



EU Rule of Law Mission Justice Monitoring Report

**Findings and Recommendations
September 2019 – Mid-March 2020**

October 2020



EU Rule of Law Mission

Justice Monitoring Report

Findings and Recommendations

September 2019 – Mid-March 2020

October 2020

TABLE OF CONTENTS

Foreword	5
1. Introduction	7
2. Findings of Systemic Monitoring	8
2.1 Continuous trend of less unproductive hearings.....	8
2.2 Some progress in the pace of adjudicating high-profile cases	8
2.3 Functioning of the Special Department in the Basic Court and Court of Appeals of Pristina	9
2.4 Prosecution of terrorism cases	11
2.5 Re-trial policy within the Kosovo justice system.....	12
2.6 Case allocation in re-trial proceedings.....	13
2.7 Cross-examination	15
2.8 Announcement of criminal judgements in first instance	16
2.9 Detention on remand	17
2.10 Confiscation and temporary confiscation of assets	18
3. Findings of Thematic Monitoring	20
3.1 Anti-Corruption.....	20
3.2 Crimes under international law	22
3.3 Privatisation and liquidation.....	24
3.4 Kosovo Property Agency Appeals Panel / property rights.....	25
3.5 Hate crimes	26
3.6 Gender-based violence.....	28
Annex I – List of Recommendations	31
Annex II – List of Monitored and Referenced Cases	35

FOREWORD

I am pleased to present the first publicly available “Systemic and Thematic Justice Monitoring Report” prepared by the European Union Rule of Law Mission in Kosovo.

Since early 2019, the EU Rule of Law Mission has produced four of these reports. The first three were only shared with the Ministry of Justice of Kosovo, the Kosovo Judicial Council, the Kosovo Prosecutorial Council and other Kosovo institutions and international organizations.

Given the importance of rule of law, in particular as regards the EU approximation process for Kosovo, it is now time to make the results of our monitoring work of the Kosovo police, prosecution and judiciary more readily available to the Kosovo public, including rule of law civil society organizations who are themselves engaged in monitoring of the judiciary, lawyers and other legal practitioners, as well as interested citizens.

This report will hopefully add to the debate over how to improve the rule of law in Kosovo and includes a number of specific recommendations. The purpose of making it public is also to increase the transparency about what the EU Rule of Law Mission does in this critical area of its current mandate to support the strengthening of the local justice system, as well as how the Mission assesses progress made and challenges faced by our Kosovo rule of law partners.

The assessment is carried out through a “robust” monitoring of selected criminal and civil cases, including high-profile cases and cases previously dealt with by the EU Rule of Law Mission until June 2018, when its executive functions in the judiciary ended.

The justice monitoring performed by the EU Rule of Law Mission is based on two unique features:

Firstly, the Mission enjoys full access to judicial, prosecutorial and police systems that was granted by the Kosovo authorities under the Mission’s revised mandate approved in June 2018. This allows us to complement the monitoring of trial hearings performed together with other international organizations and specialized civil society organizations with a “behind the scenes” review and assessment of how specific cases are dealt with before and after a court session.

Secondly, the Mission’s monitoring covers the entire chain of the criminal justice system, as well as aspects of the civil justice system, relying on our EU Member States’ police, prosecution and judicial experts working closely with their Kosovo counterparts. In the case of the Special Prosecution, these EU expert monitors are co-located with their Kosovo colleagues.

I hope that by sharing this report with the wider public the Mission’s findings and recommendations will enhance the understanding of what is required to progressively make the justice and rule of law system in Kosovo more accountable, efficient and resilient.

Moreover, greater openness and understanding of how fundamental rule of law institutions operate is in the best interest of the people of Kosovo and will help pave the way for Kosovo’s path to the European Union.

Lars-Gunnar Wigemark

Head of the European Union Rule of Law Mission in Kosovo

1. INTRODUCTION

The EU Rule of Law Mission (EULEX) Case Monitoring Unit (CMU) assesses the functioning of the Kosovo Police and judiciary in terms of procedural, legal and human rights compliance. It spans over the entire chain of criminal justice (the police, prosecution and courts) and as well aspects of the civil justice system. This fourth report covers the period from September 2019 until the outbreak of the coronavirus pandemic mid-March 2020.

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, systemic monitoring and thematic monitoring.

The section covering the systemic monitoring focuses on the issues identified through the monitoring of individual cases that have a systemic dimension, i.e. indicate the possible existence of a problem on a wider scale throughout the system. This was achieved by monitoring the ratio of productive hearings, the progress of high-profile cases, the functioning of specialised institutions, the prosecution of terrorism cases, the re-trial policy, cross-examination practices in trials, the announcement of criminal judgments, detention on remand and the confiscation of assets acquired from criminal activity.

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. The identified thematic topics are: corruption, hate crimes, gender-based violence (GBV), crimes under international law, privatisation and liquidation and Kosovo Property Agency (KPA) Appeals Panel/property rights.

These topics have been identified since they are relevant from a human rights and transitional justice perspective. Based on the findings, key recommendations are outlined in each chapter and a list of all recommendations is additionally provided in Annex I. An overview of the cases mentioned in this report is provided in Annex II.

This is the 4th Systemic and Thematic Report prepared by EULEX since early 2019 and the first one to be made available to the public. All previous reports were shared with the Kosovo Ministry of Justice, the Kosovo Judicial Council, the Kosovo Prosecutorial Council and all other relevant local institutions and international organisations. They include findings and recommendations for improvements of the rule of law system in order to assist the Kosovo justice institutions in achieving better compliance with Kosovo law and human rights standards.

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

2. FINDINGS OF SYSTEMIC MONITORING

2.1 Continuous trend of less unproductive hearings

An unproductive hearing is defined as a hearing that was scheduled but immediately adjourned without any meaningful progress. Unproductive hearings are symptomatic of inefficiencies in the judicial system and prolong the length of proceedings. Excessive length of procedures can be a source of inequality, can create conditions favourable to the development of corruption and ultimately lead to a general lack of trust of citizens in the judicial system.

Out of 287 monitored cases in the period August 2019 to February 2020, 67 were unproductive (23%), compared to 29% in the previous reporting period.

In December 2019, the Kosovo Judicial Council (KJC), following up on findings from previous EULEX systemic and thematic reports, instructed all courts to keep track of unproductive hearings and identify the key reasons for this situation in order to tackle this matter in a structured way. As of mid-March 2020, the matter was still in the process of being addressed. The main reason why hearings monitored by EULEX were unproductive was the absence of the defendant (36%). In some cases this was due to poor coordination between the Court and the Correctional Service. However, in the vast majority of these cases the defendants were not in detention and duly summoned but nonetheless failed to appear in court. Several hearings had to be adjourned due to prosecutors and, to a lesser extent, judges not attending the sessions.

Recommendations:

- The accountability of court management should be increased:
 - Judges should report regularly on the number of unproductive hearings and what measures were taken, if applicable. If no measures were taken while this would have been possible, a justification should be provided;
 - Prosecutors should be held accountable if they are the cause for an unproductive hearing by, for example, not being prepared or unjustifiably absent;
 - Judges should apply punitive and disciplinary measures available to them in the Criminal Procedure Code.

2.2 Some progress in the pace of adjudicating high-profile cases

After a long period in which progress of high-profile cases, many of which are former EULEX cases, remained slow or stalled completely, a number of them moved forward. For instance, after seven successive unproductive sessions in the period between 16 July 2018 and 25 June 2019, the “Olympus Case” (PKR 610/2016), also known as “The Land Case”, began moving forward. From September 2019 until February 2020, the court scheduled trial sessions almost on a weekly basis and most of them were productive.

After the decision to sever the proceedings, the first productive hearing was held on 3 July 2019 in the “Grande Case” (PKR 305/2016), gradually moving the case forward. Furthermore, in the “Hospital Escape Case” (PKR 685/2016), which had been dormant for more than one year since the Court of Appeals had confirmed the indictment on 15 June 2018, several hearings were held in the second half of 2019 and in early 2020. Similarly, in the “Gani Rama and Pal Lekaj Case”

(PKR 16/2018), the Basic Court held several hearings in November and December 2019 after the initiation of the retrial on 7 November 2019. Another positive example is the “Veterans” Case (PKR 230/2018) which, after a pause of almost eight months (the initial hearing was held on 14 March 2019), gained momentum with five sessions being held during December 2019 and seven in 2020, until the pandemic measures were introduced. Also to be noted is that some high-profile cases reached the end of the trial such as the “Pronto Case” (PKR 90/2018) and the “People’s Eye Case” (PKR 46/2018).

Although at a slower pace, the “3 % Case” (P 2022/2017) saw some developments with its first two productive sessions being held in August 2019, followed by another one in October waiting for the arrival of ‘super expertise’.¹ Additionally, the “Olympia Case” (PKR 236/2017) and the “City Club Case” (P 253/2016) continued to see more activity since the last report. However, the pace was still rather slow with only one session scheduled every five to six/eight weeks, which is particularly relevant since in both cases one of the defendants is in detention on remand. The “Emin Krasniqi Case” (PKR 591/2016) is of special concern given that no new session has been scheduled yet since April 2019, when the court ordered a new expert examination, and the defendant has been in detention on remand for over eight years.

Notwithstanding the reported progress in the above-mentioned cases, other high-profile cases (including former EULEX cases) remained dormant or experienced little progress for various reasons. For example, in the “Drenica I Case” (PKR 74/2018), after a long period, a hearing scheduled for 26 December 2019 was postponed at the request of the case prosecutor. In the “Naser Kelmendi Case” (PKR 32/2019) hearings were ongoing until the measures related to the pandemic were introduced, but with numerous delays due to the lack of an official answer from the Office of International Legal Cooperation regarding the testimony of a protected witness, imprisoned in Bosnia and Herzegovina. Likewise, the “Olympus II Case” (PKR 611/2016) and the “Land 4 Case” (PKR 130/2016, both connected to the “Olympus I Case”) did not experience any progress, the same as the “Touareg Case” (P 176/2015), the “Transport Case” (PKR 147/2016), the “Tear Gas Case” (PKR 70/2018) and, connected to the latter, the “Pal Lekaj Case” (PKR 108/2016) and the “Medicus Case” (PKR 226/2017). No particular justifications for these delays were provided.

Recommendation:

- The courts should ensure that trials are not unduly delayed

2.3 Functioning of the Special Department in the Basic Court and Court of Appeals of Pristina

The fact that the Special Department became operational during the second half of 2019 has had a positive impact on the efficiency of the judicial system. The Special Department is a specialised department in the Basic Court and Court of Appeals of Pristina which exclusively handles cases from the Special Prosecution of Kosovo (SPRK), dealing with the most serious criminal cases. Proceedings are generally conducted and concluded faster than when they were taking place before the Serious Crimes Departments of the various Basic Courts, which was the usual procedure prior to the Special Department becoming operational. It is expected that the Special Department will contribute to an enhanced consistency in judicial decisions and to an improved

¹ ‘Super expertise’ refers to Art 142 in the Criminal Procedure Code and is applied when the findings of expert witnesses are contradicting each other in which case there is a need for another expert witness or ‘super expertise’.

efficiency and case management by the Basic Court.² Another positive factor is that the majority of judges assigned to the Special Department have finalised their previous ongoing cases, which implies that they are now exclusively available for their cases before the Special Department. Also important to note is that the Special Department decided, as recommended by EULEX in its previous Thematic and Systemic reports, to not organise judges in fixed panels³ of the same three judges, which has a positive impact on the public confidence in the independence and impartiality of the Department.

