EULEX
European Union Rule of Law Mission
Kosovo

EU Rule of Law Mission

Justice Monitoring Report

Findings and Recommendations
March 2020 – October 2021

December 2021

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Table of Contents

List of Abbreviations

AC Agency	Anti-Corruption Agency
ACA	Automatic Case Assignment
ACTF	Anti-Corruption Task Force (KP)
BC	Basic Court
CMIS	Case Management Information System
CMU	Case Monitoring Unit
CoA	Court of Appeals
CCSFRY	Criminal Code of the Socialist Federal Republic of Yugoslavia
CPC	Criminal Procedure Code
DC	Detention Centre
ECHR or the Convention	European Convention on Human Rights
ECtHR	European Court of Human Rights
GBV	Gender-based violence
GLPS	Group for Legal and Political Studies
KCS	Kosovo Correctional Service
KJC	Kosovo Judicial Council
KP	Kosovo Police
KPA	Kosovo Property Agency
KPA AP	Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo
KPCC	Kosovo Property Claims Commission
KPCVA	Kosovo Property Comparison and Verification Agency KPC Kosovo Prosecutorial Council
MoIA	Ministry of Internal Affairs
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
WCIU	War Crimes Investigation Unit (KP)

Foreword

This is the second EULEX Justice Monitoring report available to the public. Previously, such reports were only shared with the judiciary itself and institutions with specific responsibilities in the rule-of-law sector such as the Kosovo Judicial Council, the Kosovo Prosecutorial Council, the Kosovo Police, the Ministry of Justice and the Ministry of Interior. The first one was issued in October 2020. In the meantime, a special report on the effects of the COVID-19 pandemic on rule of law was issued by the Mission in May 2021, including recommendations specifically related to the pandemic.

Given the positive reception by both the judiciary and the public at large, including civil society organisations who are themselves engaged in monitoring the Kosovo judiciary, we have decided to continue with the practice of making these reports available also to the general public in the interest of transparency and as a means to support ongoing efforts to reform the rule-of-law system in Kosovo.

When the EU Rule of Law Mission in Kosovo started its so-called robust monitoring of the Kosovo justice system in June 2018 it could not be taken for granted that it would work. After all, no other international organisation had ever before performed a systemic and thematic assessment of such a wide range of police, prosecutorial and judicial activities by virtue of co-locating its experts with important Kosovo rule-of-law institutions as well as full access to its partners in these areas. Moreover, EULEX's monitoring aimed at covering the entire criminal justice chain and complex aspects of the civil justice system such as property rights and privatization matters.

Such a comprehensive monitoring task is a major challenge and responsibility for the Mission, which had hitherto engaged in an executive role. It should be emphasised that this monitoring is carried out in partnership with Kosovo and is intended to support rule-of-law reforms.

Three and a half years later and with five reports "under the Mission's belt", EULEX's robust justice monitoring is working well and is delivering fact-based and concrete observations and recommendations to Kosovo rule-of-law institutions and legal practitioners. The Mission's reports have become a reference for the Kosovo rule-of-law system, in particular for our many colleagues in the local police, prosecution and courts. It is also used by international partners both within and outside the European Union as well as Kosovo's own civil society organizations, legal practitioners and concerned citizens to understand why the rule of law system is still too often marred by inefficiencies, long delays and, at times, questionable practices.

EULEX Justice Monitoring Reports provide a diagnosis as well as a prognosis of critical aspects of the functioning of the rule of law in Kosovo. By offering findings on what works well in the legal system and what is wrong with the system as well as concrete and practical recommendations for what needs to be improved, the EULEX reports should serve as a tool for policy and lawmakers as well as relevant bodies overseeing the work of police investigators, prosecutors and judges to consider and undertake measures aimed at strengthening the Kosovo rule-of-law system.

This would have never been possible without the commitment and professionalism of both the many EULEX international and local experts and their Kosovo counterparts in police stations, prosecution offices and courts across the country. We are here as partners.

As with previous monitoring reports, this report is the result of a "joint venture" between EULEX and its partners in order to make Kosovo's rule-of-law system more accountable, transparent, and efficient, and increase its integrity and resilience. Ultimately, it should also support Kosovo's quest to move closer to the finishing line of its EU approximation process.

Lars-Gunnar Wigemark
Head of Mission

1. Introduction

Through its Case Monitoring Unit (CMU), the EU Rule of Law Mission in Kosovo – EULEX, is assessing the functioning of the Kosovo Police (KP), prosecution and judiciary in terms of procedural, substantive and human rights law compliance. The robust monitoring by the Mission is spanning the entire chain of criminal justice (police, prosecution and courts) as well as certain aspects of the civil justice system. This fifth monitoring report covers the period from March 2020 until October 2021.

The assessment is carried out through systemic and thematic monitoring of selected criminal and civil cases, including high-profile cases and cases previously dealt with by EULEX until June 2018. The report consists of two sections, focusing on systemic monitoring and thematic monitoring respectively.

The section covering the systemic monitoring focuses on issues identified through the monitoring of individual cases having a systemic dimension, indicating the possible existence of a problem on a wider scale throughout the justice system. This was achieved by monitoring the procedures of detention on remand, the ratio of productive hearings, the ways court hearings were being recorded, cases in which the injured parties were state institutions, the progress of high-profile cases and the enforcement of criminal sanctions.

The section covering the thematic monitoring identifies issues based on the monitoring of specific types of cases, such as crimes committed out of hate or prejudice, or gender-based violence (GBV). The thematic topics monitored by EULEX are: corruption, crimes under international law (war crimes, crimes against humanity and genocide), property rights privatisation and liquidation issues, court administration, GBV and the level of access to justice of victims of domestic violence.

These topics were identified for their relevance from a human rights and transitional justice perspective. Based on the findings, key recommendations are outlined in each chapter of this report. An overview of the court cases mentioned in this report is provided in Annex I.

This is the fifth Justice Monitoring Report prepared by EULEX since early 2019 and the second one in a row to be made available to the public. All previous reports were shared with the Kosovo Ministry of Justice, the Kosovo Judicial Council (KJC), the Kosovo Prosecutorial Council (KPC), the Kosovo Police and other relevant local institutions and international organisations. They include findings and recommendations for improvements of the rule of law system with the aim to assist the Kosovo justice institutions in achieving better compliance with Kosovo law, international human rights standards and EU best practices.

EULEX additionally designs and implements projects providing training measures and best practice exchanges with local partners in order to address the identified gaps.

2. Findings of Systemic Monitoring

2.1 Overuse of detention on remand and potential punitive effects

Detention on remand is one of several measures provided for by the Kosovo Criminal Procedure Code (CPC) to ensure the presence of the defendant, the successful conduct of the criminal proceedings and the prevention of reoffending.[1] Although detention on remand, like imprisonment, entails a deprivation of liberty, it must be strictly distinguished from it, as the latter is not a security measure but a form of punishment and can only be imposed after a final judgement. Since detention on remand implies a severe limitation on the right to liberty, the CPC provides that it should be used as a measure of last resort and be imposed for the shortest possible time.[2] Detention on remand can be ordered only if it has been established that 1) there is a grounded suspicion that a person has committed a criminal offence; 2) there is a risk of flight, of interference with the course of proceedings or of reiteration of the criminal offence and; 3) less severe measures would be ineffective in ensuring the presence of the defendant, the successful conduct of the criminal proceedings or the prevention of reoffending.[3]

The provisions on detention on remand in the CPC are in line with international human rights standards on the right to liberty, which forbid authorities to deprive individuals of their liberty in an arbitrary fashion. Article 5 of the European Convention on Human Rights (hereinafter: 'ECHR' or 'the Convention") stipulates that no one can be deprived of his/her liberty with the exception of a limited number of cases and in accordance with the law.[4]

In our Justice Monitoring Report of October 2020, the Mission reported that it had observed what appears to be an overreliance on the security measure of detention on remand. In the aforementioned report, EULEX examined three particular cases concerning Kosovo Correctional Service (KCS) officers, in which the initially imposed detention on remand was lifted after only one month or was changed to house detention after two months respectively. EULEX concluded that in these three cases, the grounds for imposing the measure of detention on remand had not been sufficiently substantiated and that the application of this measure had a punitive effect, infringing upon the right to liberty and the right to be presumed innocent, protected under Article 5 and Article 6 of the ECHR.

1 Criminal Procedure Code, 28 December 2012, Article 187, paragraph 1.3, available at https://gzk.rks-gov.net/ActDetail.aspx?ActID=2861 [last accessed 01.12.2021]. More lenient security measures include: promise of the defendant not to leave his or her place of current residence; house detention; attendance at police stations; bail; and prohibition of approaching a specific place or person (Article 173, CPC).

2 *'Detention on remand shall, at any stage of the proceedings, be terminated and the detainee released as soon as the reasons for it cease to exist'*, Article 185, paragraph 3, CPC.

3 Criminal Procedure Code, Article 187.

4 *Article 5 of the Convention – Right to liberty and security*
"1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
...(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; ...".

In order to determine whether these findings are indicative of a wider trend, EULEX examined a sample of decisions imposing detention on remand (68 in total) from all Basic Courts (BC) in Kosovo[5] and from each department within the courts. Within the context of this analysis, EULEX also looked at the situation of the defendants as of April 2021, to verify whether the measure of detention on remand was still in place, or had been replaced with other measures. The data revealed that in a large number of cases, the initially imposed detention on remand was not upheld in the later stage of the proceedings, be it before or after the indictment was filed. This suggests that the courts eventually assessed that the conditions for imposing detention on remand, as foreseen by the law mentioned above, had ceased to exist in the course of the proceedings. As a result, most defendants were released[6] and house detention was imposed instead of detention on remand in a small number of cases[7]. Given the high proportion of detention on remand measures terminated or replaced out of the total examined, the question arises whether the conditions for imposing this specific security measure existed in the first place, and whether other, more lenient measures, such as house detention, were considered, as the CPC requires. Moreover, as of April 2021, in case a verdict had been issued, this included non-custodial sentences such as a suspended sentence[8], imprisonment replaced by a fine[9] or imprisonment replaced by community work measures.[10] It follows that in most cases, in light of the final lenient punishment imposed, the measure of detention on remand was disproportionate.

The analysis of cases brought to light that regardless of other identified risks, almost all decisions included a risk of reoffending, which suggests that this condition may be applied systematically for justifying the imposition of detention on remand, which is a clear cause for concern.

Around two thirds of the analysed decisions did establish the facts of the act (*actus reus*) that determine the criminal offense, yet often not within the condition of *grounded suspicion* as required by the CPC, but as part of the *risk of repeating, completing an attempted or committing a criminal offence*[11]. In the remaining one third of the decisions, the *actus reus* was not clearly outlined, but rather only hinted at, or the decisions relied exclusively on the prosecution's ruling on initiating an investigation, on police reports, witness interviews and/or other documents within the case file.[12]

The analysis of the decisions furthermore revealed that the calculation of the duration of detention on remand varies. While the law allows for a maximum of one month from the day of arrest, some judges calculate the day of arrest as the first day and others do not. In other cases, judges imposed 30 days instead of one month, which is not necessarily the same.[13] The exact calculation of the length of detention on remand is crucial and should be unified across all courts.

5 EULEX received from each of the seven BCs three decisions from the Serious Crimes Department, three decisions from the General Department and three decisions from the Juvenile Department. In addition, the Pristina BC provided five decisions from the Special Department. Altogether EULEX analysed 68 detention on remand decisions.

6 Exemplary: Pristina BC (PPPS. nr. 47/19, 34/20, PPR. nr. 826/20), BC Mitrovica (PPR.KR. nr. 03/20), BC Gjilan/Gnjilane (PPR.KR. nr 18/21, PPR. nr. 27/21), BC Prizren (PPR.KR. nr. 12/21), BC Pejë/Peć (DP.PP. NR. 1/21, 2/21, 28/21; PPRM. No. 42/20, 01/21, 02/21).

