COURT MONITORING REPORT 2016

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Introduction

For the tenth year in a row, the Balkan Investigative Reporting Network (BIRN) and Internews Kosova (I/KS) continued to monitor all levels of the judicial system in Kosovo.

This report will have a particular focus on pre-detention cases, but will also deal with other problems observed during the work of the monitors in the field.

More concretely, the report will contain thorough analysis with concrete recommendations on topics such as:

- Negotiation of a plea deal,
- Mediation as an alternative form of resolving cases in the judiciary,
- Applying community service sentences for the common good,
- Indictments overruled in the second trial,
- Information Offices and Transparency, and
- Analysis of the shortcomings of the Inheritance Law in Kosova.

Furthermore, the report will shed light onto procedural violations of the defendant's right to be informed in their native language, lack of order during the trial, lack of factual statements in the court session minutes, lack of removal of witnesses from the courtroom, invitations not being properly sent out by the court, lack of preparation of prosecutors for trials, scheduling two court hearings at the same time, trials held without full composition of the trial panel, changes regarding witness statements, lack of respect of the legal deadlines, unnecessary postponements of court hearings, and technical problems during court hearings.

Additionally, the report will provide data to the public on the transparency and accountability of the institutions of Police, Prosecution, and Courts of Kosovo. This report has also gone back to concrete data of technical violations from the monitoring of 686 court hearings.

Lastly, the report will provide concrete recommendations for the relevant institutions that are involved in the work of the judiciary in Kosovo.

Methodology

For the compilation of this report, a variety of methods were used depending on the depending on the relevant topic or chapter, including direct observation, analysis, comparison, and statistical scrutiny..

The direct observation of the work of the Courts is based in the monitoring of 686 court hearings during 2016. Cases observed were of varying natures, with a special focus on cases related to pre-detention.

During 2016, our monitoring team covered all court levels in Kosovo (the seven basic courts and their branches, the Court of Appeals and the Supreme Court).

Court were monitored in the following municipalities: Prishtina, Prizren, Peja, Mitrovica, Gjilan, Ferizaj, Vushtrri, Skenderaj, Drenas, Kacanik, Viti, Podujeva, Rahovec, Suhareka, Klina, Istog, Gjakova, Deçan, Dragash, Lipjan, Kamenica, Novo Brdo and Malisheva.

Since BIRN and I/KS began its court monitoring project in 2008, 10,482 hearings have been monitored, thus creating a powerful database that enables comparative analysis and trend measurements of the progress achieved.

Table with the total number of court cases monitored:

2008/2009	2009/2010	2010/2011	2011	2012
513 HEARINGS	**1,248** HEARINGS	**2,147** HEARINGS	**2,525** HEARINGS	**1,441** HEARINGS
2013	2014	2015	2016	TOTAL 10,481 HEARINGS
820 HEARINGS	**501** HEARINGS	**600** HEARINGS	**686** HEARINGS	

TREATING PRE-DETENTION AS A PROBLEM IN KOSOVO COURTS

During 2015-2016, BIRN and I/KS court monitors placed a special focus on cases related to preliminary procedures as well as main trials that dealt with people suspected of criminal offences held in pre-detention.
BIRN and I/KS's 2015-2016 court monitoring had a special concentration on cases regarding pre-detention, assessing it as the most important kind of case of the criminal procedure, as it directly touches upon the fundamental human rights and freedoms guaranteed in European conventions.
The European Convention on Human Rights (ECHR) has placed particular importance on the pre-detention measure in order for judicial bodies to weigh in accordingly, to the extent necessary, about considerations around decisions on pre-detention rulings. According to the ECHR: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."[1] The local applicable legislation similarly establishes that "No one shall be deprived of his or her liberty, save in such cases and in accordance with such proceedings as are prescribed by the law."[2]
In Kosovo's Criminal Procedure Code, there are nine measures foreseen that can be used to ensure the presence of the defendant, to prevent re-offending and to ensure successful conduct of the criminal proceedings.[3] In deciding which measure to apply, the court shall be obliged to take account of the conditions specified for the individual measures and to ensure that it does not apply a more severe measure if a less severe measure would suffice. Detention is listed as the very last one of the measures foreseen to ensure the presence of the defendant in the proceeding, but in practice, it usually is the first and only measure used.

BIRN and I/KS (hereinafter the Report) have noticed that in some cases, the prosecutors have not been able to prove reasonable suspicion that the defendant committed the criminal offence, while they have only paraphrased the provisions of the Criminal Procedure Code without relating it to the specific circumstances of the case and without basing it on concrete arguments that prove that the detention of the defendant is truly necessary.