However, there are some possible limitations of specialisation which should be taken into account. For example, a specialised department or court may have the effect of separating judges from the rest of the judiciary and exposing them to pressure from the parties or other actors.⁴

Some challenges were observed in relation to human capacity and logistical matters of the Special Departments. Firstly, the judges at the Special Department of the Basic Court of Pristina work without the assistance of professional associates and legal officers, whose recruitment process has not yet been completed, and with insufficient logistical equipment, such as computers and copy machines. Secondly, having in mind the quantity of ongoing cases, the number of six judges assigned to the Department seems insufficient. The same can be said in relation to the Special Department at the Court of Appeals, with three judges exclusively assigned to the Special Department at the Court of Appeals in Pristina and three judges in the Division of Appeal in Mitrovica. Thirdly, the judges in the Division of Appeal in Mitrovica are also assigned to the Serious Crime Department in the Basic Court of Mitrovica, which is an additional burden. Furthermore, they are assigned to panels in the Court of Appeals in Pristina as well, which means they need to commute from Mitrovica to Pristina and vice versa. This is the case when judges in Pristina are barred from participating in a Court of Appeals panel and thus need to be replaced, which is not unusual given the small number of judges in the Court of Appeals in Pristina.

An urgent need to set up a system at the Palace of Justice to allow the examination of witnesses under protective measures was also identified. Since the Special Department is competent for serious crimes under the jurisdiction of the SPRK, the resort to protective measures for witnesses is more frequent. However, whenever there is a need to examine a witness, by video call for example, the court has to relocate the trial session to Pejë/Peć, which is one of the few courts in which examination of protective witnesses is possible. This procedure creates unnecessary delays and places an additional burden on the parties while it may potentially endanger the security of the witnesses during the travel.

Furthermore, the lack of Albanian/Serbian translators continues to be a major problem in both Special Departments resulting in delays in the translation of judicial documents, which is of particular concern regarding rulings on detention on remand.

² See Opinion Nr. 15 (2012) of the Consultative Council of European judges of the Council of Europe on the specialisation of Judges: <https://rm.coe.int/16807477d9>.

³ Fixed panels of the same three judges are seen to be easier to control than panels of judges which are not fixed. In the latter case, all judges are randomly assigned, not just the presiding judge with two fixed panel members.

⁴ See footnote 3.

Recommendations:

- Increase the number of judges in the Special Department at first instance and appeal level in line with legal provisions on ethnic diversity as foreseen in the law and in the Regulation on the Organisation and Functioning of the Special Department within the Basic Court of Pristina and Court of Appeals;
- Recruit additional support staff such as professional associates and legal officers;
- Set up the necessary equipment to allow for the examination of witnesses under protective measures at the Palace of Justice in Pristina;
- Increase the number of Albanian/Serbian translators.

2.4 Prosecution of terrorism cases

It is estimated that a total of 400 Kosovars joined the armed conflicts in Syria and Iraq. At regional level Kosovo was appreciated for its most advanced efforts with returning their nationals from conflict zones and the ensuing measures including criminal justice and reintegration.

EULEX noted the continued efforts by the Kosovo authorities to prosecute the citizens who were returned on 19 April 2019 from war theatres in Syria, where they had joined the terrorist organisation Islamic State or the Al-Nusra Front. Out of a total of 110 returnees, there were 32 females, 74 children and 4 males. Starting from 23 April 2019, most of the women were placed in house arrest by the Special Department of the Basic Court of Pristina while the four males were placed in detention on remand. The reintegration efforts commenced with the 74 children, who were enrolled in primary schools as of 2 September 2019.⁵ At the time of this report, 25 indictments have been filed by the Special Prosecution of Kosovo (SPRK) in relation to the adult returnees brought up on criminal charges of membership in and organisation of a terrorist group (Article 143 paragraph 2 of the Criminal Code of Kosovo), with several other cases still in the investigation phase.

After swift trial proceedings before the judges of the Special Department, at least eight female defendants pleaded guilty and received suspended sentences of 2 to 2.5 years of imprisonment. Some of the women told the media that they had been deceived about joining the conflict in Syria and regretted their decision, whereas others indicated that they were enticed with stipends of up to 150 EUR monthly paid by the Islamic State. Most women travelled to Syria with their husbands, some of the children were born on foreign territory.

The cases of the male defendants contained more serious charges, three of them have already been sentenced to 3.8, 4 and 5.5 years of imprisonment. The female defendants consistently received suspended sentences in exchange for their guilty pleas, additional to obligations to attend [undisclosed] reintegration measures. The male defendants received minimal sentences also in consideration of their cooperation. It is difficult to assess the effectiveness of the rehabilitation and reintegration measures undertaken by the authorities, which have remained largely unknown to the public.

A de-radicalisation programme for convicts is run by the Kosovo Islamic Community with the Kosovo Correctional Service. Also, a reintegration programme was formulated with help

⁵ Several children were born abroad and had never been in Kosovo before, which means that technically these children are not reintegrating in Kosovo.

from the International Organisation for Migration (IOM) and other international partners and was submitted for approval to the National Counter Terrorism Coordinator, however its contents remained closed to the public. The court obliged the convicted females to attend a psychologist for a determined period of time, without mentioning any obligation to attend further reintegration measures.

Recommendation:

- Considering the swift dispensation of justice in the monitored terrorism cases, and the general low/suspended sentences, it appears that the complex and difficult burden of managing future potential risks associated with the returnees falls mainly on the shoulders of the police. The outcome of this should be closely monitored by the Kosovo rule of law institutions.

2.5 Re-trial policy within the Kosovo justice system

The Court of Appeals has made it a common practise to send a relatively large number of cases to the respective Basic Courts for retrial, despite the notion that the instrument of retrial should be of rare use and only ordered as an exception. The reason for this is that a retrial affects the rights of the accused to a fair trial within a reasonable time in line with Article 6 of the European Convention on Human Rights.

Provisions in the current Kosovo Criminal Procedure Code do allow the Court of Appeals to adopt a proactive approach when adjudicating appeals against judgements of the Basic Courts. Specifically, Article 403 provides the Court of Appeals panel with the possibility to hold hearings, take new evidence or confirm the existing evidence, in order to properly determine and assess the material facts. However, monitoring of the judicial practise has revealed that the provisions of Article 403 are hardly relied upon. Instead, the common practise of the Court of Appeals panels has been to annul the judgements of the Basic Courts and return the cases to the respective courts for retrial, placing an additional and often unnecessary burden on the Basic Courts, which are already dealing with significant backlogs.⁶

Statistical data provided by the Courts of Appeals for 2018 and 2019 confirm the trend of an increasing number of cases sent for retrial: 292 cases sent for retrial in 2018 compared to 462 cases in 2019. Although an increased number of cases sent for retrial could result from a general increase in cases adjudicated by the Court of Appeals, EULEX's case monitoring confirmed that the mentioned legal mechanism provided by Article 403 is hardly ever used by the Court of Appeals.

EULEX additionally observed that some retrial judgements issued by the Basic Courts do not sufficiently reflect the administration of evidence from the retrial, but mostly rely on the initial judgement; large delays have been monitored in drafting and serving the rulings of Court of Appeals ordering the retrial, which result in an unnecessary prolonging of the length of trial proceedings; instructions contained in the Court of Appeals rulings ordering the retrials are sometimes not precise enough and leave room for interpretation. One of the main reasons invoked by a superior court (Court of Appeals and Supreme Court) to return a case for retrial is

⁶ Article 402 (1): The Court of Appeals shall, in certain cases, annul by a ruling the judgement of the Basic Court and return the case for retrial, if:

- 1.1. there exists a substantial violation of provisions of criminal procedure, and the Court of Appeals cannot proceed under Article 403 of the present Code; or
- 1.2. a new main trial before the Basic Court is necessary because of an erroneous or incomplete determination of the factual situation and the Court of Appeals cannot proceed under Article 403 of the present Code.

that the enacting clauses are in contradiction with the reasoning. However, the Court of Appeals and the Supreme Court are entitled to modify the judgement and correct the enacting clause if necessary, instead of sending the case back for retrial.

Recommendations:

- The Court of Appeals should make better use of the possibility as provided for in the Kosovo Criminal Procedure Code to hold hearings, take new evidence or confirm the existing evidence, in order to properly determine and assess the material fact, aimed at avoiding the unnecessary annulling of judgements and returning cases for retrial;
- The new draft Kosovo Criminal Procedure Code defines the procedure of re-trial as an exceptional one, only to be used in specific cases. This should be a further incentive for the appellate courts to refrain from the unnecessary returning of cases for retrial;
- The quality of judgments should be improved, with a specific focus on the need to better harmonize the enacting clauses and the reasoning of the judgments.

2.6 Case allocation in re-trial proceedings

During the monitoring of trial proceedings, EULEX noticed the practise of the Basic Courts to allocate cases that are returned for retrial by decisions of a superior court (usually the Court of Appeals) to the same presiding trial judge, or trial panel, who initially handled the matter at the Basic Court.

Article 39 of the Kosovo Criminal Procedural Code, which deals with the incompatibility of judges, prohibits a judge from serving as presiding trial judge, single trial judge or panel member, where they had participated in previous proceedings in the same criminal case, exceptions being made only for judges who served on a special investigative opportunity panel or a review panel. The Kosovo courts have been consistently interpreting these provisions in a way that the cases returned for retrial represent new proceedings. As a matter of fact they also receive new registration numbers

As an immediate consequence, the retrial proceedings take place considerably faster, both the parties and the court being well familiarised with the case. During the evidentiary proceedings, the court usually only processes the evidence it was specifically instructed to administer or re-administer. In some cases entire retrial proceedings unfold in a single session,⁷ especially where the scope of retrial is only partial. Such proceedings lack the thoroughness or completeness required of a retrial, as they do not deal with the complete evidence. Sometimes the superior court orders repeated retrials (like in the Medicus Case) which further and considerably delay the delivery of justice.

More importantly, the Basic Court judges are presented with an ethical dilemma of adjudicating on the basis of the same, or only slightly changed, factual evidence, ultimately having to re-evaluate their own previous decisions, which can raise the question of their impartiality. In several monitored cases the retrial proceedings being handled by the same judges soured the atmosphere, the parties and trial panel members entering heated arguments, demanding the

⁷ Esat Fejsa Case, P 77/2018, Basic Court of Mitrovica/Mitrovicë, Branch Skenderaj/Srbica; Hummer Case, P 113/2019 Basic Court of Mitrovica/Mitrovicë.

disqualification of the judges or prosecutors,⁸ or personally offending each other.⁹ The parties whose appeals had been granted were often observed to sneer in frustration and disbelief in the fairness of the new proceedings, assuming it was highly unlikely to expect that judges would arrive at an opposite conclusion from the one they had themselves announced at the initial trial without losing face or credibility.

Article 398 (2) Criminal Procedure Code grants the appellate court the power to operate changes in the composition of the trial panel who handles the retrial, which means that there is no need to return retrial cases by default to the same judge or panel at the Basic Court. Although the current judicial practise is time-efficient, it comes at the high cost of frustrating the impartiality of the judges. Further, it consolidates a system where retrials are prone to trivial proceedings, invalidating the right to adequate judicial review by an impartial court.