7 BC Pristina (PPR.KR. nr. 328/19), BC Prizren (PPRM. nr. 08/21).

8 BC Gjakovë/Đakovica (PPR. nr. 20/21).

9 BC Gjilan/Gnjilane (PPR. nr. 254/20), BC Gjakovë/Đakovica (PPR. nr. 17/21).

10 BC Ferizaj/Uroševac (PPRM. nr.73/20).

11 BC Prizren (PPRM. nr. 08/21).

12 BC Gjilan/Gnjilane (PPR.KR. nr 18/21, PPR. nr. 27/21), BC Prizren (PPRM. nr. 72/20), BC Pejë/Peć (DKR.PP. nr. 125/20, DKR.PP. nr. 176/20).

13 To impose 30 days instead of one month is indeed formally possible as Article 190, paragraph 1, CPC states that detention on remand can be imposed for a "maximum" of one month.

These findings lead to the conclusion that detention on remand is often being applied systematically, without proper substantiation and carries, whether intended or not, a punitive effect. This practice of overuse of detention on remand not only falls short of human rights standards on the right to liberty under Article 5 of the ECHR, but also of those under Article 6, which guarantees the right of everyone charged with a criminal offence to a fair and public hearing and to the presumption of innocence. These conclusions do not necessarily apply to cases of domestic violence examined as part of this assessment,[14] since in order to effectively protect victims, the risk of reoffending and, in general, all risks assessments in GBV cases need to be conducted by the authorities with special diligence.[15]

Recommendations:

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

  "[…] an explanation of all material facts which dictated detention on remand, including the reasons for the grounded suspicion that the person committed a criminal offence and the material facts under Article 187, paragraph 1, subparagraph 1.2, CPC."

- Judges imposing detention on remand should justify this measure based on facts and by providing sufficient proof of the specific risks. Basing the decision on general criteria and schematic arguments, or on the assumption that an imprisonment sentence could be expected at the end of the proceedings, should be avoided.
- In case the conditions for imposing security measures are met, the most lenient one should be ordered and detention on remand should be the last resort as foreseen in Article 187, paragraph 1, subparagraph 1.3, CPC.
- Judges should calculate the length of detention on remand in accordance with Article 190, paragraph 1, CPC.

2.2 Excessive length of detention on remand without final judgement

EULEX identified data pertaining to cases of excessively long periods of detention on remand in protracted trials, where defendants have been in detention on remand for years without a final decision. In April 2021, there were 37 cases of persons being in detention on remand for two years or more, as follows:

- 13 cases with more than two years;
- 10 cases with more than three years;
- 8 cases with more than four years,
- 2 cases with more than five years;
- 4 cases with respectively six, seven, nine and twelve years.[16]

14 BC Mitrovica (PPR. nr. 01/20, 150/20, 160/20).
15 See Article 5 of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence ('Istanbul Convention').
16 This data is possibly not exhaustive, as EULEX was unofficially informed about a detained person whose name was not listed in

These cases include several high-profile cases, such as "Oliver Ivanović Murder", "Olympia", "City Club" and "Olympus", which are delayed to the severe detriment of the detained persons' rights to be tried within a reasonable time (Article 5, paragraph 3 and Article 6, paragraph 1, ECHR). The reasons for the slow adjudication are lack of translation capacities ("Oliver Ivanović Murder"[17]), the necessity to recommence the case after years of being tried since the Presiding Judge either retired ("City Club" and "Olympia"[18]) or was transferred ("Olympus"[19]) before the cases were concluded. The cases "Olympia" and "Olympus" have in fact been dormant since March 2020, leaving the detainees in uncertainty about their future, a situation that causes serious human rights concerns. In its jurisprudence, the European Court of Human Rights (ECtHR) indicated that it was up to the judicial authorities '*…to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time'*[20]. Kosovo authorities are therefore encouraged to take measures to ensure that the application of the security measure of detention on remand meets relevant standards of legality, necessity and proportionality throughout the criminal proceedings.[21]

Recommendations:

- In line with the jurisprudence of the ECtHR, Kosovo courts should ensure that their decisions meet the criteria of necessity and proportionality to determine the justified length of detention on remand in relation to the length of the trial. Several aspects should be considered, such as the kind of crime, the role of the defendant, the stage of the proceedings, the delays in proceedings and the reasons for it, the time of the expected judgement, the potential sentence and an overall prognosis of the outcome of the case.
- In cases where it is assessed that detention on remand is not necessary and proportionate any longer, the defendant should be released from detention regardless of the kind of the committed crime, as the seriousness of the criminal offences at stake does not justify by itself the continuous extension of detention on remand.[22]

2.3 A moderate increase in unproductive hearings

As in the previous Justice Monitoring Report of October 2020, EULEX continued looking into the issue of unproductive hearings. A hearing can be considered productive when it is held as scheduled and progress is made towards adjudication, for example, requests for evidence, testimonies of defendants, injured parties, or witnesses, opening and closing arguments. A hearing is considered as unproductive when adjourned without any meaningful progress. Unproductive hearings are detrimental to the justice system as a whole, increasing the length of proceedings, and placing a burden on the judiciary.

the list of detainees that EULEX received from the Kosovo Correctional Service.

17 With defendants in detention on remand for around 2 ½ years in April 2021.

18 With a defendant in detention on remand for around 4 ½ years.

19 With a defendant in detention on remand for around five years.

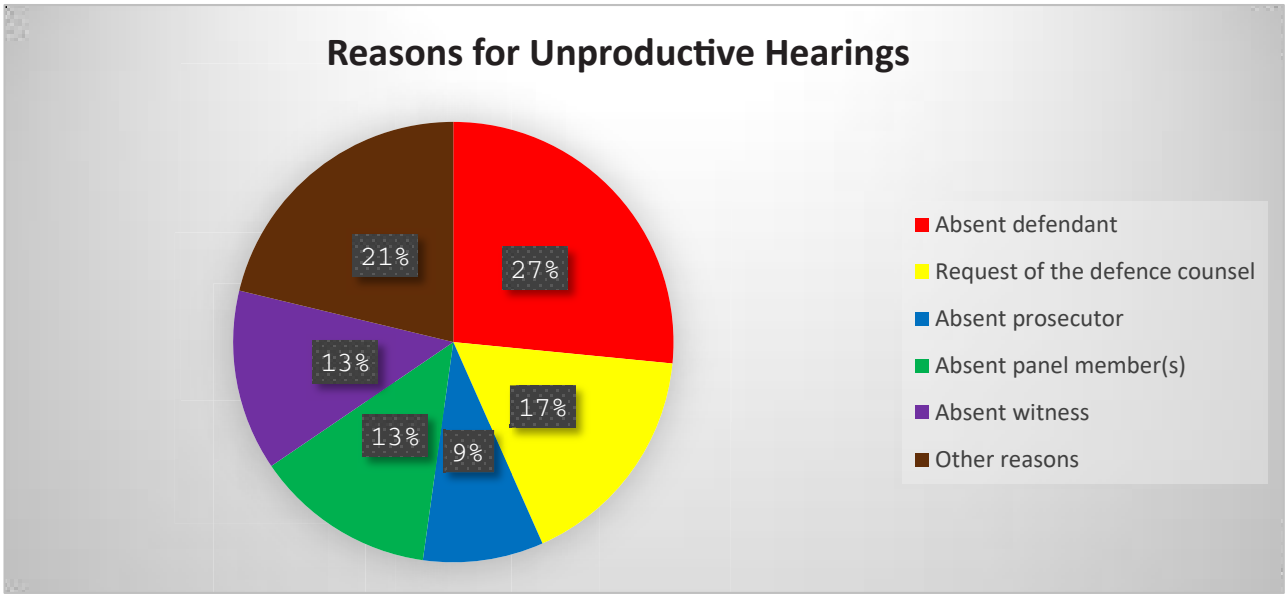
20 See ECtHR: CASE OF KUDŁA v. POLAND (Judgement 26.10.2000; Application no. 30210/96), paragraph 110.

21 See ECtHR: CASE OF LADENT v. POLAND (Judgement dated 18.03.2008; Application no. 11036/03), paragraph 55 in relation to Article 5, paragraph 1 (c) and 3 ECHR.

22 See footnote 26, ibid. and further ECtHR: CASE OF JĖČIUS v. LITHUANIA (Judgement dated 31.07.2000; Application no. 34578/97), paragraph 94 in relation to Article 5, paragraph 3 ECHR and CASE OF MEHMET HASAN ALTAN v. TURKEY (Judgement dated 20.03.2018 Application no. 13237/17), paragraph 211.

In the period mid-March 2020 until end of October 2021, EULEX monitored a total of 378 hearings, out of which 113 were unproductive (30%). This is a moderate increase compared to the figures identified in the previous report, covering the period August 2019 – February 2020 (23%), and to the figures identified in the first half of 2019 (29%). However, the situation in the current reporting period should be considered as exceptional due to the ongoing COVID-19 pandemic.[23]

The two main reasons for unproductive hearings remain the absence of the defendant (30 hearings), followed by requests by the defence counsels to adjourn the hearing, mostly claiming they needed more time for preparing the case or stating that they were ill (19 hearings). Several hearings had to be adjourned due to prosecutors or judges not attending the sessions, or the absence of witnesses.



Often judges omit to ask for a proper justification for absences or to use the available mechanisms in order to avoid unproductive hearings, such as, for example, following up on the alleged illness of the parties, reprimanding absent prosecutors[24] or defence lawyers[25], or applying warrants for absent defendants[26] or witnesses[27]. In numerous cases, hearings were consecutively adjourned at the request of the parties, with the trial panel often remaining passive.

Out of the total of 113 unproductive hearings monitored, 37 were in high-profile cases (33%). Although these cases should be adjudicated promptly given the severity of the crimes, the profile of the defendants and that in many cases defendants are in detention on remand, the number of unproductive hearings remains quite significant.

23 Many hearings were adjourned because the parties, lawyers, prosecutors, or members of the panel were COVID-19 positive or in self-isolation (20 hearings, 8%). Furthermore, in the period 14 March 2020 – 01 June 2020, the Kosovo government imposed a total lockdown, thus the hearings scheduled in this period were adjourned, except for urgent ones (see KJC Decision 53/2020 dated, 15.03.2020, available at https://www.gjyqesori-rks.org/wp-content/uploads/decisions/63168_Vendimi_KGJK-se_Nr.53_2020_per_Masat_parandalimit_infeksionit_nga_Corona_Virusi_SHQ.pdf [last accessed 25.11.2021]).
24 Criminal Procedure Code, Article 306.
25 Ibid, Article 308.
26 Ibid, Article 307.
27 Ibid, Article 309.

In conclusion, the number of unproductive hearings remains a concern, especially in high-profile cases, further impacting negatively on the already slow pace of adjudication.

The delays in the proceedings often exceed the reasonable time, in contradiction with the fair trial principle and timely proceedings standard[28], affecting not only the defendants, but also the victims' right for a timely adjudication and reparation[29].

Furthermore, such delays create practical obstacles in adjudicating the cases, especially when it comes to administering evidence. For instance, some material evidence might not be properly preserved for a long time, while, with the passage of time, witnesses might encounter difficulties in remembering the events they are called to testify about.

It is therefore evident that the sizeable number of unproductive hearings does not affect individual cases only, but the overall efficiency justice system as a whole, and additional efforts are needed to avert them.

Recommendations:

- Judges should be more thorough in verifying the parties' reasons of absence and apply the available toolbox, including punitive and disciplinary measures provided by the law, or be held accountable when failing to do so.
- Courts should prioritise high-profile cases and avoid unnecessary procedural delays.
- Prosecutors and defence counsels should be held accountable when causing undue delays.

2.4 Record of court proceedings

The Mission established that court proceedings were always recorded in writing, although the law allows to only audio-record them. Audio-recording was reportedly not applied mainly due to a lack of technical equipment. Several issues and problems arise from this practice, such as the avoidable prolonging of hearings due to the production of written records requiring more time, the shifting of focus from the essential aspects of the hearing and the damage to the quality of the testimonies. Providing the courts with the right equipment and allowing them to audio-record court sessions would increase the efficiency and quality of the trial proceedings, especially in relation to the examination of parties and witnesses.