Apart from monitoring concrete cases, during the research we have also requested the opinions of those enforcing the judicial practice such as judges, prosecutors and lawyers. Bearing in mind the desire of every lawyer to win the case, especially when it comes to pre-detention, their opinions are that in the majority of the cases, the State Prosecutors bases their requests for detention on three main grounds established by the Kosovo Criminal Procedure Code (KCPC).[4] This is done in order to reach the goal of getting the order for detention on remand, while it is clear that in reality only one or none of the measures to order detention have transpired. However, in their inability to fully argue the request to order detention on remand, prosecutors in the majority of cases also use other grounds to secure the order for detention on remand, such as: 1.1. There is a grounded suspicion that such person has committed a criminal offence; 1.2. One of the following conditions is met: 1.2.1. He or she is in hiding, his or her identity cannot be established or other circumstances indicate that there is a danger of flight; 1.2.2. There are grounds to believe that he or she will destroy, hide, change or forge evidence of a criminal offence or specific circumstances indicate that he or she will obstruct the progress of the criminal proceedings by influencing witnesses or injure parties or accomplices; or 1.2.3. the seriousness of the

1 European Convention on Human Rights. Article 6, paragraph 2.
2 Please see Article 12, paragraph1 of the KCPC.
3 Please see Article 173 of the KCPC.
4 Please see Article 187, paragraph 1 of the KCPC.

criminal offence, or the manner or circumstances in which it was committed and his or her personal characteristics, past conduct, the environment and conditions in which he or she lives, or other personal circumstances indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit.

In practice, unfortunately the prosecution rarely requests the application of any other security measure to ensure the presence of the defendant in the proceeding. Almost all the requests are to order the detention on remand.

On the other hand, the lawyers—in the majority of the cases when they believe there is sufficient proof that their client may have committed a criminal offence—prefer house arrest, as this measure counts towards the overall conviction in the end. However, the lawyers say that the decision typically depends on the request of the prosecutor, despite the right to equality of parties.[5] According to them, the Court still gives priority to the requests of the prosecutors in the majority of cases, regardless of the reasonability. In the opinions given for this report, judges also stated that when it comes to ensuring the presence of the defendant in the proceeding, the prosecutors usually request the detention on remand instead of requiring other measures.

Judges say that prosecutors base their requests only on the points of the Criminal Procedure Code, while bypassing the fact that each case has its own particular characteristics that should be well justified. In their opinions, judges say that they rarely refuse the proposals of the prosecutors to order detention on remand, even when they are not justified well, and the biggest burden falls upon judges themselves, as they have to justify the decision.

On the other hand, prosecutors complain about lack of updates on the side of the Police with the Prosecution, in regards to the 24 hours deadline after the arrest of a suspect of a criminal offence.[6]

The KCPC foresees that within twenty four (24) hours of the arrest, the state prosecutor shall file with the pre-trial judge a request for detention on remand.[7] Prosecutors state that in practice they often see a lack of updates by the Police in regards to the detainees by the Prosecutor, as Police file their criminal charges to the Prosecution only just a little bit before the 24 hour deadline passes to file the request to the pre-trial judge and they say that the criminal charges in most cases are presented to the prosecutors with vague proof.

Prosecutors say that there are many cases when the Police files criminal charges only two hours before the 24 hour deadline passes, a period within which the Prosecutor is obliged to file the request for detention on remand to the pre-trial judge. According to prosecutors, this affects the lack of adequate justification of proposals for detention on remand, and in some cases, according to them, the Court rejects the prosecutors' requests or drops them as ungrounded.[8]

During the monitoring of the detention cases, monitors found many irregularities, which are listed in four points:

a) delays related to criminals charges from police to prosecution;

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5 According to Article 9 of the KCPC, the defendant and the state prosecutor shall have the status of equal parties in criminal proceedings.
6 See pages 7, 8 and 9 of this report.
7 See article 164 paragraph 7 of the RKCC.
8 See pages 8, 9 and 10 of this report.

b) failure to justify decisions on ordering detention on remand by the prosecution, as well as the pre-trial judges;

c) long duration of detention of defendants while awaiting trial and

d) lack of respect of judicial deadlines for scheduling the first proceeding and the second proceeding.

For all the above-mentioned points, BIRN and I/KS took concrete examples to elaborate the situation in the field.

Delays on filing criminal charges

The report, during the monitoring of cases in detention, regards the issue of delays on filing criminal charges by the police to the prosecution as a main concern.

According to the Republic of Kosovo Criminal Code, RKCC, as soon as the police obtain reasonable suspicion that a criminal offence prosecuted ex officio has been committed; the police have a duty to provide a police report within twenty four (24) hours to the competent state prosecutor, who shall decide whether to initiate a criminal proceeding. [9]
Also, the Criminal Code foresees that within 24 hours after the arrest, the state prosecutor should file the request for detention to the judge of the previous procedure.[10]

In order for prosecutors to draft well-justified requests for detention, they should, within this period of 24 hours, accept the criminal charges from the police. This should be done as soon as possible so that the prosecutor's requests for scheduling the determination of the suspected presence may be more successful.

During the monitoring process, BIRN and I/KS came across some cases in which the police filed delayed criminal charges. The prosecution complains of poor justification of requests filed to determine the pre-trial detention time period for the delayed criminal charges. They say that they often receive criminal charges 22 or 23 hours after the arrest of the suspected, or only one to two hours before the expiration of the legal deadline of 24 hours. They claim that the criminal charges are frequently incomplete, with missing evidence. They say that the short time frame for submitting the request for a pre-trial detention measure directly affects the quality of the justifications of their requests, which in most cases are templates with poor quality justifications.

Except for the cases in which the police file criminal charges a few hours before the expiration of the deadline, BIRN and I/KS found at least nine cases when the police filed criminal charges after the deadline of 24 hours.