The direct implications to human rights standards and safeguards fall under Article 6 (1) European Convention on Human Rights, in particular in respect to the right to a fair trial within a reasonable time by an independent and impartial tribunal established by law. The European Court of Human Rights recognised the close link between the concepts of independence and objective impartiality, commonly considering the two requirements together.¹⁰ There are two possible situations in which the question of a lack of judicial impartiality arises.¹¹ The first is *functional* in nature and concerns, for instance, the exercise of different functions within the judicial process by the same person, or the hierarchical or other links with another person involved in the proceedings. The second is of a *personal* character deriving from the conduct of the judges in a given case. The first category includes previous exercise of different judicial functions by a member of the judiciary in the same proceedings. For instance, the European Court of Human Rights established that when an issue of bias arises with regard to a judge's previous participation in the proceedings, a time-lapse of nearly two years since the earlier involvement in the same proceedings is not in itself a sufficient safeguard against partiality.¹²

No question of a lack of judicial impartiality arises when a judge has already delivered purely formal and procedural decisions in other stages of the proceedings. However, problems with impartiality may emerge if, in other phases of the proceedings, a judge has already expressed an opinion on the guilt of the accused.¹³

The Council of Europe stated that hierarchical judicial organisations should not undermine individual independence.¹⁴ The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge,¹⁵ which should be observed not only when a case is allocated to a judge or panel of judges for the first time, but also when the same is returned for retrial by a superior court.

8 Gjakova Double Murder Case, PKR 43/2019 - Basic Court of Gjakovë/Đakovica.

9 Hummer Case, P 113/2019 Basic Court of Mitrovica.

10 *Findlay v. the United Kingdom*, § 73.

11 *Kyprianou v. Cyprus [GC]*, § 121.

12 *Dāvidsons and Savins v. Latvia*, § 57.

13 *Gómes de Liaño y Botella v. Spain*, §§ 67-72.

14 Council of Europe, Recommendation CM/Rec (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities; Chapter III – Internal independence, Para. 22.

15 *Ibid.* Para 24.

Recommendation:

- The Kosovo Judicial Council should evaluate the current judicial practise and its implications and if deemed appropriate, decide to issue a guidance decision or interpretation, or otherwise undertake the necessary legal action with a view to providing a consistent interpretation and application of the relevant provisions, in order to ensure that the impartiality and independence of the judiciary is preserved and consolidated.

2.7 Cross-examination

According to Article 6 (3) of the European Convention on Human Rights, everyone charged with a criminal offense has the right to examine, or have examined, witnesses against him or her as a minimum right. Throughout case monitoring activities, the following challenges to the proper implementation of cross-examination have been observed:

- The degree of compliance with cross-examination rules in main hearings was highly dependent on the composition of the trial panels, especially the presiding judges. Thus, an inconsistent implementation of cross-examination principles has been observed Kosovo-wide, which in turn raises concerns over associated legal principles, such as “legal certainty”;
- In approximately half of the monitored trial sessions, it has been noted that most of the questions asked by the parties were beyond the scope of cross-examination. Moreover, the parties were occasionally confused about the type of questions allowed for direct and cross-examination (e.g. direct questions were allowed in cross-examination and vice versa). Consequently, the presiding judge or other members of the trial panel dedicated a considerable amount of time for asking the parties to reformulate their questions; these conditions resulted in prolonged trials and losing track of developments in main hearings. This may have a negative impact on the efficiency and the length of the criminal proceedings;
- It has also been frequently observed that parties in charge of cross-examination were inadequately prepared. Considering that cross-examination constitutes an opportunity for the opposing party to contest the alleged factual events and seek the material truth, the lack of preparation reduces the chances of safeguarding the rights of the parties involved and hinders the quality of criminal trials;
- There were also instances when re-cross-examination was allowed, after a cross-examination of a witness or a defendant, especially when the prosecution was the cross-examining party. According to the relevant provisions of the Criminal Procedure Code (Art. 333 et seq.), another round of cross-examination should not be allowed. Similarly, it has also been noted that occasionally several rounds of direct and cross-examination were allowed, contrary to the relevant Criminal Procedure Code provisions. These circumstances may raise issues over the legality of the procedure as well as the equality of arms principle;¹⁶
- The objections submitted by the opposing parties to cross-examination questions were often vague and/or unsubstantiated, which resulted in unnecessary delays in the advancement of the trials. Furthermore, occasionally trial panels or presiding judges overruled objections by the parties without providing well-reasoned decisions, despite the legitimate nature of certain objections during cross-examinations. This, in sequence, might raise issues of arbitrariness and impartiality in criminal proceedings.

¹⁶ In line with jurisprudence of the European Court of Human Rights, equality of arms is an inherent feature of a fair trial which requires that each party in the proceedings (prosecution and defense) are given a reasonable opportunity to present their case under conditions that do not place them at a disadvantage vis-à-vis their opponent.

Recommendations:

- Judges should be more assertive in safeguarding the lawful application of the rules of cross-examination over the course of main trials, but it has to be underlined that the parties also have their own responsibility in the proper implementation of cross-examination.
- Initiatives to improve the quality of cross-examination in main hearings could include:
 - Design of online courses with ad-hoc guidelines and practical advice regarding cross-examination aimed at legal practitioners, developed either by the Kosovo Prosecutorial Council and/or the Kosovo Bar Association, and available to law professionals for free;
 - Publishing a handbook on cross-examination for law practitioners written by a wide range of law professionals, primarily by those actively involved in criminal trials (e.g. judges, prosecutors, defence counsels);
 - Implementing activities with the intention to raise awareness of cross-examination (e.g. emphasising cross-examination education in law schools, increasing the number of targeted questions on cross-examination during Bar Examinations; organising moot court competitions for law students and young lawyers.).

2.8 Announcement of criminal judgements in first instance

Based on the monitoring of 28 announcements of judgements in first instance, EULEX identified some inconsistencies.¹⁷ In its monitoring, EULEX focused on key features of the announcement of judgements, including the adequate reading of the criminal act, the justification or reasoning, appeal instructions, and the audibility of the reading for the parties and for the public as prescribed by the Criminal Procedure Code.

Based on these criteria, EULEX identified irregularities in 13 out of the total of 28 announcements of judgement. In six cases the criminal act was not read out, in ten cases the presentation of a brief justification was entirely omitted and was insufficient in three cases, in seven cases the parties were not given instructions regarding legal remedies and in five cases the announcement was deficient due to the fact that the judge could not be heard or understood.

Additionally, in three announcements, it was communicated that the judgements had been reached by unanimous decision of the panel members. It has to be noted that the secrecy of the deliberation and voting is provided for by Articles 473 and 320 of the Criminal Procedure Code, the record being available only to the superior court. The disclosure of such information is therefore in breach of legal provisions.

EULEX also monitored that in two cases judgements were announced in the office of the judge. This represents a breach of the principle of publicity as it is required that the enacting clause shall be read in open court. The importance of the public announcement of the judgement is also underlined in Article 6 (1) of the European Convention on Human Rights, which reads that the judgement shall be pronounced publicly. The European Court of Human Rights ruled that “other means of rendering a judgement public” may also be compatible with the Convention, yet this does not apply to the aforementioned cases, since the publicity of the judgement was not secured by other means.¹⁸

¹⁷ Out of the 28 judgments, there were 22 guilty judgements, with guilty pleas or plea agreements reached in seven cases and six acquittal judgements.

¹⁸ Where only the operative part of the judgement is read out in public, it must be ascertained whether the public had access by other means to the reasoned judgement which was not read out and, if so, the forms of publicity used must be examined in order to subject the judgement to public scrutiny. (*Ryakib Biryukov v. Russia*, §§ 38-46 and references cited in §§ 33-36).

Recommendation:

- There is a need for a more effective training of the judges. Professional forum discussions between judges of various instances may also effectively address this concern.

2.9 Detention on remand

Throughout its monitoring of cases EULEX has observed what appears to be an overreliance on the security measure of detention on remand. During the reporting period, EULEX examined three cases involving the detention of several Kosovo Correctional Service officers as defendants, in which they are mainly being accused of having committed the crime of “Unlawful release of persons deprived of liberty”.¹⁹ All three cases are related to incidents at the University Clinical Centre of Kosovo.²⁰ None of them is in main trial, while in all cases detention on remand was imposed. In two cases, the defendants were either released after approximately one month and in one case after around two months, or the security measure was changed to house arrest.

Considering that the imposition of detention on remand is the most severe human rights restriction during criminal proceedings according to the European Convention on Human Rights (Art. 5 par. 1 (c), Right to Liberty and Security)²¹ and given the fact that detention on remand was imposed for a relatively short time while no main trial has been conducted yet, EULEX decided to conduct an analysis of the respective rulings.

EULEX observed shortcomings in the rulings imposing detention on remand in all three cases. In the first case,²² the ruling imposed detention on remand for one month and formally qualified the act in its enacting clause, as well as in the reasoning, as “Fraud”,²³ although the prosecution had explicitly qualified the act as “Unlawful release of persons deprived of liberty”. In addition, the court referred to a risk of flight without factual substantiation, a risk which the prosecution had not even mentioned in its request. A month later both defendants were released upon request of the prosecution.

In the second case,²⁴ the initial ruling to impose detention on remand for one month did not elaborate on the grounded suspicion of having committed a criminal offense. The decision referred only to the documents in the case file. The following ruling on the extension of the detention on remand was again issued without establishing the facts for grounded suspicion and was appealed by the accused. The Court of Appeals did not elaborate on this omission of the court of first instance. However, it changed the measure into a more lenient one, namely into house arrest.

¹⁹ According to Art. 399 (Code no. 06/L-074) and Art. 407 (Code No. 04/L-082, applicable until 14.04.2019) Criminal Code of Kosovo respectively.

²⁰ One incident occurred end of 2017, two in mid-2019.

²¹ According to Art. 187 Criminal Procedure Code the court may order detention on remand [if]:

1.1. there is a grounded suspicion that such person has committed a criminal offence;

1.2.1. [...] that there is a danger of flight;

1.2.2. [...] that he or she will obstruct the progress of the criminal proceedings by influencing witnesses [...];

1.2.3. the seriousness of the criminal offence [...] or [...] a risk that he or she will repeat the criminal offence [...] and

1.3. the lesser measures to ensure the presence of defendant [...] would be insufficient to ensure the presence of such person [...].

²² Prosecution number: PP.II.nr. 11/2017; (Pre-Trial) Court number: PPR.nr.295/2017.

²³ According to Art. 323 (Code no. 06/L-074) CCK.

²⁴ Prosecution number: PP.II.nr. 2557/2019; (Pre-Trial) Court number: PPR.nr.351/2019.

In the third case,²⁵ the court followed the prosecution's request and first imposed detention on remand for 15 days, thereafter extended it for two months and eventually changed the measure into house arrest. The Court in all three rulings argued that a risk of flight existed, yet without elaborating on the respective facts. Furthermore, the rulings contradict each other: the change from detention on remand to house arrest as the more lenient security measure after two months was justified with the same risk of flight that had justified the initial imposition of detention on remand. Consequently, the Court by its own line of reasoning should have been obliged to impose the more lenient measure of house detention from the very start instead of detention on remand.

It can be concluded that none of the cases is in line with Art. 187 of the Criminal Procedure Code (and thus neither with Art. 5 par. 1 (c) of the European Convention on Human Rights). Consequently, the imposition of detention on remand had the effect of replacing an eventual punishment, yet without a main trial. Several principles are hence infringed, such as the right to be detained only after conviction by a competent court (Art. 5 par. 1 (a) of the European Convention on Human Rights), the right to a fair and public hearing by an independent and impartial tribunal (Art. 6 par. 1 (Right to fair trial) of the European Convention on Human Rights) and the right to be presumed innocent until proved guilty (Art. 6 par. 2 of the European Convention on Human Rights).