According to the CPC, a record in writing must be made of the proceedings of the main trial, and the entire course of the main trial in its essentials must be entered in this record. In addition, the main trial must be recorded (either by audio or by video or by stenographical means), unless there are reasonable grounds for not doing so.[30]

The decision on how the main trial is to be recorded should be taken by the single trial judge or the presiding trial judge. When the main trial is recorded in writing only, the judge may order that testimonies which he/she considers particularly important be entered in the record

28 Ibid, Article 5.
29 The purpose of the reasonable time guarantee is to protect "all parties to court proceedings (…) against excessive procedural delays", European Court of Human Rights, Stogmuller v. Austria, 10 November 1969, paragraph 5, available at http://hudoc.echr.coe.int/eng?i=001-57582 [last accessed 25.11.2021].
30 Criminal Procedure Code, Article 315.

verbatim. Only the essential part of testimonies delivered by the prosecutor, the defendant, witnesses and expert witnesses shall be entered in the record.[31]

Court proceedings in trial hearings monitored by EULEX were never audio- or video-recorded, but rather in writing, often verbatim. In some cases, the judges justified this procedure at the beginning of the hearing with the lack of technical equipment.

According to information provided by the BCs, four (out of a total of seven) BCs (including their branch courts) do not have the technical equipment to audio- or video-record court proceedings,[32] whereas the remaining three have some equipment at the BC but not at the branch courts[33].

The practice of recording court proceedings verbatim in writing considerably slows down the hearing, prolonging the trial as a whole. The judge, the parties and the witnesses need to adjust the way they speak and are often being interrupted or asked to repeat their statements, all of which impedes the flow of the proceedings. Instead of leading the hearing, judges need to pay considerable attention to the process of record-taking. Moreover, this procedure puts an additional strain on parties and witnesses giving their testimonies, hindering a meaningful cross examination and making it more difficult for the public to follow the proceedings. Overall, there is a serious risk that the quality of the testimony is impaired, especially in sensitive cases, like war crime cases and cases of GBV, where testimonies are an important part of the evidence.

Also, it was monitored that the parties were at times inclined to hand in written statements instead of giving oral presentations to save time during the hearing, thus restricting the public's access to the hearing.

While the negative impact of this procedure is less grave in some cases, it was evident in all monitored hearings. Conducting audio-recording only of the examination of parties, witnesses and expert witnesses would already improve the situation, as it would significantly increase the efficiency of the court proceedings as a whole. This is particularly important given the fact that many court proceedings are not being held within a reasonable time.

There is an ongoing project of the KJC, funded by the U.S. Bureau of International Narcotics and Law Enforcement Affairs, to install audio- and video-recording equipment in all BCs. EULEX will monitor the improvements in court proceedings once the project is completed and the equipment is operational.

Recommendations:

- All courts should be provided with the technical equipment to be able to audio-record the court proceedings.
- When the equipment is available, the courts should use it to at least audio-record the testimonies of the parties, witnesses and expert witnesses and only keep a written record of the essentials of the court session.

31 Ibid, Articles 315, 316 and 318.
32 The Basic Courts of Ferizaj/Uroševac, Pejë/Peć, Gjakovë/Đakovica and Mitrovica.
33 The Basic Courts of Pristina, Gjilan/Gnjilane and Prizren.

2.5 State institutions as injured parties

In corruption cases, the injured party is often a State institution. The Mission observed that in a large number of cases, the injured institution was not identified as such in the indictment phase, but only later, and that State institutions often displayed a lack of activity when identified as injured parties.

In many corruption cases, the defendants are charged with the criminal offense of *Abusing official position or authority*[34]. An element of that offense, which needs to be proven in court, is the intent of the defendants to acquire a benefit or to cause damage. When the offense is claimed to have caused damage, an injured party must be identified and specified in the indictment[35]. The injured party is a party to the criminal proceedings and may be represented by a legal representative[36]. The State Advocacy Office, an administrative body within the Ministry of Justice, represents, upon request, the public authorities in judicial proceedings and is authorised to take all actions which a party to the proceedings can undertake.[37]

A report issued by the Group for Legal and Political Studies (GLPS), an independent and non-profit public policy organisation based in Kosovo, observed the same shortcomings in the proceedings pertaining to the identification of public institutions as injured parties.[38] Identifying the injured party in the indictment is an essential part of a well-prepared indictment and also ensures the injured party's right to take part in the court proceedings from the beginning of the main trial.

An example of this problem is the "Ministry of Infrastructure" case, in which the prosecutor identified the Ministry and a company that had lost a tender procedure as the injured parties and requesteWd their representatives to be summoned to a hearing only after the examination of the witnesses was completed. The representatives of the company at first failed to appear and later, when present, declined that the company be assigned the status of injured party. The Ministry's initial representative also rejected the status of injured party. At a later stage, the Ministry was represented by a representative of the State Advocacy Office who filed a claim for damages, which was eventually successful. The issue of who the injured party is should have been clarified much earlier in the proceedings.

The aforementioned inactivity of State institutions' representatives during the main trial is also a reason for concern. When a State institution is the injured party, its legal representative can contribute significantly to the criminal proceedings by assuming his/her role properly, presenting evidence, posing questions to the defendants and witnesses, etc., thus complementing the work of the prosecution. This, however, is very seldom the case. The Mission observed that

34 Criminal Procedure Code, Article 414.
35 Ibid, Article 241, paragraph 1, subparagraph 1.5.
36 Ibid, Article 62 and 63.
37 Law on the State Advocacy Office, Law No. 04/L-157, 12 March 2013, available at http://old.kuvendikosoves.org/common/docs/ligjet/Law%20on%20State%20Advocacy%20Office.pdf [last accessed 01.12.2021].
38 See Drejtësia Sot, Justice Today Snapshot Analysis, Proposal or specification of the injured party and financial expertise, June 2020. A report from the project "Monitoring the Judicial and Prosecutorial System in Kosovo" of the Group for Legal and Political Studies.

in many cases the legal representatives of the injured party were either absent altogether or, when present, rarely posed any questions or took any other action.

Against the backdrop of sizeable financial damages caused by defendants to the Kosovo budget in some of these cases, the passive approach displayed by the injured parties is alarming, as it should be in their interest to contribute to the successful completion of these proceedings. One example is the "Veterans" case, in which the prosecution assessed the damage caused by the defendants to the Kosovo budget at approximately EUR 68 million at the time the indictment had been filed, and growing continuously ever since. The injured party, the Ministry of Labour and Social Welfare, was represented by the State Advocacy Office but nevertheless played a very passive role in the proceedings. The defendants were eventually acquitted by the Basic Court of Pristina.

Recommendations:

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

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

The modest progress in handling high-profile cases, observed in the previous Justice Monitoring Report of October 2020, slowed down even more during the current reporting period. While some delays could be attributed to the pandemic, this was not the main cause for the observed delays. Furthermore, in the few high-profile cases which did come to an end, verdicts were often lenient or the defendants were acquitted.

The Mission's previous Justice Monitoring Report established progress in the pace of high-profile cases such as the "Olympus" case, also known as "Land" case, the "Grande I and II" cases, "Hospital Escape" case and "City Club" case. In the current reporting period, the "Olympus" case did not see any progress after it had been assigned to another judge and therefore needed to start from the beginning. Of specific concern is the fact that a suspect in this case has been in detention on remand for five years now. After the demotion of the judge in charge of both "Grande" cases, and the subsequent assignment of the cases to another judge, these had to recommence as well. While "Grande I" did see some progress, there was no movement in "Grande II".

The "Hospital Escape" case progressed slightly, yet the high-profile defendants were either acquitted or merely given a fine. The case was severed in March 2020 and it is of concern that regarding the severed part of this case, pertaining, *inter alia*, to charges of intimidation during criminal proceedings and participation in, or organisation of, an organised criminal group, no

hearing has been held since the case was severed. Moreover, the judge informed that he was not planning to undertake action in this case any time soon without providing a proper justification other than the complexity of the case.

The "City Club" case saw progress until 21 September 2020, when the judgement was supposed to be announced. However, on that day, the Presiding Judge instead reopened the main trial, stating that the evidentiary procedure had not been exhausted. The same judge retired two weeks later, resulting in the case having to start again, while the defendant had by then been in detention on remand for more than five years.

Another high-profile trial that did make progress is the "Veterans" case, where all defendants were acquitted. The prosecution, the Ministry of Labour and Social Welfare as injured party, as well as the panel, seemed to lack commitment during the proceedings. Progress was also seen in a long-lasting high-profile case against, *inter alia,* Gani Rama and Pal Lekaj held at the Basic Court of Gjakovë/Đakovica in a second retrial, after both main defendants had been acquitted twice, in the initial trial and in the retrial. The defendants were given suspended imprisonment sentences and banned from exercising functions in public administration or public services for a period of two years. They were additionally obliged to compensate the Municipality of Gjakovë/Đakovica within one year from the day the judgement becomes final. However, the judgement was overturned once more, on 23 August 2021, and will soon start its third retrial. As concluded in the previous Justice Monitoring Report, retrials should be of rare use and only ordered as an exception. Retrials place an additional and often unnecessary burden on the BCs which are already dealing with significant backlogs.

Recently, several judges in charge of high-profile cases at the Basic Court of Pristina informed that they had stopped proceedings in these cases, since they were of the opinion that they should be transferred to the Special Department of the Basic Court of Pristina. These include the "Olympus", "Grande II" and "Naser Kelmendi" cases. Since such a transfer would not be in line with the law, the KJC clarified on 24 November 2021 that the concerned cases remain with the Serious Crimes Department of Basic Court Pristina but that they will be assigned to judges from the Special Department in their capacity as judges from the Serious Crimes Department. While this would be in line with the law it is of concern that the affected cases would have to recommence again as a consequence of being assigned to a new Presiding Judge.

Other prominent high-profile and former EULEX cases that are not progressing at all since they were handed over are, for example, the "Drenica I", "Olympus II", "Land 4" and "Fahredin Gashi" cases. Not a single hearing was held in these cases after they were handed over to the Kosovo judiciary in 2018. Other former EULEX cases which are not progressing are "Medicus", the "Naser Kelmendi", "Touareg", "Fadil Shabani", "Muhamet Kamberaj and Makfir Spahiu", "Salih Qitaku et al.", "Olympia" and three "Vukotić" cases. For more details, please refer to the Annex of this report, listing all cases mentioned herein.

Recommendation:

- The courts should ensure that trials are not unduly delayed, which is of specific concern in relation to many high-profile cases, also in order to avoid the impression that the Kosovo judiciary is not fully ready or willing to adjudicate these cases.

2.7 Enforcement of final criminal sanctions

The enforcement of criminal sanctions is the final step in the criminal chain and it is often overlooked in the assessment of the functioning of the criminal justice system. A proper enforcement of criminal sanctions is essential to ensuring the credibility of the judicial system. EULEX observed some inconsistencies and lack of homogeneous practices in the enforcement of final criminal sentences throughout the different basic courts.

Based on the monitoring and on data obtained from all BCs on this topic, EULEX established that the level of application of the Case Management Information System (CMIS) regarding the execution of criminal sanctions is uneven. The CMIS is an electronic system which stores a variety of information regarding cases. While it is now being implemented in all BCs, Execution Officers in some of them do not yet use this system. In some courts, the specific function within the CMIS which is designed for the use of Execution Officers has not yet been installed, whereas in others the officers have not yet been fully trained to use this function. It is of concern that this particular function of the CMIS is not being used at all in Pristina BC due to a massive backlog of around 2,000 cases for payment of fines, including cases from 2019. In the BCs in which the Execution Officers use the CMIS, they still at times receive some of the cases in hard copy. Several Execution Officers stated they would rather continue using their own databases and manual registers as a back-up tool, regardless of the additional workload this would imply. In conclusion, the execution procedures are not yet adequately inserted in the CMIS and the Execution Officers have not yet transitioned from using their own databases or manual registries to a unified system.