In one case in Prizren, police stopped one person under the suspicion of committing the criminal offence "ownership, control or unauthorized possession of weapons" in accordance with article 374 par.1. The suspected was caught with three weapons, one of them an "AK 47," which was found in his car, and two additional guns that were found at his home. The arrest was made on 04.11.2015 at 6:30, whereas the criminal charge was filed in the prosecutor's office on 05.11.2015 at 10:15, about 28 hours after the arrest.

Because the 24-hour deadline passed, the prosecutor was forced to set the suspected free through a regular procedure because he was not able to propose a security measure for his presence—after the expiration, the court would refuse such a request. The case number is PP. nr. 305/15.

9 See article 70 paragraph 4
10 Same article 164 paragraph 7 of the RKCC

"The legal obligation of the prosecutor is to take measures against Police as well, because if the Prosecutor fails to file and justify the request for pre-detention, police officers shall be kept responsible and measures against them taken".
Besim Kelmendi – Prosecutor in the State Prosecution

Also in Prizren, case number PP. nr. 306/15, also for suspicion of committing the criminal offence "ownership, control or unauthorized possession of weapons" in accordance with article 374 par.1, had similar circumstances with the above mentioned case. The criminal charge was filed to the prosecution 24 hours beyond the scheduled deadline.
In this case as well, the prosecutor was unable to determine a legal measure and was forced to release the suspect through a regular procedure.

Delays of these cases appeared from various police officials, towards which no criminal or disciplinary procedure has been initiated. Such circumstances leave room for similar cases to happen in the future with the justification that the deadline for filing criminal charges is short, and in practice similar cases can happen.

In a Gjakova case number PP – 1651/15 on the date 04.12.2015, the suspected was stopped due to suspicion that he committed the criminal offence "attack on the official representative during official duty hours" according to article 410, and the criminal offence "unauthorized/illegal purchase, possession, distribution and selling of narcotics, psychotropic and analog substances" according to article 273 of the RKCC. Because of the delayed filing of the criminal charges by the police, for which the legal deadline of 24 hours passed, the prosecutor working on the case was forced to release the suspect through a regular procedure for committing two serious criminal offences.
In Prishtina there were at least three cases that the Report came across in which the prosecutors' requests were submitted to the court for determining the pre-trial detention time after the 24-hour deadline passed, and the judge of the previous procedure refused because the legal deadline passed. All three cases were related to the arrests during the protests of January 27, 2015, based on suspicion for committing the criminal offence "participation in a mass that commits criminal offences and hooliganism" according to article 412, par. 4 and 1 in the RKCC.

"The legal obligation of the prosecutor is to take measures against Police as well, because if the Prosecutor fails to file and justify the request for pre-detention, police officers shall be kept responsible and measures against them taken"
BESIM KELMENDI – PROSECUTOR IN THE STATE PROSECUTION

The first case had to do with the request of the prosecution PP. II. Nr. 606/15 on the date 28.01.2015, with which the prosecution requested the pre-trial sentence time for 7 suspects. The judge of the previous procedure, Isuf Makolli, refused this request with the verdict PPR. Nr. 81/15 after he considering the request of the prosecution filed after the foreseen deadline within the RKCC. The second case has to do with the request of the prosecution PP.II. Nr.597/15 on 28.01.2015, with which the prosecution requested pre-trial detention for eight suspects. In this case as well the judge of the previous procedure, Lumnije Krasniqi, refused the request of the prosecution with verdict PPR. Nr. 78/15 after considering the case, which was filed after the foreseen deadline according to the RKCC.

Also in Prishtina, the Report came across a case in a criminal procedure for juveniles. The prosecutors' deadline for submitting requests to determine time for juveniles is 12 hours,[11] whereas in this case the prosecutor Ferdane Sylejmani submitted the request after this deadline. Unable to provide the punishment measure for the safety of the juvenile in the procedure due to the passing of the legal deadline, the juvenile was released via a regular procedure according to the verdict of the judge Lumnije Krasniqi, PPRM. Nr. 74/15. The suspected criminal offence was "serious bodily injury," according to the article 189 par. 5 related to par. 1 and article 31 of the RKCC.

In another case in the Basic Court of Prishtina, case number PKR.nr.169/16, there was a

11 See Justice Code for Juveniles, article 65 paragraph 2

defendant suspected of the criminal offence of arson according to article 334 par.2 of the RKCC. As a result of the delay, the request for determining the pre-trial sentence by the prosecution was refused by the judge Faik Hoxha.

In the Basic Court of Gjakova, case number PP/I nr. 62/16 for the criminal offence of "unauthorized possession of narcotics, psychotropic and analog substances," according to article 275 par 1 and 3 and article 31 of the RKCC, the police were late in filing the criminal charge against the suspected L.U., T.F., and K.R. in the Basic Prosecution in Gjakova at the Department of Serious Crimes, specifically to the prosecutor Agron Metjani. As a result, the prosecution failed to make a request for determination of the sentence.