Recommendations:

- Prosecution requests for imposing detention on remand and respective Court rulings should be reasoned with concrete facts in a way that the defendant is able to comprehend the decision;
- In case the conditions for imposing a security measure are met, the most lenient one should be ordered and detention on remand should be the last resort;
- Importantly, it should be taken into account that the Kosovo Correctional Service officers are detained not only in the same facility in which they work, but actually in cells with inmates that they had to guard before. Such a situation is potentially hostile. It is a risk to the safety of the correctional officers and might moreover have a psychological effect on them. In one case, the correctional officers were initially even still wearing their official uniforms when being detained.

2.10 Confiscation and temporary confiscation of assets

Legislation on confiscation foresees different procedural mechanisms for the judicial entities to enforce the confiscation and temporary confiscation of assets. EULEX identified the need for improving the effectiveness of the implementation of the applicable framework in this field, since there are procedural mechanisms that have not been widely used.

Firstly, the amount of assets confiscated is much lower than the amount of assets temporarily confiscated. It is positively noted that the prosecution often uses temporary confiscation of assets. Nevertheless, the amount in relation to final confiscation is much lower.²⁶ An underlying

²⁵ Prosecution number: PPII.nr. 3078/2019; (Pre-Trial) Court number: PPR.nr.461/2019.

²⁶ According to statistics provided by the Agency for the Management of Sequestered and Confiscated Assets (Agency) the value of assets administered by the Agency as of March 2020 was as follows: assets sequestered – 1,021,664.04 EUR.; assets confiscated – 80,613.30 EUR.; restitution of assets – 274,095.53 EUR. During the reporting period of 2017 the Agency executed a total of 138 decisions out of which 78 decisions were for sequestration of assets, 39 decisions for confiscation of assets, 18 decisions for restitution of sequestered assets and 3 decisions for giving the assets for use to the State institutions. During the reporting period of 2018 the

reason might be related to the high number of acquittals in corruption cases, in particular in high-profile cases.

Secondly, the foreseen sale of assets during the proceedings, proposed by the prosecution to avoid the loss of value, is not widely approved by the courts.²⁷ The Agency for the Management of Sequestered and Confiscated Assets (Agency) made approximately 300 sales proposals to the Prosecution during the last years but just a few were approved by the courts, despite the recently signed Memorandum of Understanding between the Kosovo Judicial Council, the Kosovo Prosecutorial Council and the Agency in this regard. In the period 2016 – 2019, the value of sales of confiscated assets totalled EUR 252,700 which is low.

It is noteworthy that the aim of this mechanism is solely to avoid the asset from losing value, which is often the case with temporarily confiscated vehicles, with storage costs being disproportional to the asset's value or exceeding it altogether. The foreseen sale of assets is not related to the conviction or non-conviction of the defendant. The revenues from the sale are deposited in the Agency's bank account in the Central Bank of Kosovo and restituted to the defendants in case of acquittal.

Thirdly, the Law on Extended Powers on Confiscation of Assets, which entered into force on 10 January 2019, has not been implemented yet. The new Law on Extended Powers has added the number of criminal offenses for which confiscation is foreseen and extended the possibility to confiscate assets not only from defendants but also from third parties, if they bought the assets in bad faith. Although some of the mechanisms foreseen in the law are only applicable upon a final conviction (the number of which is very low, given the long appeal procedures), there is an urgent need to initiate its implementation in order to ensure the effectiveness of the confiscation legal framework.

Recommendation:

- To initiate the implementation of the Law of Extended Powers on Confiscation of Assets and to use more often the possibility of sales of assets.

Agency has executed a total of 110 decisions, out of which, 64 decisions were for admission of sequestered assets, 14 decisions for admission of confiscated assets, 21 decisions for restitution of sequestered assets and 11 decisions for giving the confiscated assets for use of the State institutions. During the reporting year of 2019, the Agency executed a total of 136 decisions out of which 87 decisions are for sequestration, 30 for confiscation and 19 restitution decisions. During the reporting period 1 January 2020 - 30 March 2020, the Agency executed a total of 45 decisions, out of which 42 decisions are for sequestration, 2 for confiscation and 1 restitution decision.

²⁷ Pursuant to Art. 27 para. 1 of the Law on the Management of Sequestered and Confiscated Assets "On the proposal of the Agency, the State Prosecutor or any other competent body may require from the court a decision to sell an asset that may lose value, or its storage costs exceed its value, or the storage expenses are disproportional with the value of sequestered assets. Such assets will include livestock, and assets which quickly lose value".

3. FINDINGS OF THEMATIC MONITORING

3.1 Anti-Corruption

The Kosovo Police Anti-Corruption Task Force plays an essential role in the area of anti-corruption detection, initial steps and investigations. Established by a Government Decision in 2010, in cooperation with EULEX, the Task Force's success is safeguarded by its unique position in the Kosovo Police hierarchy and its special reporting lines, which guarantee its independence. Although staffed with 30 investigators and one financial expert, the complexity and volume of its investigations would benefit from further capacity and support. EULEX observed that the Task Force was able to detect and take on high-profile investigations involving prominent and politically-exposed persons, as well as complex financial cases, such as cases of privatisations or public tenders, which had incurred damages to the public budget estimated at several million EUR.

The spearheading agency in anti-corruption remains the Special Prosecution of Kosovo (SPRK). In addition to changes in its leadership (the appointment of a new SPRK chief) and staff (recruitment of two new prosecutors and the retirement of one), the SPRK underwent a much welcomed reorganisation into four departments, including one on anti-corruption and financial crimes, following the adoption of a comprehensive strategy in February 2020. This resulted in a focused effort to tackle large-scale corruption and aims at further specialising the SPRK prosecutors, all of which is a positive development.

The level of cooperation and coordination between police and prosecution remains a concern. Some findings suggested insufficient transparency and accountability of the prosecution or reluctance to fulfill its supervisory role as foreseen by the Criminal Procedure Code. Several police requests remained unanswered by the SPRK for longer periods of time, to the detriment of the investigation. In a specific investigation, EULEX identified a long-standing conflict of jurisdiction between the Anti-Corruption Task Force and the Police Inspectorate whereas the case prosecutor remained inactive.

While most investigations were conducted professionally, with police and prosecution employing a wide range of investigative means and techniques (including forensic work, special and covert investigative measures, international cooperation), EULEX noted that several complex financial investigations were completed without exploring all the leads for obtaining evidence. Key financial schemes, witnesses or corporate records remained unexplored or insufficiently probed. This manner of proceeding leads to cases being built on insufficient or unclear evidence, thus endangering the outcome of the judicial process.

Moreover, the "follow the money" principle, of paramount importance in investigating money laundering and financial crime, is generally neglected.

Several cases involving high-profile officials had stalled or recorded setbacks. Some investigations were lagging behind because of rather poor cooperation between police and prosecution. A tendency was noted to maintain some cases in the initial phase, while the opening of formal investigations was being delayed by the SPRK until the last moment, possibly in order to prolong the procedure so that the investigation extends over the legal deadline of two years, or to serve other pressures. In spite of positive evaluations on anti-corruption by the Kosovo Prosecutorial Council, some SPRK prosecutors had difficulties dealing with a large case load or with insufficient capacity (including prosecution support staff). Some of these issues were, however, considered, as mentioned, in the SPRK strategy adopted in February 2020.

It was generally recognised that many suspects and defendants in corruption trials were considerably wealthy and influential, with powerful political connections or financial links, which could arguably lead to pressure or interference into these criminal proceedings. Indeed, it was monitored that high-profile corruption cases often ended with low sentences or resounding acquittals (e.g. the “Pronto Case”, the “KEK Case”, “FAN Privatisation”, “Telekom Managers”, “Suharekë/Suva Reka Mayor *et al*”) or decisions by superior courts to return the cases for retrial, a negative feature further analysed in the systemic section of this report.

In relation to the declaration of assets by public officials, EULEX monitored several cases, including that of the former Klinë/Klina mayor, Sokol Bashota. After being indicted for broader corruption charges in 2016 by a EULEX prosecutor, the defendant was recently sentenced to a suspended sentence and fine punishment, whereas his co-accused, also municipal officials of Klinë/Klina, were acquitted. The defendant appealed to the Court of Appeals, which sent the case for retrial.

EULEX also monitored several cases of *active and passive corruption*, including several relating to judges, prosecutors, police officers and lawyers.²⁸ A Supreme Court clerk and a police officer were sentenced, on 9 October 2019, for trading in influence, each receiving a one-year imprisonment sentence. Several high-level municipality and governmental officials were arrested on corruption accusations, including a Tax Administration director.²⁹ In spite of some progress, the media and civil society were joined by the international community in criticising the Kosovo authorities for failing to successfully prosecute any high-profile official during 2019.³⁰

EULEX also monitored the *protection of criminal justice officials*, given that several incidents of threats against prosecutors had been recorded. In a specific case, a prosecutor who was handling a corruption investigation against a prominent municipal official was pressured to release the suspect from detention and came under serious threats against his person and his family. The police provided for personal protection for the prosecutor, however the investigation into the threats has not yielded any result as yet. EULEX is exploring the current mechanisms to ensure protection of prosecutors and magistrates from threats, pressure or interference in relation to corruption and other serious crimes cases that they handle. Some officials stated that more could be done to protect them than the physical security measures.

28 Case of Judge Sali Berisha arrested *flagrante delicto* in Pejë/Peç; Case of Serious Crimes Department Judge at the Basic Court of Skenderaj/Srbica and police officer arrested for abuse of office, receiving bribes and trading in influence; Case PKR.nr.125/17 against lawyer Haxhi Çekaj.

29 Case of Drenas/Glogovac Municipal Director arrested for abuse of official position; Case of Novo Brdo/Novobërdë Mayor Svetislav Ivanovic and former Kaçanik/Kaçanik Mayor Xhabir Zharku arrested in separate cases for abuse of official position on orders by the Basic Courts of Gjilan/Gnjilane and Ferisaj/Urosevac respectively; Case of Safet Krasniqi, Director of Tax Investigation and Intelligence Unit within the Tax Administration of Kosovo was arrested and indicted by the SPRK following a complaint by TAK employee Murat Mehmeti. By providing unlawful benefits for himself and 120 businesses the defendant causing the state budget a damage of over 4 million EUR; Case against former Kosovo Serb minister Nenad Rikalo (Ministry of Agriculture) and other seven defendants for misuse of official duty in relation to drafting specific development programmes.

30 18 November 2019 – KLI Roundtable on “Impunity of Corruption” noted no indictment filed in 2019 against high profile corruption; 04 December 2019 British Ambassador surprised by rapid enrichment of some Kosovo citizens; January 2020 - Transparency International Corruption Perceptions Index 2019 downgrades Kosovo world index from 93 to 101;

Whereas recent legislative advancements on *whistleblowing* have been received with general applaud, secondary legislation to guarantee safe mechanisms for whistleblowing is still not in place, which may explain the scarcity of criminal cases so far recorded, with the exception of the case against the Tax Administration official mentioned above.

Recommendations:

- Cooperation between police and prosecution in anti-corruption and serious financial crime cases of particular sensitivity, such as those involving politically exposed persons, needs to be improved;
- While many investigations were conducted professionally, complex financial investigations would benefit from a more vigorous investigation. Not all available leads are always explored, such as key financial schemes and corporate records;
- The “follow the money” principle needs to be strengthened when investigating money laundering and financial crimes;
- To strengthen the Kosovo Police Anti-Corruption Task Force as a key player in the area of anti-corruption detection and investigations.