EULEX also identified that the position of Execution Officer is not specifically regulated by law. Article 11 of the Regulation on Internal Organisation of the Court establishes, among the responsibilities of the President of the Court, a generic obligation (point 6): *"organising, supervising and exerting direct control of the execution of penal sanction on a monthly basis"*. Subsequently, the position of Execution Officer is categorised differently in each BC, sometimes as clerk, in other cases as senior clerk. The Execution Officer usually reports directly to the president of the BC. In Gjakovë/Đakovica BC, the Head of Case Management Office has for several years been in charge of the execution of criminal sanctions in addition to his multiple functions. There is clearly a need for a better and more specific definition of the position of Execution Officer, including job requirements, terms of reference, category and retributions.

EULEX furthermore established that the practices of the different BCs related to the execution of fines and to the total duration of the execution of the criminal sanctions are not harmonised. This does not only pertain to the responsibilities of the Execution Officer, but also to the different time spans between the publication of a judgement and its receipt by the Executive Officer.

EULEX also looked into the communication between the KCS and the BCs. In parallel to sending a court order on the execution of an imprisonment judgement to the convicted person, BCs forward this information to the KCS. Since the beginning of 2020, the KCS Director reportedly designated the Pristina Detention Centre (DC) as the focal point for receiving all execution files from the Execution Officers of all BCs, apart from cases pertaining to juveniles, females, persons subject to psychiatric treatments in the Pristina Forensic Psychiatric Institute and persons who are already in detention. The Pristina DC then classifies and assigns the convicted persons to the different correctional facilities. Subsequently, the correctional facility informs the competent court whether the convicted person had reported to serve the sentence. EULEX considers this a good practice and an important improvement compared with past procedures. Cases monitored in the past, in which Correctional Centres failed to inform the competent court on the arrival of convicted persons, as stipulated by the Law on Execution of Penal Sanctions, no longer occur following the introduction of the new procedures.

Finally, EULEX examined the difficulties posed by the absence of a specific reference in some judgements to the manner of substituting a fine when it cannot be collected by means of compulsion, as required by Article 365, paragraph 2, CPC and Article 43, CPC. This was estimated to apply in 30% of the judgements in one of the BCs, triggering a considerable additional work load. It was established that these cases are being treated differently in each BC – mostly it is the President of the BC who decides on the manner of conversion, at times it is the Execution Officer, and in some BCs these decisions are taken by other employees.

Recommendations:

- The KJC should ensure that the CMIS is fully implemented at all levels of the execution procedures. To facilitate the transition from using their own databases or manual registries to a unified system, the Execution Officers should be fully trained.
- The KJC should ensure that the position of Execution Officer is better regulated with specific terms of reference, job requirements, defined category and retributions.
- Judges should include a specific reference in their judgements to the manner of substituting a fine when it cannot be collected by means of compulsion, as required by Article 365, paragraph 2, CPC and Article 43, CPC.

3. Findings of Thematic Monitoring

3.1 Anti-corruption

In the previous Justice Monitoring Report, EULEX stressed that the KP Anti-Corruption Task Force[39] (ACTF) played an essential role in the area of anti-corruption detection, initial steps and investigations. It was highlighted that the Task Force's success was safeguarded by its unique position within the KP hierarchy and its special reporting lines, which had guaranteed its independence. Furthermore, EULEX stressed that the complexity and volume of its investigations would benefit from further capacity and support. When EULEX presented these findings publicly, on 19 October 2020, the former government announced it intended to abolish the ACTF, claiming it was unconstitutional. The decision was perceived by local NGOs[40] as a political revenge against the Task Force and was subject to criticism by the international community.

However, following consultations by EULEX and other international partners with all involved local counterparts and respective institutions[41], to date the ACTF, in the meantime renamed the Special Investigation Unit (SIU), is continuing its work effectively in cooperation with the Special Prosecution Office (SPRK). Furthermore, it is noteworthy that this cooperation has markedly improved during the past year. An Exchange of Letters between the SPRK and the KP, formalising the cooperation between the two parties, and the establishment of specialised departments in the SPRK in 2020, including one on anti-corruption as the main interlocutor of the SIU, were important steps in this regard. Following these developments, some investigations conducted by the SIU in cooperation with the SPRK resulted in the filing of indictments e.g. in the "Gjilan/Gnjilane Highway" case in January 2021 and in the "Hydro-power Plants" case in April 2020, both complex financial cases involving prominent and politically-exposed persons and alleged financial damages worth several million Euros. Nevertheless, the SIU investigations could be enhanced by further developing the Unit's intelligence-led policing and its financial investigations capacities. As observed in the previous report, the 'follow the money' principle, which is crucial in investigations of money laundering and other financial crimes, is still not being applied adequately.

As reported in the previous section *on "Lack of progress in the handling of high-profile and former EULEX cases",* several of the affected cases at trial stage, which are not progressing, or in which other obstacles were observed, are corruption related. This applies to the aforementioned high-profile cases "Olympus", also known as "Land", the two "Grande" cases, "Land IV" and the "Veterans" case. The high-profile "Heckler and Koch" case is also noteworthy within this

39 The ACTF was established by a Government Decision (No. 02/110) dated 26 February 2010, in cooperation with EULEX.

40 E.g. by the Kosovo Law Institute (KLI): https://kli-ks.org/en/kli-reacts-against-the-government-of-kosovo-regarding-the-proposal-for-the-termination-of-the-special-anti-corruption-department-for-in-the-kosovo-police/ [last accessed 25.11.2021].

41 On 11 November 2020, a joint letter was sent to the then Acting General Director of the Kosovo Police by EULEX, the EU Office/EUSR, the U.S and UK embassies and the OSCE Mission in Kosovo to voice their concerns regarding the disbanding of the Anti-Corruption Task Force.

context; after several years of delay, the indictment issued by EULEX was dismissed by Pristina BC and criminal proceedings against all defendants were terminated. More than six years had passed between the indictment and the final ruling on its inadmissibility. Considering that this timeframe was needed only for reaching a final decision on the indictment without the main trial ever being initiated, the length of proceedings appears to surpass a reasonable time in which a criminal case should be finalised.

The acquittal and the length of proceedings in another high-profile former EULEX case, the "Tolaj et al" case, stood out as well. Initially the defendants were found guilty by Pristina BC by a panel composed of EULEX and Kosovo judges in 2013. However, after a retrial, all defendants were acquitted in 2018, which was ultimately upheld by the Court of Appeals in 2020 due to the fact that the intent of the crime was not established. As monitored in other corruption related trials, it appears that courts have difficulties in proving the intent, while arguably in corruption cases intent should be apparent once the factual findings are determined.

Another major institution fighting corruption is the Anti-Corruption Agency (AC Agency). Based on the new *Draft Law on the Agency for Prevention of Corruption,* the mandate of the AC Agency will shift from a general possibility to investigate criminal corruption cases[42] to overseeing cases concerning conflicts of interest, asset declaration and receipt of gifts related to the performance of official duty,[43] leaving the original investigation competence in all other criminal corruption cases solely to the KP. This is expected to decrease to a minimum the risk of the AC Agency and the KP conducting investigations in the same cases in parallel, as observed in a number of cases in the past. The AC Agency is advised to coordinate with the KP the continuation of the pertinent pending investigations once the aforementioned law becomes effective.

Moreover, the AC Agency will have the competence to oversee and take action in relation to whistle blowers. Following the adoption of the *Law on Protection of Whistle blowers* in 2019, the relevant secondary legislation, the *Regulation on Receiving and Dealing with Whistleblowing Cases,* became effective during the reporting period. Once the law on the AC Agency is enacted, all tools for the protection of whistle blowers will be in place.

Recommendations:

- The KP should further empower the Special Investigation Unit (SIU), formerly Anti-Corruption Task Force, as a major actor in the area of anti-corruption detection and investigations.
- The SIU, supported by other law enforcement agencies, should improve the quality of corruption investigations by enhancing intelligence-led policing and its financial investigations capacities.
- The SIU, supported by other law enforcement agencies, should enhance the 'follow the money' principle, as this is critical in the investigation of money laundering and other financial crimes.

42 Law on Anti-Corruption Agency, Law No. 03/L-159, 29 December 2009, Article 5, paragraph 1, subparagraph 1, available at http://old.kuvendikosoves.org/common/docs/ligjet/2009-159-ang.pdf [last accessed 01.12.2021].
43 Ibid, Article 5 1.1.1-1.1.3.

- The AC Agency should coordinate with the KP on the continuation of pertinent pending investigations once the Law on the Agency for Prevention of Corruption is in place.

3.2 Crimes under International Law

The Mission noted some progress in the work of the KP War Crimes Investigation Unit (WCIU) with regard to operationalising the war crimes database, which was set up between 2019 and 2020 with considerable support from EULEX. The ongoing digitalisation of the case files, including those handed over by EULEX in 2018, has progressively allowed the WCIU to begin analysing and investigating war crimes also in relation to missing persons. The KP and SPRK identified ten priority cases, in which investigation is progressing. In two cases, in the Pejë/Peć region, all available data were fully entered into the database, enabling the police to start investigation and conduct case analyses.

In coordination with the SPRK War Crimes Department, the KP shifted to investigating several smaller war crime cases, instead of combining them into large multi-defendant and multi-witness cases which are ultimately harder to investigate, prosecute and adjudicate. It is therefore expected that several new indictments will be filed in the near future. All in all, the improved administration of cases, combined with the new approach of investigating several smaller cases, appear to have yielded some positive results.

The SPRK War Crimes Department was enlarged and is now staffed with four prosecutors, which is an important improvement and in line with the Mission's recommendation in its previous Monitoring Report. Additionally, the prosecutors were allocated to four geographical areas in order to streamline cooperation between police and prosecution.[44] Several new investigations were opened but only one indictment was filed, in the "Zoran Vukotić" case.

Zoran Vukotić was indicted for raping a Kosovo Albanian woman as part of a widespread and systematic attack against the Kosovo Albanian population in the municipality of Vushtrri/Vučitrn in May 1999. On 5 July 2021, he was found guilty as charged and sentenced to ten years of imprisonment. This is the first case under international law (i.e. war crimes, crimes against humanity and genocide) which was initiated and investigated by the Kosovo prosecution alone, unlike other cases of this type, all of which were investigated by UNMIK or EULEX. The reason for this is that this case had not been reported to UNMIK or to EULEX during their respective executive mandates. It is also the first conviction for crimes against humanity in Kosovo and, if upheld in higher instances, it could pave the way to prosecute and adjudicate other cases based on this criminal offence. After reviewing the written judgement which was delivered on 8 September 2021, the Mission noticed it only mentions that Vukotić acted in violation of Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), which refers to war crimes, while according to the indictment, and the announcement of the judgement,

44 The four geographical areas are 1) Pejë/Peć-Prizren-Ferizaj/Uroševac, 2) Mitrovica, 3) Gjakovë/Đakovica and 4) Pristina-Gjilan/Gnjilane.

Vukotić violated Article 143, CPC, which refers to crimes against humanity. In other words, the legal qualification in the written judgement on the one hand, and the announcement in the courtroom on the other hand, refer to different provisions of the Criminal Code.

In another case, a suspect and former member of the Serbian police was arrested on the suspicion of having committed war crimes as part of the so-called Kraljane/Kralan massacre. However, a month later, the pre-trial judge issued a ruling which cancelled the detention, as there was no more grounded suspicion that the suspect had indeed participated in the said massacre. It is worth mentioning that the investigation was conducted relatively quickly and the SPRK was diligent in collecting both inculpatory and exculpatory evidence, which resulted in the detention measure having lasted less than a month. During the reporting period, Pristina BC was relatively productive with several cases in the main trial phase. Five main trials in war crimes cases were finalized with a judgement in addition to the aforementioned "Zoran Vukotić IV" case. These are the "Zoran Djokić" case, the "Darko Tasić", the "Zlatan Krstić/Destan Shabanaj", the "Nenad Arsić" and the "Goran Stanišić" case.