Delayed and uncompleted filing of the criminal offences by the police directly affects the prosecutors' performance, leaving them without sufficient time to draft these professional requests for determining the security measurements for detention based on the relevant arguments. In cases when they receive delayed filing, prosecutors usually submit template requests invoking the template procedural dispositions, without arguments and facts on concrete cases. Thus the burden falls on the judge of the previous procedure to argument the request of the prosecutor for determining the detention measure. In practice, cases in which the court abolishes these decisions on the second instance due to the lack of better arguments of a specific case are not rare.

"As far as pre-detention is concerned, the biggest concern is the deadline of 24 hours, especially when it comes to criminal offences with many defendants and where measures must be taken – the deadline is to short. A major problem we have encountered is the continuation of the detention, where the suspicion why the defendant should remain in detention must be very well justified".
Admir Shala – Head Prosecutor in the Basic

Prosecution of Prizren

The Report deems that the police should prioritize filing criminal charges with the prosecution within the shortest time possible. Failure to do so due to unreasonable delays creates a chain of problems, from the police and the prosecution up to the court, along with the release of alleged criminals through regular procedures, without any sentence or safety measures for their presence in procedures. This creates the huge risk that offenders may escape and not be tried at all, and reveals unprofessionalism and inefficiency of the judiciary system in capturing and punishing criminal offenders.

Failure of the Justification of the Decisions for Detention
According to the European Convention for Human Rights, everyone has the right to liberty and security. Everyone is arrested or detained in accordance with these provisions.[12] The burden falls on the prosecutor, who should make a justification for one's stay in detention with arguments based on suspicion in front of the court and according to evidence and facts that a person has committed a criminal offence for which he should stay in detention.

Criminal proceedings shall only be initiated upon the decision of a state prosecutor that reasonable suspicion exists that a criminal offence has been committed.[13] The Report noticed that in practice, some cases exist in which prosecutors failed to testify with articulated evidence on "grounded suspicion" in front of the previous procedure judge that the suspected has committed a criminal offence. In many cases, the prosecutors submit their suggestions in templates, only by supporting the existence of three conditions foreseen in the RKCC for ordering the detention according to article 187 of paragraph 1 of the RKCC, whereas they failed to explicitly justify evidence that deals directly with the

12 Article 5, par 1 and 3 of the ECHR
13 See article 6 par 2 of RKCC

concrete case.

The Report—during case monitoring in the court hearings of the previous procedures for ordering the detention on remand—has noticed that the prosecutors' proposals, even though not justified well, are not objected and in most cases are approved by the judges of the previous procedure. In many cases they failed to justify the ordering of the detention, and the court of the second instance abolished these unjustified decisions.

The following cases are findings of the Report from monitoring in the field, and serve as examples of the unjustified decisions by the prosecutors and judges of the previous procedure:

In one case in the Basic Court of Prishtina, case number PKR.nr.263/2015, the suspected was the President of the Appeal Court, Sali Mekaj. He was being investigated by the Kosovo Special Prosecution under the suspicion of committing the criminal offence "abuse of official position or authority" from article 422 of the RKCC, and "trading in influence" according to article 431 of the RKCC. Initially the case prosecutor Drita Hoxha requested an order for detention on remand, however, due to lack of required arguments, the court of the first instance, concretely the judge Vehbi Kashtanjeva, decided to order a house arrest and called the suspect "a pity," and he replaced that order with the custody order and offered a place or the certain person a two-months time period.

"We have not been able to justify the decision to a level we believe is necessary, due to the fact that only during 2016, we have reviewed 2,190 such cases so it is possible that we have just made them as templates. But, when the number of judges increases then I believe we will get to improve this".
Hasan Shala – Head of the Court of Appeals

In the verdict of the Appeal Court with the case number PN.nr.1431/2015, it is stated, among other things, that the court orders a house arrest when the state prosecutor justifies his request and has supplied sufficient and uncontested evidence.

"The prosecutor's suggestion for detention according to the legal bases from points 1.2.1. and 1.2.3. of article 187 of the RKCC did not include any evidence required by the law except for a description word by word of the legal norm. It is a pity that courts accept such unjustified suggestions without any critical evaluations."

Also in the verdict of the Appeal Court it is stated that in the court of the first instance, not only was the decision not based on evidence, it even made ungrounded statements.

"Not only are they without any evidence, but they have ungrounded statements of the first instance court when they emphasize that "the defendant will not hesitate to commit other criminal offences!!!" So according to this statement, if they are free then they will repeat other criminal offences!!?? This statement is purely arbitrary, because before anything for the first defendant, it is about a judge who has never in his life had problems with the law, a family man, an older man and also it does not appear that the second defendant has ever made any legal violations."

This concrete case is a typical example of the presentation of the real situation in the field, where initially the prosecution does not manage to argue and justify the request for ordering the safety measures for detention, and then the court continues this trend and does not sufficiently justify the other measure of the house arrest.

Another case in the Prishtina court, which testifies to the failure of the prosecution to

justify the order for detention, is a case of "attempted murder," case number PKR.238/15. In this case, during the main review and after the request of the defending lawyer for releasing the accused from detention, the case prosecutor Abdurrahim Islami rejected this request to the defence with ungrounded justification without any evidence. The rejection of the prosecutor was:

"The conditions are not right to release the accused from detention, I reject this measure."