3.2 Crimes under international law

In the second half of 2019 and beginning of 2020, relevant steps were taken to set the ground for investigation and prosecution of serious crimes under international criminal law. With support provided by EULEX, the Kosovo Police War Crimes Investigation Unit has established a new database with the aim to better administer complex cases and thus enable a qualitative case analysis. A series of training courses were jointly developed and implemented by EULEX and the Kosovo Police for 22 war crimes investigation officers in order to facilitate the development of a modern case-management system and to improve capacities in the fields of case building, case administration and analysis of war crimes cases.

Separate sections were created in the databases for conflict-related sexual violence, as well as for missing persons. With regards to conflict-related sexual violence cases, the identities of the victims are concealed and access is only granted to few investigators. The database enables cross-checking war crimes files and missing-persons files, which is expected to substantially facilitate and accelerate the process of case building. Notably, the War Crimes Investigation Unit completed the investigations in most of the active war crimes cases against Nenad Arsić, Goran Stanišić, Zlatan Krstić/Destan Shabanaj, resulting in indictments filed with the Special Department of the Basic Court of Pristina.

In terms of prosecution, after the completion of investigations in the active war crimes cases with suspects in detention, the Special Prosecution of Kosovo (SPRK) filed, at the beginning of 2020, indictments in all but one of the active war crimes cases, namely in the “Nenad Arsić Case”, the “Goran Stanišić Case” and the “Zlatan Krstić/Destan Shabanaj Case”. In the first months of 2020, the SPRK indexed all their war crimes files and as a next step it will cross-check these files with the War Crimes Investigation Unit files in their new database in order to ensure that all case files are consolidated and that no information is missing.

One monitored war crimes case ended with a final judgement against Remzi Shala. The Basic Court of Prizren sentenced him to 14 years of imprisonment. While the factual situation in this judgement was well reasoned, the legal interpretation of the facts showed some inconsistencies. These matters were later addressed to some extent by the Court of Appeals, which amended the first instance judgement and mitigated the punishment to ten years of imprisonment. However, in March 2020, the Supreme Court sent the case back for retrial after a successful request for protection of legality had been filed³¹.

Another case which saw progress is the “Darko Tasić Case”, adjudicated by the Basic Court of Prizren. Unfortunately, there are also cases where the main trial has gone beyond any reasonable time limits. For example, in June 2018, the Supreme Court sent the “Drenica I Case” back to the Basic Court of Mitrovica for retrial, however no hearing has yet been scheduled.

Taking into consideration the considerable progress achieved by the Kosovo Police concerning the war crimes database and the finalising of several war crimes investigations, the Kosovo Police should be commended. However, there has not been sufficient progress with the investigation of war crimes cases which were categorised by the SPRK as high priority. This could be explained by the fact that the Kosovo Police needed time to establish the new war crimes database and digitise all the evidence. Since the evidence concerning most of the high priority cases has now been fully digitised and uploaded in the database, the Kosovo Police has to make efforts to continue the investigation and analysis of all high-priority war crimes cases.

The SPRK War Crimes Department, although understaffed, with only three prosecutors, has also made significant progress and finalised almost all of its active war crimes cases by either filing indictments or by terminating investigations where evidence proving the innocence of the suspect(s) was collected. Although the cooperation between the SPRK War Crimes Department and the police has improved, there is room to further develop this cooperation.

A significant remaining challenge in adjudicating war crimes is the lack of mutual regional cooperation, mainly with Serbia, which further obstructs the investigation of the identified high priority war crimes cases, since many witnesses and suspects reside in Serbia.

Recommendations:

- The Kosovo Police has to make efforts to continue the investigation and analysis of all categorised high-priority war crimes cases;
- Cooperation between the SPRK War Crimes Department and the Kosovo Police needs to be improved;
- The SPRK War Crimes Department should be expanded;
- Kosovo authorities are encouraged to seek ways to improve regional cooperation in the investigation of high priority war crimes cases, especially with Serbia, where many suspects and witnesses reside.

³¹ Protection of legality is an extraordinary legal remedy which may be requested against a final judicial decision, or against judicial proceedings which preceded the rendering of that decision, based on an alleged violation of the Kosovo Criminal Code or Kosovo Criminal Procedural Code.

3.3 Privatisation and liquidation

The law on the Special Chamber of the Supreme Court of Kosovo was adopted by the Assembly of Kosovo on 30 May 2019 and entered into force on 12 July 2019. With its adoption the Special Chamber became fully operational. Consequently, the new law allowed adjudication of privatisation cases which had not been possible since June 2018 when the respective EULEX judges left the court.

The adoption of the law made it necessary to finalise the recruitment process of the Special Chamber judges to replace the seven international EULEX judges, who had left the Court in June 2018, and two local judges who would retire soon. The call for applications was announced for seven candidates but had to be repeated due to the low number of candidates fulfilling the requirement to have eight years of experience as a Supreme Court judge. The Kosovo Judicial Council decided to annul the call, considering that, in view of the low number of competitors, the competition was not valid.

The call for applications was re-issued on 26 June 2019, requiring the same experience of eight years as Supreme Court Judge. This high target of experience hampered a successful selection process. Subsequently, only four judges were appointed on 24 December 2019 out of five proposed for appointment. The newly appointed judges joined the Special Chamber in January 2020.

There are currently 15 judges at the Special Chamber. However, the number of legal officers remains insufficient to tackle the backlog of more than 22.000 cases. Considering the current clearing rate of 250 solved cases per month, clearing the backlog will take more than ten years.

Statistics show a slightly increased number of solved cases after the new law was passed. However, it has to be taken into account that these statistics may partly be inflated as many of the solved cases may already have been prepared during the period when the new law on Special Chamber of the Supreme Court was not in force yet.

EULEX observed that not many hearings were held in the Special Chamber, with one notable exception, where one judge scheduled many hearings in order to finalise the so-called Shock Absorbers Factory Case with 511 claimants in less than two months.

It was monitored that hardly any use was made of the available special tools in relation to mass claims. One identified reason for this is that most of the SCSC cases have been re-allocated between all judges, while previously the Special Chamber had several specialised panels, including one on mass claims. While the re-allocation of cases between all judges is a positive move, as it enables a better prioritisation of older cases, it also has a negative effect, as sometimes mass claims are allocated to judges who have no or little experience in this specific field, which results in delays and at times the loss of important, already conducted preparatory work. However, templates for mass claims prepared by EULEX in the past are being updated based on the changes in the new law on the Special Chamber of the Supreme Court and will hopefully be of use for the Chamber in the near future. Clearing mass-claim cases is especially relevant for clearing the backlog in a fast and efficient manner. A positive development was the decision of the supervising judge to re-allocate two employees from the Registry to assist especially in privatisation cases concerning socially-owned enterprises with a large number of mass claims.

Recommendations:

- The Special Chamber of the Supreme Court should adopt a long-term strategy to clear the backlog. The strategy should, for example, establish priority criteria and identify the resources needed for clearing the backlog;
- The Special Chamber of the Supreme Court should initiate using templates for dealing with mass claims and appoint legal officers to conduct the relevant preparatory work;
- Recruitment of additional legal support officers should be considered;
- The criteria to apply for a position as SCSC judge (eight years of experience as Supreme Court judge) should be lowered, at least temporarily, in order to attract a larger number of eligible candidates.

3.4 Kosovo Property Agency Appeals Panel / property rights

After 14 June 2018, when EULEX ended its executive mandate and international judges left the Kosovo Property Agency Appeals Panel (KPA AP) at the Supreme Court of Kosovo, the cases could not be adjudicated anymore by that Panel. A solution to this impasse was found by the President of the Supreme Court who, on 28 August 2018, decided to assign two non-majority local judges to sit on rotational basis at the KPA AP. This enabled the Panel to continue adjudicating cases and diminish the number of appeals pending adjudication.

The Panel used to hold regular weekly sessions with around four cases scheduled for deliberation. In the period between September 2019 and mid-March 2020, 44 cases were decided, leaving the backlog of 39 appeals pending deliberation.

EULEX monitored several civil cases related to property rights, subject matter of which were issues like determination of ownership, illegal occupation, compensation, annulment of contract, fraudulent transactions, legalisation of false documents and eviction. The main problem identified in these cases is the excessive length of procedure due to different reasons. Some examples:

- A hearing in a case was scheduled more than five and a half years from the moment the claim was filed;
- The reply to a claim was filed after 11 years, and two years later the case was transferred to a different court;
- A case, in reply to the filing of the claim, was submitted after four years;
- A case initiated in 2002 was sent for retrial by the Court of Appeals in 2009. At the time of writing a retrial has not begun;
- In many cases judges change positions and move to other departments/courts and the cases are pending for a long time to be assigned or dealt with.

Positively, one of the monitored criminal cases related to property rights – regarding a fraudulent transaction and legalisation of false documents - was finalised and the court sentenced the accused for unconditional prison sentence.

It was also monitored that the court hearings are often adjourned for no plausible reason. For example, in one of the monitored cases the witnesses were called to testify three times and three times the court did not question them for reasons not related to the witnesses themselves. A serious issue which affects effective and timely proceedings concerns the translation of documents. The obligation of the court to deliver the documents to the party in the language he/she understands cannot be considered as fulfilled, as according to the staff of the courts and the judges, there are not enough interpreters/translators in the courts to translate for example procedural decisions. It was observed that in some cases a procedural decision has been idle for several months due to delays in translation which had an impact on the rights of the parties as it hampers them in undertaking further actions. Another aspect that influences the proceedings is the necessity to request an expertise: in some cases the expert kept the court file for more than a year without delivering the expertise and without being disciplined by the court.

In sum, due to the excessive length of proceedings in civil cases it cannot be considered that the right to a fair trial is guaranteed by the judiciary. Long-time inactivity in certain cases causes in the society an impression of not having access to legal remedy. In some of the monitored cases, the initial claimants waited in vain for having their cases resolved, but died without reaching the solution of the dispute by the court. Consequently, the heirs of those claimants could enter into the proceedings, but the decisions although rendered, and/or not being translated, are not served to the relatives of late claimants. This leads to conclude that the vicious circle of problems that the Kosovo judiciary is facing with regard to civil cases affects the relatives as well. Consequently, the right to protection of property is infringed due to the slow and inefficient judicial processes.³²

Recommendations:

- The court management should take necessary steps in order to tackle the problem of backlog of civil cases and the assignment of cases to judges, as well as monitoring regularly activities in the cases;
- Civil judges should be made aware that unreasonable length of proceedings affect the right to a fair trial and that there are provisions in the law on contested procedure that could be applied in order to reduce the length of proceedings.

3.5 Hate crimes

The Cooperation Agreement on Addressing Hate Crimes in Kosovo was adopted almost two years ago. It entails provisions and mechanisms aimed at enhancing inter-institutional cooperation and coordination between the Kosovo Police, the Ministry of Internal Affairs, the Kosovo Chief Prosecutor's Office and the Kosovo Judicial Council in order to address hate crimes in a better and more structured way. So far, the implementation of the Cooperation Agreement is far from satisfactory. The appointment of Hate-Crimes Coordinators in the Kosovo districts, which is one of the mechanisms foreseen in the Agreement, resulted in increased awareness for the specific aspects of processing these type of crimes, in particular in the Pristina region, but there has hardly been any progress in the implementation of other mechanisms envisioned in the Agreement, such as the establishment and functioning of a working group or the creation of a standardised database of disaggregated data on hate crimes.

³² Article 1 of Protocol 1 to the ECHR.