In the case against Darko Tasić it is noteworthy that Prizren BC sentenced him, on 22 June 2020, to an aggregated punishment of 22 years of imprisonment, which is in excess of the maximum punishment provided by law. The Kosovo Criminal Code prescribes that the law in force at the time the criminal offence was committed shall be applied. If the applicable law was changed prior to a final decision in the case being taken, the law most favorable to the perpetrator shall apply. The law applicable at the time of the criminal offence was the Criminal Code of the Socialist Federal Republic of Yugoslavia (CCSFRY), which foresees a maximum punishment of 20 years. The issue was then addressed by the Court of Appeals with a judgement, announced on 30 November 2020, which amended the legal qualification of the first instance judgement and mitigated the punishment to eleven years of imprisonment.

In conclusion, the KP made some progress on several active war crimes investigations, especially when compared with the previous reporting period. The prosecution could not make much progress, partly due to the fact that many suspects, as it was the case with several indictments filed by EULEX in its past executive mandate, remain abroad and could not be arrested. It remains to be seen to what extent the application of provisions allowing for trials in absentia will contribute to addressing existing impunity gaps while at the same time guaranteeing the right to a fair trial of the accused. The judges at the Special Department at Pristina BC were able to finalize all pending war crimes cases. On the other hand, several crimes cases under international law, currently being adjudicated before Mitrovica BC and Prizren BC, have not progressed at all. The Mission observed that the administration at Pristina BC was not able to provide translations of court case files in a timely manner, resulting in significant delays in the trials.

The Mission observed some shortcomings in the quality of judgements, particularly first instance judgements, when it comes to the legal reasoning and imposing sentences, as explained in relation to the first instance judgements in the "Darko Tasić" case and the "Zoran Vukotić IV" case. In addition, judges at times failed to ground in their decisions some of the elements of the

crime, by, for example, not explaining what precise actions constituted the crime. This does not affect the final outcome of the cases, but the quality of the judgements should be improved so that the parties are better able to understand the reasons behind the court decisions.

The lack of international cooperation, notably with Serbia, remains a significant challenge. It has become obvious that this obstacle is slowing down the investigations in many cases concerning crimes under international law, as it has been the case during EULEX's past executive mandate.

Recommendations:

- The SPRK should improve the level of cooperation with the KP with regard to the ongoing investigations, especially in cases in which suspects are in detention.
- Mitrovica BC should speed up the retrial of the "Drenica I" case and the remaining Vukotić cases, while Prizren BC should prioritise the retrial of the "Remzi Shala" case.
- The Academy of Justice should provide training for judges on the specifics of reasoning of judgements concerning crimes under international law.
- Kosovo authorities, with help from the international community, need to undertake steps to improve international cooperation, especially with Serbia.
- Additional resources should be allocated to the SPRK to enable it to cope with the high number of pending cases.

3.3 Property rights

One issue that attracted attention during the reporting period was the non-execution of decisions of the Kosovo Property Claims Commission (KPCC) or judgements of the Kosovo Property Agency Appeals Panel of the Supreme Court of Kosovo (KPA AP) and the Constitutional Court of Kosovo. The KPCC is the quasi-judicial decision-making body within the KPA. It operates as a mass claims processing mechanism in the field of post-conflict property. A party may file an appeal with the Supreme Court of Kosovo against the decision of the KPCC.

In 2016, the Constitutional Court dealt with referrals submitted by four applicants requesting a constitutional review of non-execution of final decisions of the KPCC and the KPA AP.[45] The Constitutional Court concluded that the non-execution by the KPA of the KPCC and KPA AP Decisions constituted a violation of Article 31 of the Constitution of Kosovo, in conjunction with Article 6.1 of the ECHR. Consequently, *"as a result of this failure to execute final and binding decisions, the applicants were unjustly deprived of their property due to the delay (…). Thus, the applicants' right to the peaceful enjoyment of their property, as guaranteed by Article 46 of the Constitution and Article 1 of Protocol 1 of the Convention, has also been violated*".[46] Therefore, the

45 Judgement in case No. K 165/15 of 25.10.2016, paragraph 3 and 5.
46 Ibid, paragraph 134 and 136.

Court held that all those decisions were to be executed by the KPA.

In those cases where the successful claimants obtained confirmation of their legal titles to immovable properties (either through the final decision of the KPCC or on the basis of judgements rendered by the KPA AP), they are entitled to request the Kosovo Property Comparison and Verification Agency (KPCVA)[47] to demolish unlawful structures constructed on their properties[48]. The KPCVA is entitled to execute decisions of, *inter alia,* the KPA. The KPCVA at first opted for mediation when it came to the implementation of decisions / judgements and stepped up its efforts only when these attempts proved futile, moving to demolition of illegal constructions. Up until now, the KPCVA managed to finalise successfully only one case involving demolition, which lasted for 11 years and in which the Constitutional Court had pronounced a judgement already in April 2014.

Another 54 cases are still awaiting implementation, which is highly concerning. One of the main reasons is the lack of budget to perform the demolitions. The KPCVA allocated EUR 30,000 for demolition procedures, an amount which sufficed to cover the costs of the first and only case mentioned above, thus no budget was left for processing all other cases.

An additional concern remains the fact that the majority of decisions and judgements that have long been pending execution relate to properties owned by Kosovo Serbs, thus potentially affecting the overall post-conflict inter-ethnic reconciliation process in Kosovo.

Recommendation:

- More funds should be assigned to the KPA for the purpose of demolition of illegal constructions, which pose the main obstacle for property rights holders to enjoy their rights.

3.4 Privatisation and Liquidation

The Law on the Special Chamber of the Supreme Court (SCSC) of Kosovo on Privatisation Agency Related Matters, adopted by the Assembly of Kosovo on 30 May 2019, is still not being fully implemented. For example, to date only one appellate panel has been created while the law requires two appellate panels.[49] The justification provided for this by the SCSC is that the second appellate panel could not be formed due to lack of judges.

47 The Law No 05/L-010 on the Kosovo Property Comparison and Verification Agency (KPCVA) in Article 4.2.3 provides that the Agency is competent *"to implement Decisions of PCC, PVAC and Housing Property Claim Commission"*. In Article 17.3 the Law states that *"the Agency shall exercise the powers of execution of outstanding decisions of the respective Property Claims Commission, Judgements of Supreme Court issued on appeal against decisions of the Property Claims Commission and decisions of the Property Claims Commission which have not been executed by the Kosovo Property Agency or the Housing and Property Directorate. In exercising such powers of execution, the Agency shall have the rights, obligations, responsibilities and powers that the Kosovo Property Agency had."* The remedies for the execution are indicated in Article 18.1 *"Remedies for the execution of a decision may include, but are not limited to eviction, placing the property under administration, a lease agreement, seizure and demolition of unlawful structures, auction and requests for registration in the registry for the rights of immovable property."* In paragraph 2 the law clarifies that *"prior to implementation of the remedies, seizure and demolition of unlawful structures, mediation for implementation of the decisions can be used".*

48 Administrative Instruction No 01/2020 on Determination of Procedures for Demolition of Unlawful Structures (Article 1.2 and 2).

49 Pursuant to Article 4.10 LSC/4.12 old LSC.

The SCSC adjudicates privatisation and liquidation matters. It deals with socially owned enterprises, immovable property and some labour issues as well. The backlog of cases at the SCSC decreased considerably from well over 20,000 cases in March 2020 to 16,085 cases in October 2021, which is an encouraging sign. However, it should be borne in mind that the Privatisation Agency of Kosovo (PAK), usually the main contributor to the caseload, was instructed by the current government to suspend privatisation activities, which significantly lowered the influx of new cases. Despite this positive trend, the SCSC is still overwhelmed by cases. To avoid further delays and to clear the backlog, as recommended already in the previous report, the adoption of a long-term strategy is needed.

Furthermore, the KJC has not established a tentative norm about the number of cases to be finalised by SCSC judges within a given time period. Such a norm would benefit the basic evaluation of productivity of each judge.

Positively, and in line with EULEX's recommendations in the previous report, the SCSC applied a template to effectively and swiftly deal with all 514 mass claims in the "Shock-Absorbers" case. It is highly recommended that the SCSC introduces this practice as a standard for dealing with all mass claim cases, since clearing them would impact strongly on the overall backlog. A less positive observation in the handling of this case was the long period (almost four months, as opposed to 15 working days prescribed by the law) to translate this single judgement from Albanian into Serbian.[50]

It is of concern that the SCSC still needs to deal with cases in which the PAK as claimant requests the annulment of final judgements of the regular courts, although they were already adjudicated and may not be pursued further. Subsequently, the transfer and registration of real estate in the cadastral offices are being delayed and the SCSC is being exposed to unnecessary burden. While these claims are always rejected as ungrounded, the motivation to continue pursuing them is arguably the PAK's interest to further delay the registration of the concerned property in the name of the rightful owner.

Based on the random monitoring of 11 Special Chamber judgements and decisions, EULEX identified that all judgements suffered to a certain extent from insufficient reasoning. For example, in judgement AC-I-16-0271, in which the SCSC Appellate Panel rejected an appeal as ungrounded, concerning a crucial legal matter it only stated that *"the Appellate Panel does not accept that the tax legislation prevails while the PAK law is applicable",* without providing any legal reasoning on why the PAK law prevails. In another decision (C-III-20-0076), the SCSC omitted to reason for which a certain condition, required for granting a requested preliminary injunction, was fulfilled.[51]

50 Pursuant to Article 9 paragraph 1 LSC.

51 Article 6 ECHR places an affirmative duty on a court, tribunal or jury to provide reasoned judgements, specifically a judgement that adequately outlines the legal and factual basis of the decision. This principle is derived from the concept that a final reasoned judgement provides the parties protection from arbitrary decisions veiled behind ambiguous and incomplete reasoning, in that the parties should be provided with all the data needed to make a fully informed decisions regarding whether to lodge an appeal or not.

Recommendations:

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

3.5 Court administration - Case Management Information System (CMIS)

EULEX visited all seven BCs and their respective branches (21 in total) in order to assess the implementation and functioning of the CMIS throughout Kosovo. As mentioned above, the CMIS is an electronic system which stores a variety of information regarding cases. Due to the digitalisation of files, CMIS enables users to have a much faster access to various documents and tracking all developments in cases and allows them to jointly work on cases and share information in a secure environment. One of the system's features, since September 2020, is the electronic interoperability between the BCs and the Basic Prosecution Offices.

Another important feature is the Automatic Case Assignment (ACA), ensuring blind assignment of cases to judges, which greatly reduces the risk of undue interference, thus enhancing the perception of an independent and impartial judiciary. EULEX monitored that the blind case allocation was not always applied, even though this was required by law. The installation of the CMIS was finalised by the end of 2019 and pending criminal and civil cases were scanned and inserted in CMIS in all BCs, the Court of Appeals (CoA) and the Supreme Court (SC), except for the Special Chamber of the Supreme Court for Privatisation Matters.

The Mission assessed that the development and roll-out of CMIS in all the courts had been successful and that the CMIS had gained the trust of most court users; however, due to its complexity and the lack of sufficient resources, mostly technical but also human, the system is not yet fully functional and efficient, mostly in the branch courts.

One of the identified obstacles for the proper functioning of CMIS is the often weak internet connection in courts and subsequent slow system performance. Some judges claimed that CMIS had actually decreased their efficiency, which is probably due to the fact that some judges do not actually use CMIS on a daily basis, as foreseen, but instead transfer their entire case load at once at the end of the month, thereby clogging up the system. While the CMIS Project had invested considerable efforts in training the users, EULEX realised that additional tailored workshops for certain CMIS court staff were needed, to be conducted preferably at the work place. Some of the CMIS users praised the system for the feature that disables the removal of any information once inserted, claiming it enhanced the overall accountability and transparency of the courts. Others complained at not being able to correct and remove ordinary mistakes.

As highlighted in various sections of this report, the Kosovo judicial system is still suffering from a massive backlog of cases, especially concerning civil cases, and the timeframe for adjudication is often too long. The CMIS could play a crucial role in addressing these concerns and enhance the perception of the judiciary becoming more efficient, transparent and accountable. To this end, courts should pay more attention to the actual using of the system and its tools on a daily basis. One example could be the introduction of minimum performance norms for judges, accompanied by supervision by KJC, BC presidents and supervising judges and with disciplinary and financial measures, like in many EU countries. This could be done using features available in CMIS benefitting the overall functioning of the judicial administration and the perception of the judicial system as a whole.