The prosecutor, without giving any convincing evidence that the accused should further stay in detention and without giving any concrete explanation, made the court approve the lawyer's request and softened the safety measures for the accused to be present in the procedure.

"We can blame the Police or Prosecution, but in the legislative respect, the judge is the main guilty party on this matter, due to the fact, that it is him/her that rules the verdict and evaluates the request, whatever that might be. We cannot blame the prosecution or police, because we are to blame".
Ali Kutllovci – Head of the Basic Court in Mitrovica

"We can blame the Police or Prosecution, but in the legislative respect, the judge is the main guilty party on this matter, due to the fact, that it is him/her that rules the verdict and evaluates the request, whatever that might be. We cannot blame the prosecution or police, because we are to blame"
ALI KUTLLOVCI – HEAD OF THE BASIC COURT IN MITROVICA

In the Basic Court of Prizren, case number PP.nr.249/15, there were six suspects, among them the Director of Education in the Municipality of Prizren, Nexhat Cocaj, and five other officials of this directory, under the suspicion of committing the criminal offences "abusing official position or authority" according to article 422, and "violating rights of employment and unemployment" according to article 222 of the RKCC. Initially the prosecutor in the case, Sefer Morina, requested the detention measure for all the defendants in front of the judge of the previous procedure. He said that two of them are known to the legal authorities as recidivists, even though in reality none of them were convicted for any criminal offences. The judge of the previous procedure, Xheladin Osmani, approved the request of the prosecutor for ordering the detention measure for one of the suspected, whereas for the other five he ordered the measure of house arrest. After the complaints of defence, the Appeal Court took a verdict with which they stopped the detention measure and the house arrest measure, replacing them for the six defendants with the measure of custody and offering the place or the certain person. In the Appeal Court verdict, among other things it is stated:

"The Appeal Court College evaluates that the first instance court orders the detention measures or the house arrest when the prosecutor justifies his request and bases it on uncontested evidence, and the prosecutor did not support this legal request and therefore, according to the legal basis "fear of escape and for repetition of the criminal offence," was satisfied with a cliché justification which was also accepted by the court of the first instance, which not only did not provide clear and concrete evidence on what they base the claim that the defendant could escape, but did not provide thorough evidence to support its own claims for this measure. The first instance court only paraphrased the legal dispositions without any support of any concrete evidence."

Also, in the Basic Court of Prishtina, in case number PP/I. Nr. 78/2015 due to suspicion for committing a criminal offence "aggravated theft" according to article 327 par 2 point 2.2. of the RKCC, the prosecutor ordered a detention measure for two suspects (S.M. and F.A.). However, due to lack of justification, the judge of the previous procedure Vehbi Kashtanjeva, with the verdict PPR.KR. nr. 24/15, refused the request of the prosecution for ordering the detention, and qualified it as ungrounded and ordered the house arrest measure, because even with the house arrest measure they would not secure the security of the defendants in the procedure.

In the Basic Court of Gjakova, in case number PPr.Kr.nr. 71/16 against the defendant E.N.

for suspicion that he committed "unauthorized purchase, possession, distribution and sale of narcotic drugs, psychotropic substances and analogues" according to article 273 par.2 of the RKCC, the second instance court abolished the decision of the first instance court. The previous procedure, ruled by Judge Nikolle Komani, with which the defendant was sentenced one-month detention, was replaced with a house arrest measure. The Appeal with the decision PN.1.nr984/16 concluded that the decision was unjustified and not the appropriate one for the concrete case.

"Judges should take on a more decision-making role, because if prosecutors do not justify well their requests for detention, then these will not go through, and I believe that this would also serve to discipline prosecutors and enhance their professionalism more. If they fail one case, then in the next one they will pay more attention and importance when compiling the justification. Judges should challenges the media pressure, thus they should not judge according to what the public opinion thinks, but rather judge on the facts and evidence".
Bashkim Hyseni – Head of the Basic Court of Ferizaj

In the Basic Court of Prishtina, in case number PP/II.nr.3784/16 against J.A. for the criminal offence of engendering road traffic, Prosecutor Shemsije Asllani, with the submission of the verdict, requested to extend the detention. In her request for ordering detention, the prosecutor requested the measure for detention according to the article 187 par.1, 2 and 3 regarding the "weight of the criminal offence," because one person was killed during the accident. Point 3, which was mentioned by prosecutor, foresees the danger that the defendant can repeat the offence, finish the attempted criminal offence, or commit the criminal offence for which he is threatened to commit. Therefore, essential in this point is the danger of repeating the criminal offence. In this case, not only does the prosecutor's request not give any circumstance or characteristics of the perpetrator such as examples of similar previous acts, but it is also incomprehensible that a person can repeat an offence of "endangering traffic" or causing accidents with fatalities after the main element in these special criminal offences is the lack of will, and as such, in principle it excludes the risk of repeating. Judge Kujtim Krasniqi refused the order of detention/imprisonment and ordered the house arrest measurement.