As part of the responsibilities of the Kosovo Police envisioned in the Cooperation Agreement, changes to the police incident report have been introduced so that it contains a specific *'hate crime box'* to identify potential cases in this area. This should help with the collection of proper statistics on bias motivation and bias indicators in order to establish the aforementioned standardised database of disaggregated data on hate crimes. EULEX could not yet verify the impact of this measure in practise but will encourage competent institutions to continue using these forms and to provide feedback as to whether these changes have a positive effect in terms of better identifying and processing cases in which a hate component is present.

According to civil society organisations, discrimination and violence against minorities in Kosovo continued to be an issue of concern, especially for the Roma, Ashkali and Egyptian communities, and women in particular, who continue to have difficulties in all spheres of life, including health care, social assistance, civic representation and education. Various Roma NGOs in Kosovo were concerned about the inaction of the institutions and the lack of resources allocated to these communities.

Two criminal cases involving Roma and Ashkali victims were monitored by EULEX, one related to the case of a Roma woman who was attacked in Lipjan/Lipljan and Ferizaj/Uroševac and the second one regarding the case of the rape and murder of a nine-year-old child in Fushë Kosovë/Kosovo Polje. These cases triggered ex-officio investigations by the Office of the Ombudsperson, who released two special reports, on 6 and 9 December 2019 respectively, providing a factual and legal analysis of the cases, as well as recommendations. It is noteworthy that some NGOs working with vulnerable communities expressed their discontent for not being consulted prior to the release of the reports.

Intolerance towards LGBTI persons is still widely spread and many LGBTI persons remain at risk of discrimination and violence. Human Rights activists are still being threatened publicly and on social media platforms. EULEX is monitoring cases currently under police investigation.

EULEX observed two encouraging developments in relation to rights of transgender individuals:

- On 24 October 2019, the Basic Court of Pristina granted the change of name of Blert Morina. The decision made clear that the General Administrative Department of Gjakovë/Đakovica Municipality has to accept a name change and a change of gender to be registered in the corresponding Civil Status Registries. Blert Morina is the first member of Kosovo's transgender community who initiated a case for the institutional recognition of gender change in Kosovo;
- The Kosovo Court of Appeals, on 2 August 2019, officially approved the request of a transgender citizen to change the name and gender marker in the Civil Status Registry.

There has been no major outcome in the investigations carried out regarding a number of incidents targeting religious sites and cemeteries that were reported in 2019, namely an attack on a Serbian Orthodox Church in the municipality of Prizren, on a mosque in the municipality of Ferizaj/Uroševac, the damaging of 19 tombstones in a Kosovo Serb cemetery in Lipjan/Lipljan and the desecration of 15 Muslim gravestones in Pristina. Related to graffiti in schools or public places posting military signs or political propaganda, investigations should determine whether these acts contain hate-crime elements.

EULEX monitored that incidents concerning religious sites, graveyards and insulting graffiti are often reported against unknown perpetrators and in most cases remain as such as the investigation of such incidents are not prioritised.

Recommendations:

- The parties to the Cooperation Agreement on addressing Hate Crimes in Kosovo (Ministry of Internal Affairs, Chief Prosecutor's Office, Kosovo Police and Kosovo Judicial Council) should undertake efforts to implement the provisions and establish the mechanisms foreseen in the Agreement in order to ensure inter-institutional cooperation and coordination in this field;
- In particular, more awareness is needed to the possibility of a crime being motivated by hate or bias;
- Incidents involving religious sites, graveyards and insulting graffiti should be investigated more vigorously;
- More efforts are needed to counter intolerance towards LGBTI persons, as many remain at risk of discrimination and violence;

3.6 Gender-based violence

In February 2019, the Constitutional Court of Kosovo had positively ruled on the request of the women's caucus group to amend the Kosovo Constitution to recognise direct applicability of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, also known as the Istanbul Convention. The Court found that the proposed amendment would strengthen the commitment of Kosovo towards the protection of human rights.

In April 2019, the new Criminal Code of Kosovo entered into force. It categorizes domestic violence as a criminal offence and rules that the fact that an offence was committed within a domestic relationship should be considered an aggravating factor. Following the entry into force of the Criminal Code, a working group was established to prepare amendments to the Law on Protection from Domestic Violence. The proposed amended law aims at regulating the position and financial sustainability of shelters for victims of domestic violence and at achieving formal recognition of the position of the National Coordinator on Domestic Violence and of the Municipal Domestic Violence Coordination Mechanisms. The new law should also broaden the power of police stations to issue emergency protection orders. In spite of advocacy efforts undertaken by civil society and international actors, no durable solution for the financial situation of shelters has been found.

A positive development of 2019 was the creation of the domestic-violence cases database. Relevant institutions are obliged to update the database with the necessary information from central and local levels, thereby enabling a better monitoring and, ultimately, prosecution and adjudication of domestic violence cases. While Kosovo Police has been leading the processes of inserting data in the database, other institutions (for example the Prosecution, Courts and Centres for Social Welfares) are still lagging behind, partly due to lack of training and of software.

Handling of gender-based violence cases

At police level, significant improvements have been noticed in the correct referral of alleged sexual violence cases to the chain of service providers, particularly to the Institute of Forensic Medicine for timely preservation of biological evidence. Other aspects remain problematic, such as the level of communication and cooperation between police and prosecution and the lack of resources, especially of sufficiently trained personnel. The police usually engages Victims Advocacy Officers and Centre for Social Welfare officials, but lacks effective knowledge concerning the use of a comprehensive victim-based approach in relation to victims interviewing, especially juvenile victims. Police officers still lack resources and appropriate training for collecting technological evidence (e.g. interception of phone conversations and messaging) which might be pivotal in investigation of gender-based violence cases, particularly sexual offences cases.

Sentencing practices in domestic violence cases

As mentioned above, the new Criminal Code of Kosovo has taken a landmark step in the criminalisation of domestic violence and in foreseeing the aggravating factor for any criminal offence carried out within a domestic relationship. International conventions, like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is applicable to Kosovo, and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, as well as the European Court of Human Rights, emphasise the obligation of the State to protect women and children against gender-based violence and to effectively deter and punish perpetrators.

In the cases monitored by EULEX, long-term sentences were imposed in aggravated murder cases, whereas in threat cases, in which the element of unauthorised possession of weapon was also present, imprisonments of 180 days replaced by a fine were imposed. In cases of light bodily injury and assaults, suspended sentences of either 150 or 180 days of imprisonment with a verification period of one year were imposed. Suspended sentence were imposed in all cases of violation of protection orders.

The cases of threats, bodily injury (whether grievous or light) and assaults were all considered and sentenced in conjunction with Art. 248.2 of the new Criminal Code, meaning as aggravated offences.

It is evident that, while long sentences were imposed in aggravated murder cases, the other aggravated offences received either low sentences, sometimes even below the foreseen range, or suspended sentences with the minimum verification period of one year, although the Criminal Code provides for up to two years verification periods (see Art. 48 (2) of the Criminal Code). The aggravating circumstances were thus hardly taken into account, or were completely counterbalanced by the mitigating factors, whereas the detailed reasoning for such sentencing was seldom provided, with courts often using the formulation ‘the court considers the sentence fair’, without providing any reference to the circumstances which had been considered more than others. Additionally, in many domestic-violence cases, which include the use or possession of weapons, this element is often not considered an aggravating factor, although prescribed by the Criminal Code, and when sentencing possession of weapons offences, courts mostly opt for the lenient imposition of a fine.

Recommendations:

- Efforts should be undertaken to adopt the amended Law on Protection from Domestic Violence; this process should consider proposals and comments coming from the relevant civil-society actors; special attention should be given to ensuring the position and financial sustainability of shelters;
- All relevant institutions should contribute to the domestic-violence cases database as foreseen; the technical and human resources needed for the accomplishment of this task should be made available;
- Communication and cooperation between police and prosecution should be improved;
- Police should be better trained and equipped to be able to implement a comprehensive victim-based approach in victim interviewing and perform adequate collection of technical evidence;
- The provisions in the new Criminal Code pertaining to domestic violence should be fully taken into consideration by the courts; this applies in particular to the aggravated factor of criminal offences when conducted in domestic environments and to the provision of a detailed reasoning for sentences in which the aggravated factors are outbalanced by mitigating ones.

Annex I – List of Recommendations

Annex II – List of Monitored and Referenced Cases

ANNEX I – LIST OF RECOMMENDATIONS

Systemic Monitoring

Productive vs. Unproductive Court Hearings

- The accountability of court management should be increased:
 - Judges should report regularly on the number of unproductive hearings and what measures were taken, if applicable. If no measures were taken while this would have been possible, a justification should be provided;
 - Prosecutors should be held accountable if they are the cause for an unproductive hearing by, for example, not being prepared or unjustifiably absent;
 - Judges should apply punitive and disciplinary measures available to them in the Criminal Procedure Code.

Some progress in the pace of adjudicating high-profile cases

- The courts should ensure that trials are not unduly delayed.

Functioning of the Special Department in the Basic Court of Pristina

- Increase the number of judges in the Special Department at first instance and appeal level in line with legal provisions on ethnic diversity as foreseen in the law and in the Regulation on the Organisation and Functioning of the Special Department within the Basic Court of Pristina and Court of Appeals;
- Recruit additional support staff such as professional associates and legal officers;
- Set up the necessary equipment to allow for the examination of witnesses under protective measures at the Palace of Justice in Pristina;
- Increase the number of Albanian/Serbian translators.

Prosecution of terrorism cases

- Considering the swift dispensation of justice in the monitored terrorism cases, and the general low/suspended sentences, it appears that the complex and difficult burden of managing future potential risks associated with the returnees falls mainly on the shoulders of the police. The outcome of this should be closely monitored by the Kosovo rule of law institutions.

Re-trial policy within the Kosovo justice system

- The Court of Appeals should make better use of the possibility as provided for in the Kosovo Criminal Procedure Code to hold hearings, take new evidence or confirm the existing evidence, in order to properly determine and assess the material fact, aimed at avoiding the unnecessary annulling of judgements and returning cases for retrial;
- The new draft Kosovo Criminal Procedure Code defines the procedure of re-trial as an exceptional one, only to be used in specific cases. This should be a further incentive for the appellate courts to refrain from the unnecessary returning of cases for retrial;
- The quality of judgments should be improved, with a specific focus on the need to better harmonize the enacting clauses and the reasoning of the judgments.

Case allocation in re-trial proceedings

- The Kosovo Judicial Council should evaluate the current judicial practise and its implications and if deemed appropriate, decide to issue a guidance decision or interpretation, or otherwise undertake the necessary legal action with a view to providing a consistent interpretation and application of the relevant provisions, in order to ensure that the impartiality and independence of the judiciary is preserved and consolidated.

Cross-examination

- Judges should be more assertive in safeguarding the lawful application of the rules of cross-examination over the course of main trials, but it has to be underlined that the parties also have their own responsibility in the proper implementation of cross-examination;
- Initiatives to improve the quality of cross-examination in main hearings could include:
 - Design of online courses with ad-hoc guidelines and practical advice regarding cross-examination aimed at legal practitioners, developed either by the Kosovo Prosecutorial Council and/or the Kosovo Bar Association, and available to law professionals for free;
 - Publishing a handbook on cross-examination for law practitioners written by a wide range of law professionals, primarily by those actively involved in criminal trials (e.g. judges, prosecutors, defence counsels);
 - Implementing activities with the intention to raise awareness of cross-examination (e.g. emphasising cross-examination education in law schools, increasing the number of targeted questions on cross-examination during Bar Examinations; organising moot court competitions for law students and young lawyers.).