EULEX assessed that the Automatic Case Assignment (ACA) as a CMIS module had been functioning well since 18 February 2020 in all BCs and their branches, effectively eliminating the possibility of manipulation in the assignment of cases to judges. However, a sizeable number of cases were manually reassigned in 2020. This was mostly the case when judges retired or moved to another position and had to handover their cases to colleagues. Such cases were then not returned to the "pool of cases" for automatic assignment, but were manually reassigned by the BC presidents. This concern is being discussed within the KJC. The ACA module is currently still not functional in the Court of Appeals and the Supreme Court but will reportedly be introduced soon.

EULEX also assessed the level of implementation of the CMIS module which renders manual registry books obsolete. This module was introduced at the beginning of 2021 in all courts and should be finalised by the end of the year. Electronic CMIS registries were developed and can be extracted from the CMIS and printed out in the form of a book. EULEX observed that around one half of the users in the court registry offices continued to use, in parallel, their outdated paper registries, claiming that the system was not reliable due to the frequent failing of proper internet connection. This practice undermines the overall efficiency of the registry in the courts.

It was furthermore observed that the option of automatic print out of summons for parties was not used in any of the branches, reportedly due to the lack of available IT experts. Many branches are understaffed because of long recruiting procedures and often have no interpreters and translators for Serbian language. The two branch courts in the north of Kosovo have no official telephone numbers, which does not facilitate the required access to justice.

Recommendations:

- The KJC should ensure a more stable internet connection in all courts and branches.
- The KJC, through the CMIS team, should provide additional tailored CMIS training measures for certain users.
- The KJC and courts should ensure that translation and interpretation services are better organised and available for parties in all courts.
- The KJC should consider the creation and a system of oversight of minimum performance norms for judges by utilising CMIS.

3.6 Gender-based violence

On 25 September 2020, the Kosovo Assembly voted the inclusion of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the *Istanbul Convention*, into the Constitution with a two thirds, thereby making it directly applicable. As the most far-reaching international legal instrument to prevent and combat violence against women, the Convention supports women victims' dignity and justice, calling on governments to prevent violence, protect victims and punish perpetrators. It also places Kosovo institutions under the monitoring of the *Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)* commission. Kosovo's approval of the *Istanbul Convention* is an important step towards addressing gender-based violence. The convention now needs to be implemented.

The *Parliamentary Committee on Human Rights, Gender Equality and Missing Persons* has since then been working, in cooperation with the *Agency for Gender Equality* and the *Office of the National Coordinator on Domestic Violence*, on the new *Draft Law on Protection from Violence against Women and Domestic Violence,* which is intended to harmonise Kosovo´**s** legal provisions with the *Istanbul Convention*.

Furthermore, the Office of the National Coordinator on Domestic Violence, led by the Deputy Minister of Justice, set up a working group for the drafting of the new *National Strategy and Action Plan on Protection against Domestic Violence and Violence against Women*, considering that the previous strategy expired in 2020. The drafting is still in progress.

With regard to the effective use of the domestic violence database created by the Office of the National Coordinator in 2019, there has not been much progress while the strict requirements set by the *Istanbul Convention* standards on data collection have increased the need for an accountable and standardised way of collecting data on GBV. The Office of the National Coordinator has been engaging with all actors by highlighting the need to insert data into the database and trying to address the current challenges.

Thirteen additional victims-centred interview rooms were established in police stations around Kosovo and efforts by civil society and international actors to advocate for the financial sustainability of shelters for victims of GBV continued during the reporting period.

A concerning increase in cases of sexual assault, rape, sexual harassment and trafficking in human beings involving minors and juvenile female victims was reported.

With regard to cases of sexual integrity offences, EULEX continued monitoring several cases of rape and observed that the referral procedure of victims to the Institute of Forensic Medicine for medical examination and acquisition of biological evidence, although improved it is still not consistent and often depends on the level of engagement of the prosecutor in charge. Additionally, there is no special unit or specialised investigators within the KP dealing with sexual integrity offences, as is already the case with domestic violence cases.

EULEX reiterates the paramount importance of establishing a standard operating procedure regulating the cooperation between all service providers involved in sexual violence cases, particularly the KP, prosecution, courts, the Institute of Forensic Medicine, health professionals, the Victims Advocacy and Assistance Office and Centres for Social Welfare.

Furthermore, the victims-based approach needs to be consistently mainstreamed by all institutions working with victims of sexual offences.

Recommendations:

- The Government of Kosovo should expedite the procedure for setting up specialised services and standardised processes and responsibilities within the KP, the prosecution, courts and among social workers for victims of sexual violence, starting from the drafting of a national protocol and guidelines.
- The KP Training Unit, the Academy of Justice and the Minister of Labour and Social Welfare need to ensure continuous training and specialisation of service providers involved in sexual integrity offences, like police investigators, prosecutors, judges and social workers, as is the case in domestic violence cases.
- Law enforcement and judicial authorities need to further mainstream the victim-based approach and minimise the number of interviews by different service providers of a victim of sexual integrity offences, which may reinforce the trauma experienced by the victims.

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

On 18 May 2021, EULEX launched its Special Report on the Impact of COVID-19 on the Rule of Law in Kosovo covering the period from March 2020 to March 2021. Since it was both difficult and premature at the time to obtain and properly assess relevant and reliable data on the impact of the pandemic on domestic violence cases and access to justice for victims of domestic violence, this topic was not covered in the Special Report. However, the Mission continued following up on obtaining these data to include the findings on the impact of the pandemic on domestic violence in this report, with a focus on restrictive measures potentially allowing abusers additional power and control over victims.

It is also important to highlight that the Kosovo authorities excluded domestic violence victims from the pandemic-related restrictions on movements of April 2020.[52]

EULEX tried to collect data to analyse both the possible trends in increasing or decreasing of cases, as well as the response by relevant institutions (police, prosecutions and courts) during the reporting period.

The collection of data proved challenging, given that Kosovo still lacks a comprehensive and consolidated system of collection of domestic violence data. Different institutions implement different systems of data collection and assessments.

The integrated domestic violence database set up by the Office of the National Coordinator on Domestic Violence in 2019, designed to address the data gap, is still not fully systemised. This concern was raised in the previous Justice Monitoring Report, as one impeding the proper management of domestic violence cases and the proper assessment of the scope of domestic violence. The impact of this shortcoming became more evident during the pandemic, when access to reliable data would have been essential.[53]

There was a constant increase in cases of domestic violence reported to the KP in 2018 (up by 20% compared to 2017) and in 2019 (up by 25% compared to 2018), and a considerably smaller increase of 8% in 2020. However, a month-by-month breakdown reveals a peak of 40% increase in the first month of lockdown (March 2020), followed by increases of 20% and 25% in the months of April and May 2020 respectively. The second half of the year, with a decrease, or only a minor increase in reported cases, resulted in the overall increase of 8% for2020.

EULEX furthermore examined the number of temporary emergency protection orders issued by the KP and the number of calls received by the free helpline[54]. In 2020, 862 temporary emergency protection orders were issued by the KP as compared to 798 issued in 2019. In 2019, a total of 795 calls were received by the helpline, which decreased to 650 calls in 2020.

EULEX also observed a significant increase of cases affecting minors during 2020 compared to the previous year. However, the lack of fully disaggregated data did not allow for a more in-depth

52 Mësoni të gjitha vendimet për qarkullim, të cilat hyjnë në fuqi nesër - GazetaBlic.
53 The Mission takes note that during the reporting period the Office of the National Coordinator further mainstreamed efforts to have all respective institutions systematically insert data in the database and positive results are expected soon.
54 Direct Line for Victims of Violence: 0800 11112, free and operational 24/7.

assessment as to the possible link between this increase and the pandemic-related situation. It was nevertheless possible to establish that, while in 2019 in four of six cases of domestic murder the male spouse killed his female spouse, in 2020, out of 13 cases of murders, only two were perpetrated by the male spouses against the female spouse, while in the majority of cases the perpetrators were young members of the family and the victims were other family members.

Detention hearings continued to be held, even though this was a matter of concern at the start of the imposition of the COVID-19 measures, since it was not clear to what extent courts would be able to carry out detention hearings and to whether detention centres were able to receive new detainees. At the same time, data received from the Prosecution Office and the KP also showed that the numbers of releases on regular procedures by Prosecution Offices and the number of cases where the KP did not carry out any arrests remain high (at least half of the cases). Since no additional in-depth information could be analysed with regard to the reasons why in certain cases arrests were carried out and security measures imposed, at this stage it is not possible to offer a more comprehensive analysis on the trend and reasons behind the number of releases and how or whether the pandemic had an impact.

With regard to cases of protection orders issued by civil courts, data received by civil courts also shows that hearings took place and protection orders were issued. However, the number of cases throughout Kosovo was relatively low. The Mission could not acquire data from the previous year, and was therefore not in a position to carry out a comparative assessment and to examine whether the lockdown measures have had an impact on requests for protection orders.

It is noteworthy that institutions continued operating normally and responded to victims even during the pandemic. The applicable Kosovo Standard Operating Procedures for Protection from Domestic Violence, which specifies the legal roles and responsibilities of all institutions playing a role in protecting from domestic violence, could have been an important factor in this and shows how important inter-institutional cooperation is.

Since public awareness of GBV and especially domestic violence has increased in recent years, it is not yet possible to determine whether the increase in cases of domestic violence reported to the KP specifically relates to the conditions of the pandemic or reflects a fundamental development in this field, with victims less reluctant to report to the authorities.

EULEX followed the development of the establishment of an emergency shelter for victims of domestic violence, a dedicated space within the University of Pristina dormitory where alleged victims of domestic violence and GBV could be quarantined before being sent to appropriate shelters. On 24 April 2020, the Ministry of Health issued an Information Circular (09/2020), aimed at specifically addressing the protection of victims of domestic violence and GBV during the COVID-19 pandemic. This Information Circular was not only initiated after concerns had been raised by some shelters about possible infections within the shelters, but also after concerns were raised by NGOs that victims were feeling specifically uncomfortable in reporting cases during the pandemic. However, on the day the Information Circular was issued, NGOs providing services to victims of other communities expressed their concerns with regard to the

fact that the compulsory quarantine regime in Pristina was likely to discourage Kosovo Serbian women and women from other minority communities from reporting on violence, fearing that they would be obliged to be quarantined outside their community. The NGOs further claimed a potential breach of minorities' rights. EULEX welcomes the swift reaction of the Ministry of Health, which issued an amended Circular on 14 May, offering domestic violence victims from non-majority communities to decide whether they wished to be quarantined in the student dormitory or in isolation in the "Women´s Inclusive Center" in Novo Brdo (which mainly provides specific services for victims of domestic violence from the Kosovo Serb community and meets the criteria set up by the Kosovo authorities). This was an excellent example of effective inter-institutional coordination and responsiveness by relevant institutions to the needs of victims from different communities.

Recommendations:

- Under the supervision of the Office of the National Coordinator for Domestic Violence, courts, prosecution and Victims Advocacy Office should improve the effective use of the domestic violence database created in 2019 by inserting consolidated data.
- Under the supervision of the Office of the National Coordinator for Domestic Violence, general and specialist service providers (KP, Victims Advocacy Office and NGOs) should increase outreach of online services available to victims, like the current helpline.
- Under the supervision of the Office of the National Coordinator for Domestic Violence, the Standard Operating Procedures on Domestic Violence should be reviewed and complemented to be fully in line with the Istanbul Convention requirements, particularly in the field of data collection, coordinated approach and special procedures in cases of minors and juveniles.

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 cases 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[55]

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 (BC) 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, 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 Basic Court of Pejë/Peć did not have enough judges at the Serious Crime Department. The case had to recommence at the Basic Court of Gjakovë/Đakovica in November 2020 (PKR 191/2020). Since then, sessions have been conducted regularly.

55 Other than war crimes cases, covered in the following section.

Fadil Shabani Case (PPS 89/2011 - PAKR 282/2018 - PKR 82/2019)

On 6 June 2014, the prosecution filed an indictment against Fadil Shabani before the Basic Court of Pristina. He was accused of smuggling of migrants.