In another case in the Basic Court of Prizren Suhareka branch, case number P.nr. 742/12 proves the fact that there are prosecutors who remain silent precisely in cases when they should request the order for a detention measure. The case has to do with the criminal offence "aggregated theft" according to article 253 par 1. of the RKCC. Since the accused did not respond to the invitation for trial, as one of the measures for safety of the presence of the offender, the judge on the case requested the opinion of the prosecutor for ordering the measure of detention in order to secure the presence of the offender in the procedure. However the response of the prosecutor was:

"I do not have something to say about the imprisonment, I can only take part and not declare," whereas the reaction of the judge was: "We did not invite you here just for the sake of it, Prosecutor."

The above mentioned examples are only some of the frequent cases in practice of the requests/orders for ordering the measure of detention, which prove that the prosecutors often paraphrase the legal dispositions in a template manner without offering concrete arguments for the stay of the offender in detention and without relating their proposals to the circumstances of each concrete case.
As proven by the examples, the same practice of not properly justifying the decisions of ordering the measurements for detention have followed other first instance courts.
BIRN and I/KS noticed that the prosecutors and the judges, in cases of requesting the order for a detention measurement, do not evaluate the expenses of the state budget for the

stay of an offender in detention, whereby one day of stay in detention for one person is estimated to cost the budget no less than 29.30 Euros.[14]

The report evaluates that in the case of the order for detention measurement, the prosecutors should make more of an effort to justify their requests with proper reasoning in concrete cases, only then when this measure is necessary. Also, judges of the previous procedure should object their requests when they are not well provided with arguments, and by no means should they take unjustified decisions for ordering detention measures.

"Other measures foreseen by the Code should be applied as well, because there are measures that have never been applied".
Afërdita Bytyqi – Head of the Basic Court in Prishtina

"Other measures foreseen by the Code should be applied as well, because there are measures that have never been applied"
AFËRDITA BYTYQI – HEAD OF THE BASIC COURT IN PRISHTINA

The frequent application of the measure for detention in practice and avoiding the other safety measures of the presence of the offender in the procedure is concerning. Courts can more frequently apply the measure of a "guarantee" instead of the detention measurement, in most cases to decide for a guarantee as an alternative way of securing the presence of the defendant in the procedure, because with this measure they would avoid the expenses and would avoid the mistakes of depriving of freedom of potentially innocent people. With this measure, and if the offender would escape, the amount given as a guarantee as seen by the law with the verdict of the court would be distributed to the fund for victim compensation, and in a way the criminal offender would get the punishment for committing the criminal offence.

The long detention period pending trial

The report, while monitoring the hearings on custody, has noted that in practice, the duration of the stay of the suspects in custody involves cases of violation of European Conventions, as well as the Criminal Procedure Code of the Republic of Kosovo.

The European Convention on Human Rights clearly determines that the violation of freedom should be treated quickly: "Any violation of freedom, and especially the duration of custody on a criminal procedure, should be mitigated in a time as short as possible." [15]

Also, Article 5 of the Criminal Procedure Code of the Republic of Kosovo determined the principle on "fair trial, unbiased, and in a reasonable scope of time." Despite the fact that the convention does not set the exact time for how long a defendant should be held in custody, the duration regarding the stay in custody before charging an indictment is specified under the Criminal Procedure Code of the Republic of Kosovo, based on which before filing the indictment, for heavy criminal acts, the custody can last for a general maximum of eighteen (18) months. [16]

What has mostly come across in the field is the long stay of the defendants in custody after the indictment has been filed. Despite the fact that under the Code the exact time for how long a defendant should stay in custody after the indictment has been filed has not been determined, the duration for finishing the judicial review has been determined. Based on the Criminal Procedure Code of the Republic of Kosovo, if the judicial review is held in front of the only judge in court, the judicial review should be finished within ninety (90) days, while if the judicial review is held in front of the judge body, it should be finished within one hundred and twenty (120) days, with a possibility to be extended for another thirty (30) days in cases of unusual circumstances such as having a large number of

14 The Report of the Kosovo Rehabilitation CentreCentre for Torture Victims, KRCT
15 See article 5 paragraph 3 of ECHR
16 Article 190 paragraph 2 (1, 2) paragraph 3 and 4 of RKCC

evidences and witnesses. [17]

So, the maximal time for finishing a judicial review on heavy cases, when led by the judge body with all possibilities for an extension due to complicated cases with large amounts of evidence and witnesses, is foreseen by the law to be five months (120 plus 30 other days).

However, in practice, cases have occurred in which defendants were held in custody for up to six years, without any judgement taken on the case.

The following cases serve as examples of cases when the defendants are held in custody for a long period of time and the judicial reviews last for several years.

In the case PKR.no.33/2013, where two defendants were accused of the criminal offence "Heavy Murder," one of them being Gëzim Ratkoceri, who under the custody measure was kept without being offered a trial from 30.04.2009 until 07.07.2015, while Osman Spahiu was kept from 10.05.2009 until 07.07.2016 under the custody measure. They were offered a trial and were declared as guilty in the Basic Court of Prishtina. Regardless of the committed criminal act, the stay in custody for six years and three months and six years and two months respectively exceeded every limit for fair trial within a fair scope of time as foreseen under the European Conventions, as well as under the local laws. The prosecutor on this case was Fikrije Fejzullahu, while members of the Judge body were Florent Latifaj, the head of the judge body and the two members, Afërdita Bytyqi and Hajrije Shala.