Announcement of criminal judgements in first instance

- There is a need for a more effective training of the judges. Professional forum discussions between judges of various instances may also effectively address this concern.

Detention on remand

- Prosecution requests for imposing detention on remand and respective Court rulings should be reasoned with concrete facts in a way that the defendant is able to comprehend the decision;
- In case the conditions for imposing a security measure are met, the most lenient one should be ordered and detention on remand should be the last resort;
- Importantly, it should be taken into account that Kosovo Correctional Service officers are detained not only in the same facility in which they work, but actually in cells with inmates that they had to guard before. Such a situation is potentially hostile. It is a risk to the safety of the correctional officers and might moreover have a psychological effect on them. In one case, the correctional officers were initially even still wearing their official uniforms when being detained.

Confiscation and temporary confiscation of assets

- Initiate the implementation of the Law of Extended Powers on Confiscation of Assets and to use more often the possibility of sales of assets.

Thematic Monitoring

Anti-corruption

- Cooperation between police and prosecution in anti-corruption and serious financial crime cases of particular sensitivity, such as those involving politically exposed persons, needs to be improved;
- While many investigations were conducted professionally, complex financial investigations would benefit from a more vigorous investigation. Not all available leads are always explored, such as key financial schemes and corporate records;
- The “follow the money” principle needs to be strengthened when investigating money laundering and financial crimes;
- To strengthen the Kosovo Police Anti-Corruption Task Force as a key player in the area of anti-corruption detection and investigations.

Crimes under international law

- The Kosovo Police has to make efforts to continue the investigation and analysis of all categorised high-priority war crimes cases;
- Cooperation between the SPRK War Crimes Department and the Kosovo Police needs to be improved;
- The SPRK War Crimes Department should be expanded;
- Kosovo authorities are encouraged to seek ways to improve regional cooperation in the investigation of high priority war crimes cases, especially with Serbia, where many suspects and witnesses reside.

Privatisation and liquidation

- The Special Chamber of the Supreme Court should adopt a long-term strategy to clear the backlog. The strategy should, for example, establish priority criteria and identify the resources needed for clearing the backlog;
- The Special Chamber of the Supreme Court should initiate using templates for dealing with mass claims and appoint legal officers to conduct the relevant preparatory work.
- Recruitment of additional legal support officers should be considered;
- The criteria to apply for a position as SCSC judge (eight years of experience as Supreme Court judge) should be lowered, at least temporarily, in order to attract a larger number of eligible candidates.

The Kosovo Property Agency Appeals Panel

- The court management should take necessary steps in order to tackle the problem of backlog of civil cases and the assignment of cases to judges, as well as monitoring regularly activities in the cases;
- Civil judges should be made aware that unreasonable length of proceedings affect the right to a fair trial and that there are provisions in the law on contested procedure that could be applied in order to reduce the length of proceedings.

Hate crimes

- The parties to the Cooperation Agreement on addressing Hate Crimes in Kosovo (Ministry of Internal Affairs, Chief Prosecutor's Office, Kosovo Police and Kosovo Judicial Council) should undertake efforts to implement the provisions and establish the mechanisms foreseen in the Agreement in order to ensure inter-institutional cooperation and coordination in this field;
- In particular, more awareness is needed to the possibility of a crime being motivated by hate or bias;
- Incidents involving religious sites, graveyards and insulting graffiti should be investigated more vigorously;
- More efforts are needed to counter intolerance towards LGBTI persons, as many remain at risk of discrimination and violence;

Gender-based violence and domestic violence

- Efforts should be undertaken to adopt the amended Law on Protection from Domestic Violence; this process should consider proposals and comments coming from the relevant civil-society actors; special attention should be given to ensuring the position and financial sustainability of shelters;
- All relevant institutions should contribute to the domestic-violence cases database as foreseen; the technical and human resources needed for the accomplishment of this task should be made available;
- Communication and cooperation between police and prosecution should be improved;
- Police should be better trained and equipped to be able to implement a comprehensive victim-based approach in victim interviewing and perform adequate collection of technical evidence;
- The provisions in the new Criminal Code pertaining to domestic violence should be fully taken into consideration by the courts; this applies in particular to the aggravated factor of criminal offences when conducted in domestic environments and to the provision of a detailed reasoning for sentences in which the aggravated factors are outbalanced by mitigating ones.

ANNEX II – LIST OF MONITORED AND REFERENCED CASES

Following its establishment in 2008, EULEX was given an executive mandate, which means 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. As of June 2018, EULEX no longer had this mandate and transferred the cases to local judicial authorities. Cases mentioned in this report, which were dealt with by EULEX during its executive mandate, are referred to as Former EULEX Cases.

Former EULEX Cases

Olympus I Case (PKR 610/2016), also known as the “Land Case”

On 24.10.2016, the Prosecution filed an indictment before the Basic Court of Pristina against Azem Sylja 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 Kosovo Privatisation Agency. 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.

Grande Case (PKR 305/2016)

On 16.12.2016, 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 are accused of organisation of and participation in a criminal group, smuggling of migrants, and unauthorized ownership, control or possession of weapons. Factually 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 Presiding Judge severed the case, in July 2019, in two separate ones, Grande I with five defendants, including Ukë Rugova, and Grande II with 15 defendants. From then on, the court regularly conducted sessions in Grande I, until the COVID 19 related lockdown in mid-March 2020. The Grande II Case was quite active starting January 2020 until the lockdown.

Hospital Escape Case (PKR 685/2016)

On 17.11.2016, the Prosecution filed charges before the Basic Court of Pristina against defendants Emrush Thaqi, Sami Lushtaku and others, who are 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”. Several attempts to hold the initial hearing were made but they were adjourned, in some of them due to alleged health issues of key defendant Sami Lushtaku. The fourth attempt was successful and the initial hearing finally took place on 06.12.2017 The motion by the defendants

to dismiss the indictment was not successful and the Court of Appeals confirmed the indictment on 15.06.2018 and sent it back to the Basic Court of Pristina for main trial. 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 20.02.2020, the court, aiming to speed up the procedure, decided to sever the proceedings against six of the defendants (Rrustem Rrukolli, Fatmir Mjaku, Rexhep Xhota, Skender Tahiri, Sheremet Jashari and Bajram Dibrani) in relation to the counts of intimidation of witnesses. In this case the criminal offence of "Escape of persons deprived of liberty" for the three main defendants (Sami Lushtaku, Sahit Jashari and Ismet Haxha) is to reach the statutory limitation on 23 May 2020.

Olympia Case (PKR 236/2017)

On 21.07.2017, the Prosecution filed an indictment before the Basic Court of Pristina against Alban Dezdari (in detention on remand since 07.07.2017) 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 March 2004 in Podujevë/Podujevo with other four perpetrators, including witness Shkumbin Mehmeti, who was already sentenced in another trial for this murder, on 09.11.2007, to 30 years of imprisonment. From April 2019 the court regularly conducted sessions until the COVID 19 related lockdown in mid-March 2020. Since then the case is inactive.

City Club Case (P 100/2018)

On 21.07.2017, the Prosecution filed an indictment against Granit Elshani (in detention since October 2016) before the Basic Court of Pejë/Peć. He is 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 30.05.2018, 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 16.10.2018, the Court of Appeals (PAKR 434/2018) annulled the first instance judgment. The retrial commenced in January 2019. Since then the court conducted sessions regularly until the COVID 19 related lockdown in mid-March 2020.

Emin Krasniqi Case (PKR 591/2016)

On 28.06.2011, the Prosecution filed an indictment before the District Court of Prizren (P 176/2011) against the defendants Emin, Durim, Berat, Astrit and Hazir Krasniqi. They were accused of having been involved in a shoot-out with members of the Limaj family in a restaurant, in the course of which they allegedly injured Azem and Ilir Limaj and killed Skender Limaj. On 13.08.2012, a mixed panel of one local and two EULEX judges found all accused guilty and sentenced Emin Krasniqi to 23 years in prison, Berat Krasniqi to 7.5 years in prison, while Astrit Krasniqi and Hazir Krasniqi were sentenced to 2 years in prison each and Durim Krasniqi to one year. On 24.10.2013, the Court of Appeals annulled the judgment and ordered that detention on remand continued only for Emin and Berat Krasniqi. The retrial started on 06.02.2014 (P

372/2013). In this first retrial, the Basic Court of Prizren, on 21.04.2016, found Emin Krasniqi guilty of “Aggravated murder” and sentenced him to 22 years in prison, while Hazir Krasniqi was sentenced to five years imprisonment for “Assisting aggravated murder”. Berat Krasniqi was sentenced to three years for “Grievous bodily harm” and “Unauthorised ownership, possession and control of firearms”. The other two defendants were acquitted. Following an appeal by the defendants, the case was sent back and the second retrial started on 14.12.2018. The main defendant, Emin Krasniqi, has been in detention on remand for over eight years now, which raises concerns in relation to the rights of the defendant. In March 2019, the court rejected his request for termination of the detention on remand and its replacement by bail in the amount EUR 100,000 and house detention. This case has not had any hearing since the court ordered a new expert examination in April 2019.

Naser Kelmendi Case (PKR 32/2019)

On 04.07.2014, 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 01.02.2018, the court found the defendant guilty of the criminal offense of “Unauthorised possession, distribution or sale of narcotics” and sentenced him to 6 years of imprisonment and acquitted him of all other charges. Both parties appealed against the verdict. On 02.08. 2018, the Court of Appeals sent the case for retrial limited to the criminal offence of “Unauthorised possession, distribution or sale of narcotics”, upheld the acquittal by the Basic Court of the other charges and ordered the termination of the detention of Naser Kelmendi. On 06.11.2019, more than one year after this decision by the Court of Appeals, the initial hearing of the retrial took place with the second hearing conducted on 29.12. 2019. 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.

Olympus II Case (PKR 611/2016)

On 24.10.2016, 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 03.02.2020, 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 17.03. 2020 was suspended due to the pandemic situation.

Land 4 Case (PKR 130/2016)

On 24.10.2016, the Prosecution filed an indictment before the Basic Court of Pristina against 24 persons, including 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. On 26.10. 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.

Medicus Case (PKR 315/2018)

On 15.10.2010 and on 20.10.2010, the Prosecution filed two indictments before the Basic Court of Pristina (joined into a single one in November 2010) against seven individuals alleging 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 the urologist Lutfi Dervishi, who owned the clinic, and his son, Arban Dervishi, who managed it. On 29.04.2013, 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 them to imprisonment of eight years (Lutfi Dervishi) and seven years and three months (Arban Dervishi). Another defendant in the case, Sokol Hajdini, the clinic's chief anaesthesiologist, was sentenced to imprisonment of three years. On 06.11.2015, the Court of Appeals (EULEX majority panel) confirmed the verdict.

On 08.03.2016, Arban Dervishi and on 05.04.2016, Lutfi Dervishi filed requests for the protection of legality against the Court of Appeals' verdict. On 07.03 2016, Sokol Hajdini also filed an appeal against the same Court of Appeals' judgment.