On 19 March 2018, the Basic Court of Pristina found him guilty and condemned him to a suspended sentence of two years of imprisonment, and a fine of EUR 15,000. On 10 August 2018, the CoA (CoA) (PAKR 282/2018) partially approved the appeal of the defence counsel by modifying the fine to EUR 8,000 but keeping the suspended sentence of two years of imprisonment.

In March 2019, the Kosovo SC (SC) ruled that the request for protection of legality, filed by the defence counsel of Fadil Shabani was approved and annulled the previous judgements of the Basic Court of Pristina of 19 March, 2018 and of the CoA of 10 August, 2018 and returned the case to the Basic Court of Pristina. The case is yet to be scheduled for re-trial at the time of the report.

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 case manageable. Grande I now included 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 (dozens) had been heard. Grande II was progressing at a reasonable pace starting in January 2020 until the lockdown. However, it was still at the early stages of the trial.

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.

The first hearing scheduled in the Grande II Case, on 6 May 2021, was unproductive and no further hearings have taken place since as the judge expects the case to be transferred to the Special Department of the Basic Court of Pristina.

Heckler and Koch Case (PKR 23/15)

On 19 January 2015, the prosecution filed an indictment against Armend Selimi and other four defendants charged with organised crime, unauthorised supply, transport, production, exchange or sale of weapons, fraud, and abuse of official position or authority. The case relates to the purchase of weapons from foreign private companies by the Ministry of Internal Affairs (MoIA) with an alleged embezzlement of EUR 3 million. On 16 October 2019, the Basic Court of Pristina ruled to dismiss the indictment as belated, while the SC had previously ruled that the criminal proceeding should be initiated. The Prosecutor filed an appeal against this ruling of the BC, which was admitted by the CoA on 21 January 2020. The CoA decided to annul the ruling issued by the Basic Court of Pristina and send the case back for reconsideration. The Basic Court of Pristina ruled, for the second time, to dismiss the indictment and terminate the proceedings against the defendants. This ruling was appealed by the Special Prosecution of Kosovo (SPRK), however the CoA decided to uphold the first instance ruling. The prosecution filed a request for protection of legality, which was dismissed as belated by the SC on 22 April 2021.

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 fleeing from the University Hospital of Pristina (UCCK) in May 2014. The indictment charged the twenty-four 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, the 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. On 14 April 2020, the Basic Court of Pristina announced its verdict in the 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 Hospital of Pristina (UCCK) 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 Prison, 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 Pristina Detention Centre, charged with "Abuse of official position or authority", and Nexhib Shatri, a doctor in the Dubrava Detention Centre, also charged with "Abuse of official position or authority" 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 BC 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 Hospital of Pristina (UCCK) 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 have been conducted regularly since then. Proceedings against eight defendants in the part of the case which had been severed in February 2020 have not yet started. In this part, pertaining to intimidation of witnesses, high-profile defendants, Sami Lushtaku and Ismet Haxha, are charged with "Obstruction of evidence or official proceedings", "Intimidation during criminal proceedings" and "Participation in or organisation of an organised criminal group" This part of the case remains dormant and no hearings are to be expected anytime soon, given that the assigned judge stated he was currently overwhelmed with cases.

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 some 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 to the re-registering of socially owned land. Already on 27 November 2014, the pre-trial judge ordered the temporary confiscation of land parcels worth approx. 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 session has been scheduled to date. After the Presiding Judge moved to the CoA at the end of 2020, the case had to be reassigned. The new Presiding Judge requested the KJC to transfer the case to the Special Department at the Basic Court of Pristina.

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 SC (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 SC, 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 BC 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 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 anew 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 and has been dormant ever since.

Muhamet Kamberaj and Makfir Spahiu Case (PP 67/12 - P 38/12)

On 12 June 2012, the prosecution filed an indictment before the Basic Court of Mitrovica for "Unauthorised purchase, possession, distribution and sale of dangerous narcotic drugs" and "Use of weapon" against Muhamet Kamberaj and Makfir Spahiu. No hearings had been scheduled by the Judge, in charge of the case since 2016, the reasoning being a very heavy backlog of cases and additionally his assessment that the case was not to be considered a priority. On 29 September 2021, the court dismissed the indictment against Muhamet Kamberaj, having received an official death certificate on his name. The initial hearing in the case against the remaining defendant, Makfir Spahiu, was scheduled on 29 October 2021, but could not take place due to the hospitalisation of the defence counsel.

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 offense of uunauthorised possession, distribution or sale of narcotics and sentenced him to six years of imprisonment and acquitted him of all other charges. Both parties appealed against 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 BC 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. No hearings have taken place since then. The main problem for the continuation of the case is the lack of an official answer from Bosnia and Herzegovina regarding the possibility of hearing a protected witness. This is one of the cases in which the Presiding Judge is of the opinion that it should be transferred to the Special Department of the Basic Court of Pristina.

Olympia Case (PKR 236/2017)

On 21 July 2017, the prosecution filed an indictment before the Basic Court of Pristina against Alban Dezdari (in detention on remand since 7 July 2017) and Bedri Krasniqi (serving sentence in another case) charging them for aggravated murder. They allegedly took part in the killing of one UNMIK and one Kosovo Police officer in Podujevë/Podujevo in March 2004, together with four other perpetrators, including witness Shkumbin Mehmeti, who had already been sentenced to 30 years of imprisonment in another trial for this murder on 09 November 2007. From April 2019 the court regularly conducted sessions until the COVID-19 related lockdown in mid-March 2020. The case has been inactive ever since. The Presiding Judge retired in May 2021 and the case was reassigned. This is one of the cases in which the Presiding Judge is of the opinion that it should be transferred to the Special Department of the Basic Court of Pristina.

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 22 defendants (out of which 17 are standing trial as four defendants are at large and one passed away in the meantime). The case is about the unlawful ownership of a large amount of socially-owned property in the period since 2006 up until now. 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 KPA. The estimated overall market value of the properties is over EUR 25 million. Two defendants are in detention on remand. From November 2018, the Basic Court of Pristina regularly conducted sessions until the COVID-19 related lockdown in mid-March 2020. The case has been dormant ever since**.** After the Presiding Judge moved to the CoA at the end of 2020, the case was assigned to a new Presiding Judge at the beginning of 2021 and will therefore have to recommence. In this case, too, the (new) Presiding Judge requested the transfer the case to the Special Department of the Basic Court of Pristina.

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 defendants Baki Abdullahu, Hali 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 situation. After long delays, the initial hearing in this case was finally held on 31 May 2021. In July 2021, once the second hearing had taken place, the Judge in charge dismissed the indictment, after which the assigned Prosecutor filed an appeal, to which the decision is pending.

Salih Qitaku et al. Case (PKR 591/16)

On 15 September 2014, the prosecution filed an indictment before the Basic Court of Pristina against Salih Qitaku, Fatmir Kastrati, Luan Miftari and Sahit Sadriu for "Participation in or organisation of an organised criminal group" and "Smuggling of migrants". On 15 October 2015, the BC sentenced Salih Qitaku, Fatmir Kastrati and Luan Miftari to four years of imprisonment and a fine of EUR 1,000 each, and Sahir Sadriu to three years of imprisonment and a fine of EUR 500. On 9 September 2016, the CoA annulled the first instance decision and sent the case for retrial. On 12 July 2017, the initial hearing of the retrial took place but was postponed to an indeterminate time. Since then the case has been dormant due to the backlog of cases assigned to the judge who eventually retired in May 2021. The new Judge assigned to the case recently filed an international arrest warrant against three of the defendants who are abroad.

Touareg Case (P 176/2015)

On 23 October 2015, the prosecution filed an indictment before the Basic Court of Mitrovica against the three brothers Albert, Mentor and Arianit Beqiri and Vesat Imeri, charging them with tax evasion in the amount of around EUR 1.69 million. Between 2011 and 2012, the brothers, owners of the business NTP Oil Kosova, had allegedly provided false information to the Tax Administration regarding the revenues generated by their business in order to avoid partially or completely the payment of taxes, fees or contributions provided by law. Within this context, all four defendants were allegedly involved in money laundering. This case has been inactive since July 2017, after the parties' request to dismiss the indictment was rejected by the BC. The Presiding Judge retired in May 2021 and the case was reassigned to another judge, who has not undertaken any action since.

Former EULEX War Crimes Cases

Darko Tasić Case (PKR 35/2018)

On 26 April 2018, the prosecution filed an indictment against Darko Tasić before the Basic Court of Prizren. The charges related to two incidents in March, 1999, in which the defendant allegedly participated in looting, theft and destruction of property, aggravated assault and cruelty in a village in the municipality of Prizren and, two days later, committed the criminal offence of desecration of lifeless bodies. The defendant served with the Yugoslav police force and allegedly committed the crimes in co-perpetration with others.

On 22 June 2020, the first instance court announced its judgement and imposed a punishment of 22 years of imprisonment, which exceeds the maximum prescribed by law. The written judgement did not deliver the needed reasoning for this excess. The defendant appealed against this verdict to the CoA. On 30 November 2020, the CoA announced its verdict, changing the legal reasoning for the judgement and mitigated the punishment to 11 years of imprisonment. Darko Tasić filed a request for the protection of legality at the SC of Kosovo. On 05 May 2021, the SC ruled that the request was ungrounded and upheld the judgement of the CoA in its entirety.

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 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 SC judgement of 3 July 2017, after which he was released. That judgement of the SC in the "Drenica I Case" confirmed the conviction by the CoA of 15 September 2016 of Jahir Demaku (who in 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 area in Mitrovica by repeatedly beating him.

On 11 June 2018, the SC sent the case for retrial to the Basic Court of Mitrovica (after the Constitutional Court judgement of 7 June 2018 had overturned the SC 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, 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 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, three-and-a-half years have passed without any progress since the SC sent the case to the Basic Court of Mitrovica for retrial in June 2018.

Fahredin Gashi Case et al. (PKR 143/15)

On 5 November 2010, the prosecution filed an indictment before the then District Court of Pristina against Fahredin Gashi for allegedly committing the criminal offence of war crimes against the civilian population, and against Hysri Gama for providing assistance to perpetrators after the commission of criminal offences. The assigned judge informed EULEX that the case had been put on hold, like other SPRK cases, until it could be transferred to the jurisdiction of the Special Department. This, however, never happened, and the case remained at the Basic Court of Pristina. No hearings in the main trial have been scheduled so far even though the case was already transferred by EULEX in August 2015.

Non-EULEX Cases[56]

Gani Rama and Pal Lekaj Case (PKR 64/2018)

On 26 May 2016, the prosecution filed an indictment against Gani Rama at 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 BC 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 to the BC. On 9 February 2018, the Basic Court of Gjakovë/Đakovica 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 to the BC 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 at the Basic Court of Gjakovë/Đakovica commenced, after the court had merged it with the case against the former mayor of Gjakovë/Đakovica, Pal Lekaj et al. (PKR 16/2018), who were also mainly charged with the criminal offense 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 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. The imprisonment sentences will not be executed if they do not commit another criminal offense within the verification period of two years for each. Pal Lekaj, Ismet Isufi and Gani Rama are 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 are 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 eventually did not take place.

56 Other than war crimes cases, covered in the following section.

Gjilan/Gnjilane Highway Case (PPS 34/2019)

In January 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 (officials at the Ministry of Infrastructure). Betim Reçica is charged with several criminal offenses, including Trading in influence, Abusing official position or authority and Money laundering. The other three defendants are charged with Abusing official position or authority. The case is based on investigations conducted by the former Anti-Corruption Task Force (ACTF). In August 2021, the CoA confirmed the indictment issued by the Special Department of the Basic Court of Pristina and the main trial was scheduled to start on 22 September. The hearing was postponed to 4 November, and then again to January 2022.