In another case in Gjakova, the indicted with the initials N.Sh. was charged for a criminal act of murder based on article 178 of the RKCC, as well as the criminal act of keeping under property, control, or unauthorized possession of guns, based on article 374 par.1 of the RKCC. He has been in custody since 11.03.2013 and this case is still in the process of judicial review, with not decision taken upon his case yet. The case is labelled with the number P.no.250/13.[18]

Also in the Basic Court of Gjakova, on case number PKR.no.61/14 the indicted Fuad Gjevukaj continues to be in custody from 09.05.2014, a case which is being judged by judge Gëzim Pozhegu.

In the Basic Court of Prizren, in case number P.nr.124/12 with the criminal offence of "kidnapping a person" based on article 159 of the RKCC, the two indicted on this case, B.K. and S.Sh., were kept in custody from 30.09.2013 until 31.10.2015, two years and one month for each. From October 31st, 2013, until around two years and a half from releasing the indicted ones from custody, for this case no court hearings were determined, while now the case is still under the evidence procedure. This case exemplifies procrastination of legal procedures and grave exceeding of every legal deadline.

Based on the fact that custody should be reduced to the shortest amount of time possible, when the defendant is under custody, all the organs that participate in the criminal procedure and the organs that offer judicial help are obliged to act with a specific speed.[19]

17 Article 314 paragraph 1, 2,3 of RKCC

18 This case was judged by the former judge, now retired Hilmi Hoxha. After his retirement the case was given to judge Gëzim Pozhegu with the members of the judge body Manduhije Syla and Ilir Rashkaj

19 See article 185 paragraph2 of RKCC

The Report considers that courts should be more aware and should treat the cases that deal with custodies with priority.

The courts in Kosovo should more carefully adapt to the implementation of legal provisions determined under the Code of Criminal Procedure, which regulates the duration of custody and the duration of the beginning and the end of the judicial review.

The disregarding of deadlines to determine the initial review and the second judicial review With the changes in the criminal procedure code, the deadlines have also been foreseen within which the court hearings are to be held. After charging the indictment, the judge or the head of the judge body should immediately determine the initial review, which should be held within 30 days if the defendant is free, while if the defendant is in custody, the initial review should be held on the first chance, no later than fifteen (15) days after the charge of the indictment.[20]

After the initial review, the presiding judge or the head of the judge body determines the second review no sooner than 30 days after the initial review and not later than 40 days after the initial review. The presiding judge or the head of the judge body can ask for presenting the proposals until the determined date, which cannot be later than 30 days from the initial review.[21]

Also, regardless of the fact that the Criminal Procedural Code of the Republic of Kosovo foresees strict deadlines based on the determination of judicial hearings, the report has come across cases when the deadlines have not been respected by the judges of the previous procedure.

A typical case of not respecting deadlines is the case in which the indicted are Zeqirja Qazimi and others, accused for criminal offences of terrorism, case number PKRRR. 54/15. The indicted stayed under the custody measure and despite the fact that the Criminal Procedure Code foresees that when the indicted are under custody, after filing the indictment, they should appear in front of the judge in the initial review within 15 days, in this case the deadline was postponed for about six months. The indictment in this case was filed on 02.03.2015 while the initial review was held on 03.09.2015.[22]

Also, in the case of the former Inspectors of the Municipality of Prishtina with case number PKR.no.341/15, where the Kosovo Special Prosecution charged ten former officials of the Municipality of Prishtina for participating in or organizing a criminal group related to misuse of official duty or authorization, the indictment had been issued in June 2015, while the initial hearing was held on August 25 2015, by disrespecting the foreseen deadline under article 242 par. 4 of the RKCC.

Another case of overcoming and disrespecting deadlines for determining the second review after the initial hearing is the case PKR. 392/15, in which Slobodan Gavric is indicted, charged of the criminal offence of preparing terrorist acts, or criminal offences against the constitutional order and the safety of the Republic of Kosovo. Despite the fact that the Criminal Procedure Code foresees that the sole judge or the head of the trial panel determines the second review no sooner than 30 days after the initial review and no later than 40 days after the initial review, in this case the court set the initial hearing on 30.07.2015 while the hearing on the second review was set on 21.09.2015, which overran the deadline by another 13 days. [23]

"Forget asking for accountability about legal deadlines from us in the Court of Mitrovica

20 See article 242 paragraph4 and 5 of RKCC
21 See article 245 paragraph5 of RKCC
22 Head of judge body Musa Kongjeli, prosecutor Suad Kuraja.
23 Head of the judge body Shadije Gërguri, prosecutor Drita Hajdari

when everyone knows the chaos we have here, with half of the staff not being here, while we have judges that get paid but never show up at work, and the rest of the staff has to cover for them and do their job. When a major crimes judge has 900 cases, what should he do first?!".
Ali Kutllovci – head of the Basic Court in Mitrovica

In the court hearing for case number PKR.no.14/16 in the Basic Court of Prishtina, held on September 9 2016 regarding the criminal offence of misuse of the position or the official authority from article 422 par. 1 of the RKCC, the indictment on the defendant Enver Hasani was charged on January 13 2016, while the initial hearing was held on September 8 2016, regardless of the fact that the Criminal Procedure Code of the Republic of Kosovo determines that the initial hearing should be held 30 days after charging the indictment.[24]