On 20.09.2016, the Supreme Court (EULEX majority panel), acquitted the defendant Sokol Hajdini on charges of organised crime, and found him guilty of the criminal offence of grievous bodily harm. On 15.12.2016, the Supreme Court, with a panel now composed of a majority of local judges, issued the decision on the requests for protection of legality filed by Arban and Lutfi Dervishi, by a vote of two to one, with the two Kosovo judges in the majority and the EULEX judge dissenting. Their decision annulled the convictions concerning Lutfi and Arban Dervishi and Sokol Hajdini and sent the case back to the Basic Court for a retrial. The other defendants had either been acquitted or the charges had been rejected (the Court of Appeals judgment of 06.11.2015). On 11.01.2017, 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 24.05.2018, 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, a fine of EUR 8.000, and a prohibition of exercising the profession of urologist for the 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 06.11.2018, the Court of Appeals (all local judges), deciding on the appeals of defendants Lutfi Dervishi and Sokol Hajdini against the judgment of the Basic Court of Pristina (PKR 11/2017) of 24.05.2018, annulled the verdict and sent the case anew for a second retrial. The court however ruled that Lutfi Dervishi had to stay in detention on remand as the grounds for it had not ceased to exist. The judgment of Sokol Hajdini was annulled since the crime had reached the absolute statutory limitation. Arban Dervishi, who had been hiding outside of Kosovo, reached an agreement with the authorities during 2019, in the course of which he returned to Kosovo and in turn, the international arrest warrant against him was suspended.

Currently the case is in second retrial at the Basic Court of Pristina against the defendants Lutfi and Arban Dervishi. The next hearing was scheduled for 27.10.2020.

Touareg Case (P 176/2015)

On 23.10.2015, 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 Basic Court.

KEK Case (PKR 18/2015)

On 10.01.2015, the Prosecution filed an indictment before the Basic Court of Pristina against seven defendants, including former Skenderaj/Srbica mayor Sami Lushtaku. The defendants were charged with allegedly committing the criminal offense of "Abuse of official position or authority", "Fraud", "Falsifying documents" and "Entering into harmful contracts". The alleged perpetration of the mentioned criminal offences led to the unlawful awarding of tendered services to a company affiliated with Sami Lushtaku, thus causing the KEK a total damage of EUR 6,182,609.76. The main trial was substantially extended due to the absence of Sami Lushtaku, allegedly on medical grounds. On 20.05.2019, the main trial panel announced the verdict, acquitting all defendants of the charges brought against them in the indictment. On 30.09.2019, the Prosecution appealed the Basic Court decision. The decision of the Court of Appeals is still pending.

Former EULEX War Crimes Cases

Drenica I Case (PKR 74/2018)

On 06.11.2013, 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 27.05.2015, the first instance court acquitted the defendants Sabit Geci, Ismet Haxha, Sahit Jashari and Avni Zabeli, which was confirmed in second instance by the Court of Appeals on 15.09.2016. 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 Court of Appeals of 15.09.2016. Later, together with Sylejman Selimi, he was also acquitted on the remaining count of "Command responsibility" by the Supreme Court judgement of 03.07. 2017, after which he was released. That judgment of the Supreme Court in the Drenica I case confirmed the conviction by the Court of Appeals of 15.09.2016 of Jahir Demaku (who in first instance had been acquitted but following an appeal by the prosecution was found guilty by the Court of Appeals) 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 11.06. 2018, the Supreme Court sent the case for retrial to the Basic Court of Mitrovica (after the Constitutional Court judgement of 07.06. 2018 had overturned the Supreme Court judgement of 19.07. 2017 in relation to 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 24.10. 2018 and 25.01. 2019. Following the creation of the Special Department at the Pristina Basic Court, the Mitrovica Basic Court sent the case to the Special Department at the Pristina Basic Court, 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 Basic Court of Mitrovica had already started the adjudication of this case and should therefore complete it. On 06.11.2019, two panel members of the trial panel in the Basic Court of Mitrovica were appointed but the initial hearing scheduled for 26.12.2019 was postponed until 25.03.2020, following a request of the prosecutor. Due to the pandemic-related restrictions, the hearing of 25 March did not take place.

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 01.04.1999, 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 indictment was confirmed by the Basic Court of Pristina and the first instance trial is currently in the phase of interrogation of witnesses.

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. On 21.05.1999, the defendant allegedly 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 is currently in the phase of interrogation of witnesses.

Goran Stanišić Case (PPS 14/2018)

In 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.

The indictment was confirmed by the Basic Court of Pristina and the first instance trial is currently in the phase of interrogation of witnesses.

Darko Tasić Case (PKR 35/2018)

On 26.04.2018, 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 Court of Appeals, which is expected to either mitigate the punishment or send the case back to the Basic Court for retrial.

Remzi Shala Case (P 181/2016), also known as the “Mollakuqe 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 5-6 other unidentified KLA members, abducted and killed Haxhi Perteshi on 26.06.1998.

On 03.07.2019, 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 Court of Appeals.

On 26.11.2019, the Court of Appeals partially approved the appeal and amended the judgment of the first instance and sentenced the defendant to 10 years of imprisonment for having committed war crimes against civilians. The other part of the judgment remained unchanged, while the appeal of the injured party was rejected as ungrounded.

The defendant's legal 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 02.03.2020, the Supreme Court 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.

Non EULEX Cases

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

On 26.05.2016, the Prosecution filed an indictment against Gani Rama in 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 13.02.2017, the Basic Court acquitted the accused on the grounds that it was not possible to prove that he had committed the criminal offence for which he was charged. This decision was appealed by the Prosecution and the Court of Appeals returned the case for retrial to the Basic Court. On 09.02.2018, 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 01.11.2018, the Court of Appeals approved the appeal and

returned the case to the Basic Court 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 07.11.2019, the second retrial at the Basic Court of Gjakovë/Đakovica commenced, after the court had merged the case 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 now merged trial, regular sessions were conducted until the COVID 19 related lockdown in mid-March 2020.

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 abuse of official position or authority. The defendants were Agim Çeku, Nuredin Lushtaku, Sadik Halitjaga, Shkumbin Demaliaj, Qelë Gashi, Shukri Buja, Ahmet Daku, Rrustem Berisha, Faik Fazliu, Smajl Elezaj, Fadil Shurdhaj and Xhavit Jashari. They were charged with enabling some 20.000 persons to receive veterans pensions based on false claims of KLA membership, causing a damage to the Kosovo budget in the amount of EUR 68,153,533.14. Prosecutor Elez Blakaj, who had drafted the indictment, fled from Kosovo in August 2018, allegedly due to received threats. The main trial is ongoing, yet several court sessions were cancelled due to the pandemic situation.

Pronto Case (PKR 90/2018)

On 06.04. 2018, the Prosecution filed an indictment before the Basic Court of Pristina with charges of “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 15.11. 2018. On 31.05.2019, the Court of Appeals confirmed the indictment, after complaints had been filed by all defendants. Numerous clashes between the prosecutor and presiding judge occurred during the court proceedings. The last hearing with the closing statements took place on 30.12.2019 and on 03.01.2020, all defendants were acquitted as the court considered that it had not been proven that the accused had committed the acts with which they were charged. The Prosecution appealed the judgement in March 2020.

People’s Eye Case (PKR 46/2018)

On 27.02.2018, the Prosecution filed an indictment before the Basic Court of Pristina against Sadri Ramabaja, Murat Jashari, Ragip Sallova, Avni Llumnica, Sabit Berisha, Bexhet Luzha, Halim Halimi, Bajrush Konjusha, Lirije Luzha and Rexhep Topllana. They were charged with retaliation, preparation of terrorist or criminal offenses against the constitutional order and security of the Republic of Kosovo, with aggravated attempted murder and other criminal offenses. This group had allegedly issued a list of Kosovo Albanians who should be executed as traitors. Former high-level communist official, Azem Vllasi, survived an assassination attempt by the alleged member of the group, Murat Jashari, in March 2017. Three defendants are in detention, while one is under house arrest. Defendant Jashari is in detention at the medical facility due to his severe mental illness. In January 2020, all but two defendants were found guilty. The key defendants received the following imprisonment sentences: Avni Llumnica 12 years; Sadri Ramabaja 5 years; Murat Jashari 10 years. The first instance trial is completed while the appellate procedure is pending on the appeals filed by the defendants found guilty by the Basic Court.

3 % Case (P 2022/2017)

On 28.4.2017, the Prosecution filed an indictment against Bujar Bukoshi, Naser Osmani and Atdhe Gashi. The defendants allegedly embezzled money related to the budget concerning the “3% donations” (a voluntary contribution, mainly by diaspora Kosovars in support of Kosovo during the 1990s) for Kosovo during the period 2006-2015 (Bujar Bukoshi allegedly around EUR 91.000; Naser Osmani and Atdhe Gashi together around allegedly EUR 154.000). On 30.11.2018, the Prosecution, following a request by the court, amended the indictment by presenting further clarification on the matter of facts concerning Bujar Bukoshi. The case against Bujar Bukoshi was then separated due to a serious medical condition, as he is being treated abroad. On 03.12.2018, the court dismissed Naser Osmani’s and Atdhe Gashi’s request to dismiss the indictment. The Court of Appeals rejected their appeals on 17.01.2019. On 15.08.2019, the trial commenced with regular sessions until end-October 2019. Since then, no further sessions were conducted as the ordered expert opinion is pending.

Transport Case (PKR 147/2016)

On 30.11.2016, the Prosecution filed an indictment before the Basic Court of Mitrovica against 21 defendants charged with leadership and participation in an organised criminal group, avoiding payment of mandatory customs fees, smuggling of goods (mostly fuel and cigarettes between Kosovo and Serbia), prohibited trade, and tax evasion, all in co-perpetration. Seven defendants out of 21 were also indicted for illegal possession of weapons. Some defendants are owners of gas stations in north Kosovo. The main trial started in mid-2018. It experienced long delays ever since. New expertise report was ordered to determine the amount of damages to the state budget. Currently, the main trial is in the phase of presentation of evidence.

Pal Lekaj Case (P 4668/2018)

On 22.02.2016, the Prosecution filed an indictment before the Basic Court of Pristina against Pal Lekaj and five other defendants for the criminal offence of unauthorised possession/using of weapons and obstructing official persons in performing their duties. The charges concern the use of tear gas during a plenary session of the Kosovo Assembly and subsequent obstruction of official persons in performing duties in the Assembly on 14.12. 2015. The case was later transferred from the Serious Crimes Department (former PKR 108/2016) in the Basic Court to the General Department (P 4668/2018) and has thus far experienced no activities.

Frashër Krasniqi et al. Case (PKR 70/2018), also known as „Tear Gas Case”

In December 2016, the Prosecution filed an indictment before the Basic Court of Pristina against Frashër Krasniqi, Atdhe Arifi, Egzon Haliti and Adea Batusha. They were charged with terrorism in relation to the attack with an RPG on the Kosovo Assembly on 04.08.2016, which caused damage to the building and to cars parked in the vicinity. On 17.11.2017, the court found the defendants guilty of co-perpetration of the criminal offence of terrorism and sentenced them to imprisonment ranging between two and eight years. Upon the appeal of all parties (both the defendants and the Prosecution), the Court of Appeals, on 26.02.2018, annulled the judgment and sent the case back for retrial. On 04.03.2020, the first session of the retrial in this case had to be postponed immediately, as the defense counsel, Tomë Gashi, requested the dismissal of the presiding judge, claiming he was biased. He mainly reasoned this by referring to the first instance judgement, in the course of which the presiding judge had allegedly, “deliberately or accidentally” failed to consider exculpatory evidence. A week later, the President of the Basic Court rejected that request. The case is now awaiting a new start.



 www.eulex-kosovo.eu

 [@eulex.kosovo](https://www.facebook.com/eulex.kosovo)

 [@eulexkosovo](https://twitter.com/eulexkosovo)

 [eulexkosovo](https://www.youtube.com/eulexkosovo)