Hydro-power plants Case (PS 17/2020)

On 10 April 2020, the prosecution filed an indictment before the Basic Court of Pristina against 19 defendants, including the four former ministers Besim Beqaj, Mimoza Kusari-Lila, Dardan Gashi and Nenad Rašić. The defendants are charged with the criminal offence of Abusing official position or authority in relation to the allegedly wrongful transfer, in 2013, of four hydropower plants from the Kosovo Energy Corporation (KEK) to the Kosovo Power Distribution Company (KEDS) in order for these hydropower plants to be included in the privatisation process of KEDS to a Turkish consortium, Limak-Calik. The value of the hydropower plants is estimated at EUR 12 million. The case was detected by the Anti-Corruption Task Force (ACTF). The initial hearing took place on 28 October 2020 and on 4 March 2021, the CoA decided to dismiss the indictment against 13 defendants. The main trial against the remaining six defendants, including the four former ministers, started on 1 July 2021 and hearings are ongoing.

Ministry of Infrastructure case (PKR 16/18)

On 23 January 2018, the prosecution filed an indictment before the Basic Court of Pristina against two officials at the Ministry of Infrastructure, Xhelil Bekteshi and Besim Tahiri, for Abuse of official position in regard to the tender procedures for the infrastructure project "Expansion of the National Road N-9", worth just under EUR 1 million. As secretary general at the Ministry of Infrastructure, Bekteshi was accused of having persuaded an officer to falsify the records concerning the dates of the bids, in order to favour one of the competitors, the company NTT "Sallahu". The owner of the company, Naim Sallahu was also charged in this case, but following a plea agreement with the prosecution, he was sentenced to imprisonment of six months replaced with a fine. Besim Tahiri was accused that in his capacity as acting director of the Procurement Division in the same ministry, he exercised influence over the chairwoman of the tender commission, so that she would change the evaluation report of the tender to favour Sallahu. Hearings were taking place regularly and on 6 August 2021, the judgement was announced. Both Tahiri and Bekteshi were sentenced to three years of imprisonment and were banned from any functions in public administration for a period of two years after serving the prison sentence. Both were additionally obliged to jointly compensate the Ministry of Infrastructure with almost EUR 30.000.

Murder of Oliver Ivanović Case (PS 54/2019)

On 16 January 2018, the leader of "Civic Initiative Serbia, Democracy, Justice (GI SDP)", Oliver Ivanović, was murdered outside the party premises in Mitrovica. The perpetrator was not identified. On 3 December 2019, the SPRK filed an indictment against six defendants. The indictment alleges that the murderer was assisted by three KP officers, Nedeljko Spasojević, Marco Rosić (both in detention on remand) and Silvana Arsović (under obligation to report to the police) and that two other KP officers, Dragiša Marković and Žarko Jovanović (both under obligation to report to the police), had tampered with evidence following the murder. The indictment additionally claims to have revealed an organised criminal network, which had been operating since 2014 and which KP officers Spasojević and Rosić, alongside with the sixth defendant, Rade Basara (in detention on remand), were allegedly part of. In April 2021, the Presiding Judge rejected the requests to dismiss the indictment and objections to evidence after which the defendants appealed to the CoA. On 6 July 2021, the CoA rejected the request and the main trial started and hearings are ongoing.

Pronto Case (PKR 90/2018)

On 6 April 2018, the prosecution filed an indictment before the Basic Court of Pristina with charges for violation of equal status of citizens and residents of Kosovo against 11 defendants, including some high-level officials, such as former Kosovo Assembly members Adem Grabovci and Zenun Pajaziti and former minister Besim Beqaj. The initial hearing was held on 15 November 2018. On 31 May 2019, the CoA confirmed the indictment, after complaints had been filed by all defendants. The last hearing with the closing statements took place on 30 December 2019 and on 3 January 2020, all defendants were acquitted as the court considered it had not been proven that the accused had committed the acts with which they were charged. In March 2020, the prosecution appealed against the judgement and on 30 June 2020, the CoA partially amended the first-instance: it found both Adem Grabovci, former President of the PDK caucus in the Assembly and Ilhami Gashi, former Secretary at the MoIA and PDK member, guilty of two charges of violation of the equal status of citizens and residents of Kosovo. Also, Sadat Gashi, Adviser in the MoIA at the time, was found guilty of one count.

In July 2020, the SPRK prosecutor appealed against the CoA' decision to the SC as well as the defendants. After the CoA had modified the decision from acquittal to guilty for two counts, on 29 September 2020, the SC rejected as unfounded the appeals of the defence counsels and the prosecutor and in consequence upheld the sentencing judgement of the CoA of 30 June 2020. The CoA had sentenced Adem Grabovci and Ilhami Gashi to the aggregate punishments of one year and two months and one year and four months imprisonment respectively. Sadat Gashi, adviser in the MoIA at the time, was found guilty for one count and sentenced to eight months of imprisonment. All were suspended sentences. Additionally, all were banned from exercising public administration or public service functions and deprived of the right to be elected for the period of two years after the respective suspended sentence had passed.

On 19 April 2021, the SC granted the requests of the accused for the protection of legality, annulled both judgments and returned the case for reconsideration in the CoA, reasoning that

the CoA had committed essential violations of the provisions of the criminal procedure, which needed to be addressed by the CoA. On 9 September 2021, the CoA issued a judgment, partially accepting the appeal of the SPRK. The panel partially changed the judgement only regarding the accused Ilhami Gashi and sentenced him to a conditional imprisonment sentence of one year and four months for the criminal offense of "Violation of the equal status of citizens and residents of Kosovo". Meanwhile the appeal against Adem Grabovci and Sadat Gashi was rejected as unfounded, confirming the judgement of the first instance, which in 3 January 2020 acquitted them. The judgement of the CoA also sentenced Ilhami Gashi to an additional ban of exercising functions in public administration or public service for a period of two years. After that, the prosecution filed an appeal before the SC.

Tolaj et al Case (PPS 33/2013 - PKR 382/2015)

On 6 July 2015, the prosecution filed an indictment before the Basic Court of Pristina against six defendants: Ilir Tolaj, Zenel Kuçi, Bekim Fusha, Valentina Haxhijaj-Pacolli, Florije Tahiri and Remzije Thaqi on charges of abusing official position or authority and tax evasion. It involves accusations that officials in the Ministry of Health had taken bribes to award health contracts. On 6 June 2018, the Basic Court of Pristina acquitted all defendants. After the court established in its judgement that there was no direct intent on the part of the defendants the prosecution appealed. On 20 September 2018, the case was registered at the CoA. On 13 December 2019, the CoA partially allowed the appeal of the prosecution. The CoA found the accused guilty of the offense of "Abuse of Official Position or Authority" in co-perpetration and sentenced Ilir Tolaj to three years, Bekim Fusha to two years and four months and Zenel Kuqi to two years and eight months imprisonment. Valentina Haxhijaj Pacolli, Remzije Thaçi and Florije Tahiri were each sentenced to six months. The parties appealed to the SC which on 21 August 2020 returned the case to the CoA due to essential violations of the provisions of the criminal procedure. Following the decision of the SC, on 24 December 2020 the CoA rejected the appeal of the prosecution and upheld the acquittal of all defendants of the first instance.

Veterans Case (PKR 230/2018)

In September 2018, the prosecution filed an indictment before the Basic Court of Pristina against 12 persons in the case known to the public as "Veterans", on charges of abusing official position or authority. The defendants were Agim Çeku, Nuredin Lushtaku, Sadik Halitjaha, Shkumbin Demaliaj, Qelë Gashi, Shukri Buja, Ahmet Daku, Rrustem Berisha, Faik Fazliu, Smajl Elezaj, Fadil Shurdhaj and Xhavit Jashari. They were accused of abusing their positions as members of a State Commission by enabling almost 20,000 persons to receive veteran benefits they were not entitled to, causing a damage to the Kosovo budget in the amount of over EUR 68 million. The main trial was postponed due to the pandemic. On 19 January 2021, the BC announced its judgement, acquitting all 12 defendants of all charges. The prosecution appealed to the CoA, the latter's decision is still pending.

Non-EULEX War Crime Cases

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 committed during the war in Kosovo against the civilian population. In April 1999, the defendant allegedly participated in a wide-scale attack of Serbian police, military and para-military 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 April 2021 to May 2021 due to the incapacity of the administration of the Basic Court of Pristina to provide the defence counsel with the translation of the minutes of the sessions in Serbian language. Arguably, this was connected to the fact that at the same period the "Zoran Vukotić IV Case" was being tried. 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.

Nenad Arsić Case (PPS 01/2016)

In December 2019, the prosecution filed an indictment before the Basic Court of Pristina against Nenad Arsić charging him with conducting war crimes against the civilian population while serving as member of the Serbian police during the war in Kosovo. It was alleged that on 21 May 1999, the defendant participated in an operation against civilians, intentionally acted inhumanely and violated the physical and mental integrity and well-being of Jakup and Skender Shala by beating them for a long time using hard tools and causing them serious bodily injuries, insulting and humiliating Jakup Shala and subjecting him to inhumane treatment. The indictment was confirmed by the Basic Court of Pristina and the first instance trial was conducted during the year 2020. On 24 December 2020, the Special Department at the Basic Court of Pristina announced the judgement, which found Nenad Arsić guilty of taking part in an operation against Kosovo Albanian civilians on 21 May 1999, treating them inhumanely and violating their physical and mental integrity. The Basic Court of Pristina imposed a punishment of six years of imprisonment. The defendant appealed but the judgement was confirmed by the CoA on 12 May 2021. Afterwards the defendant filed a request for protection of legality before the SC which was rejected on 20 October.

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 a war crime against the civilian population. The defendant was member of the KLA and had allegedly, together with five or six other unidentified KLA members, abducted and killed Haxhi Perteshi 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 against this verdict to the CoA. On 26 November 2019, the CoA partially approved the appeal and amended the judgement to 10 years of imprisonment for having committed war crimes against civilians. 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 SC followed the request and annulled both verdicts and sent the case back for retrial at the Basic Court of Prizren, where the trial is currently ongoing.

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 during the war in Kosovo. 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 inhumanly, 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 1 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. Both defendants were found guilty as charged. Zlatan Krstić was sentenced to 14 years and six months of imprisonment and Destan Shabanaj to seven years of imprisonment. Both of them appealed at the CoA. On 2 December 2021, the CoA upheld the judgement of the Basic Court.

Zoran Djokić case (PPS 23/2018)

On 31 May 2019, the prosecution issued an indictment for war crimes before the Special Department at the Basic Court of Pristina against Zoran Djokić. It was alleged that on 28 March 1999, in Pejë/Peć, acting together with an organised criminal group of Serbian nationality, wearing police, paramilitary and military uniform, in order to cause great suffering violated the bodily integrity or health of Kosovo Albanian citizens and applied measures of intimidation

against the vulnerable civilian population by robbing, killing and expelling unprotected civilian population not directly involved in the conflict. On this occasion, he allegedly entered the houses of Kosovo Albanian civilians, forced them to leave the city 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 commission of the criminal offense of War Crimes against the civilian population under Article 142 in conjunction with Article 22 of the Criminal Code of the Socialist Federal Republic of Yugoslavia, in conjunction with Article 3 of the Geneva Conventions of 12 August 1949 and Article 4 of Protocol 2 dated 8 June 1977 Annex to the Geneva Conventions. The defendant appealed against this decision and at 12 October 2021, the CoA held an open hearing, yet the decision is still pending.

Zoran Vukotić IV Case (PPS 09/2018)

On 6 March 2020, the prosecution filed an indictment for war crimes against Zoran Vukotićc before the Special Department at the Basic Court of Pristina. It was alleged that on 22 May 1999, he participated as a member of the Serbian police 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 allegedly inflicting physical, psychological and sexual violence to a Kosovo Albanian female. Vukotić had been extradited from Montenegro in November 2016 and is serving a sentence after having been convicted in the „Vukotić I Case". He is additionally involved in several other cases which are pending at different stages at the Basic Court of Mitrovica (retrials of part of „Vukotić I" and „Vukotić II" and trial of „Vukotić III"). The main trial started on 15 June 2020, and despite some delays due to the need to translate numerous documents, the hearings took place regularly. On 5 July 2021, Vukotić was found guilty as charged and sentenced to ten years of imprisonment.

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