December 2019 and ended, after some pandemic-related delays, on 4 February 2021 with the closing statements of the parties. On 11 February 2021, the Basic Court of Pristina announced the judgement. Zoran Djokić was found guilty and sentenced to 12 years of imprisonment for the criminal offence of war crimes against the civilian population under Article 142 in conjunction with Article 22 of the CCSFRY, in conjunction with Article 3 of the Geneva Conventions. The defendant appealed the judgment and on 12 October 2021, the CoA held the appeal hearing. On 8 November 2021, the CoA rendered the decision upholding the first instance judgement. The defendant filed a request for protection of legality against this decision and on 15 February 2022, the Supreme Court rejected it and confirmed the decision of the CoA.

### Goran Stanišić Case (PPS 14/2018)

On 6 February 2020, the prosecution filed an indictment before the Basic Court of Pristina against Goran Stanišić, charging him with war crimes against civilian population committed during the armed conflict in Kosovo. In April 1999, the defendant allegedly participated in a wide-scale attack of the Yugoslav armed forces on two villages in the municipality of Lipjan/Lipljan and participated in the deportation and killing of civilians.

Due to the lockdown in March 2020 and the subsequent adjournment of the court proceedings, the main trial started a few months later and was conducted in a timely manner. A short delay occurred in the period between April 2021 and May 2021 due to the inability of the administration of the Basic Court of Pristina to provide the defence counsel with the translation of the minutes of the sessions held in Serbian language. The main trial resumed on 27 May 2021 with the interviewing of witnesses. On 30 October 2021, the parties delivered their closing statements and on 5 October 2021, the Basic Court of Pristina announced the judgement. Goran Stanišić was found guilty as charged and sentenced to 20 years of imprisonment. The hearing at the CoA following the appeal filed by the defendant took place on 27 September 2022 and at the end of the reporting period the judgement of the second instance was pending

## Zoran Vukotić IV Case (PPS 09/2018)

On 6 March 2020, the prosecution filed an indictment for war crimes against Zoran Vukotić before the Basic Court of Pristina. It was alleged that on 22 May 1999, he took part, as a member of the Serbian police force, in a widespread systematic attack by the military, police and paramilitary Serbian forces against the Kosovo Albanian civilian population in the municipality of Vushtrri/Vučitrn, as well as in the expulsion of the Kosovo Albanian civilian population, whereby he had allegedly committed physical, psychological and sexual violence against a Kosovo Albanian female.Vukotić was previously extradited from Montenegro and is serving a sentence convicted for the *Vukotić I Case* and has several other cases pending at different stages in the Basic Court of Mitrovica (retrials for the part of the *Vukotić I Case,* for which he had initially been acquitted by the first instance, retrial of the *Vukotić II Case* and trial of the *Vukotić III Case*). The main trial started on 15 June 2020. A short delay occured between 1 April 2021 and 30 June 2021 due to the incapacity of the administration of the Basic Court of Pristina to provide the defence counsel with translation of the minutes of the sessions in Serbian language. The main trial resumed on 30 June 2021 with the closing statements of the parties. On 5 July 2021, the Basic Court of Pristina announced the judgment, finding the defendant guilty as charged and sentencing him to 10 years of imprisonment.

The judgement was appealed by all parties. The SPRK and the victim requested from the Court of Appeals to impose a punishment of 20 years of imprisonment, while Zoran Vukotić and his defence counsel, in two separate appeals, requested acquittal. On 21 July 2022, the Court of Appeals ruled to send the case back to the Basic Court of Prishina for retrial. On 11 November, the Basic Court of Pristina issued a judgement, again sentencing the defendant to ten years of imprisonment.

## Zlatan Krstić/Destan Shabanaj Case (PPS 17/2019)

In December 2019, the prosecution filed an indictment before the Basic Court of Pristina on multiple counts against Zlatan Krstić and Destan Shabanaj, both members of the Serbian police force during the Kosovo conflict. Zlatan Krstić was charged for violation of the rules of international humanitarian law (the Geneva Convention). It was alleged that, on 26 March 1999, in a village in the municipality of Ferizaj/Uroševac, knowingly and with intent, acting pursuant to the plan and orders of his superiors, he participated directly in an attack against civilian population. The defendant allegedly participated in the grievous ill-treatment of members of

the Nuha family, removed them from their home by force, treated them inhumanely, participated in the unlawful and intentional destruction of the family's property, the eviction of 15 members of the family and in the hostage taking of four persons and substantially contributed to their cruel treatment, mistreating, torturing, mutilating and ultimately killing. Destan Shabanaj was charged with violating the rules of international humanitarian law against civilians. On 01 April 1999, he allegedly ordered the bodies of victims of war to be buried without dignity and in violation of the rules of war by ordering other members of the police to relocate the bodies from the Pristina morgue and dispose of them in an unmarked mass grave.

The main trial was conducted during the entire year 2020 and the beginning of 2021. On 23 March 2021, the Special Department at the Basic Court of Pristina announced the judgement, finding both defendants guilty as charged. Zlatan Krstić was sentenced to 14 years and six months of imprisonment and Destan Shabanaj to seven years of imprisonment. Both appealed the judgement at the Court of Appeals. On 8 November 2021, the Court of Appeals rejected both appeals, thus upholding the first instance judgment. Both defendants filed requests for protection of legality before the Supreme Court. On 23 June 2022, the Supreme Court granted the request of Destan Shabanaj and acquitted him. The request filed by Zlatan Krstić was rejected.

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