In the Basic Court of Prishtina, in case number PKR.nr.458/16, the initial hearing was held on October 14 2016, while the indictment against Arben Bashota, Sylejman and Osman Bajrami was charged on August 10, 2016. All the indicted until the second review were under custody, and are accused for organized crime related to the obligation offence. [25]

In the case where Azem Syla and 21 other persons were indicted for organized crime with social properties, which was raised on October 25 2016, until the drafting of this report the initial review has not been held yet, regardless of the fact that some of the indicted ones are in custody, including Azem Syla and Ilaz Syla. [26]

Such cases on determining initial hearings until six months after raising an indictment in cases when the indicted ones are under custody, as well as the delays of up to eight months from the initial review until the second judicial review, are considered as blatant negligence of the judges and as a failure from their side to finish the cases by the foreseen legal deadlines.

BIRN and I/KS consider it concerning that the judges do not respect and overcome the determined deadlines under the Criminal Procedure Code. The continuation of allowing the judicial deadlines to be disregarded has an impact on the non-efficiency of the judicial system for treating cases within reasonable deadlines towards those who are under custody for being suspected of committing criminal offences.

24 The individual judge Shasivar Hoti, prosecutor Abdurrahman Islami, indicted Enver Hasani with lawyer Bajram Ternava
25 Head of judge body Arben Hoti, prosecutor Merita Bina-Rugova
26 Prosecutor Danilo Cecareli, judge Arcadiuzc Sedek

PROCEDURAL VIOLATIONS DURING COURT SESSIONS

During 2016, 686 court seasons were monitored, including penal and civil matters, and from which many procedural violations were found regarding prosecutors, lawyers, and even judges and the trial panel.

The monitoring across the territory of Kosovo has found various procedural violations throughout 2016. Problems include the right of the defendant to be informed in his/hers spoken language, incontinence of order during court sessions, the mis-conclusion of the real matter in the records, non-dismissal of the witnesses from the courtroom, non-delivery of the invitations in time from the courts, the poor preparations for the prosecutors in trial, the assignment of two court sessions at the same time, holding of the court session without the participation of the whole court, conducted delays from the detention centre, changing the witnesses declarations, non-adherence to the legal deadlines, and the unnecessary delays of court sessions and technical problems thought the process of the court session.

Specific examples of the violations founded in the monitored cases throughout the court sessions for penal and civil matters are listed below:

The right of the defendant to be informed in his spoken language

In the hearing session with case number P.no.3851/15 held in The Basic Court of Prishtina, regarding the criminal offence of "omission or false reporting of wealth, incomes, gifts, other material benefits or financial liabilities" from Article 437, paragraph 1 of the RKCC, the prosecutor had not brought the indictment in the Serbian language with him, though the accused was of Serb nationality. Also, the judge allowed the retention of the initial session without the indictment in the needed language. This was allowed in accordance with the defendant who did not have a lawyer present. In the end the judge obliged the prosecutor to bring the indictment translated in Serbian language to court within a deadline of three days, which would later be delivered to the defendant.[27]

The spoken language of the defendant is guaranteed with the Article 14, paragraph 2 of the KCPC, which states:

"Any person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language and the right to be informed though interpretation, free of charge, of the evidence, the facts and the proceedings."

In another court session with the case number Pkr.733/14 held on June the 16th, 2016 in The Basic Court of Prishtina's Serious Crimes Prosecution Department, regarding the criminal offence of "miss-appropriation in duty" from the Article 425 of KCPC, the accused was not equipped with a translator of his spoken language throughout the reading of the verdict. Therefore, this was a procedural violation of the defendant's rights, guaranteed by Article 14 of the KCPC.[28]

Incontinency of Orders During Court Sessions

In the Basic Court of Prishtina's Serious Crimes Prosecution Department, in case number

27 Judge: Naime Jashanica; Prosecutor: Meduhi Kastrati; the accused: Srdian Jerencic.; Court Session held on 02/09/2016.
28 Individual judge: Suzana Qerkimi; Prosecutor: Dulina Hamiliti; the accused: Milan Milanovic.

Pkr.717/15 regarding the criminal offence of "usage of fire arms or dangerous assets'' from the Article 375, paragraph 1 of the KCPC, after the lawyers finished their objections, the judge gave the word to the accused Albin Kurti saying "even though it is not allowed by law, we will make an exception and will give you an opportunity to give your objections." This made the accused address the judge by asking, "why are breaking the law then?" In this specific case, regardless of the purpose, the judge should be more careful in the guidance of the case and should not tolerate trying to break the law and giving controversial allowances to the accused.[29]

Lawyers Disrupt Order in the Courtroom

In the Basic Court of Prishtina, in case number Pkr.312/13 held on March 10th, 2016 for the criminal offence of "aggravated murder" from Article 179 of The Penal Code of the Republic of Kosovo, one of the irregularities reported was the speech made by a lawyer while it was not his turn, which forced the trial panel to rebuke him.[30]

Lawyer Tome Gashi also often interrupted the trial panel, giving suggestions for what should be written on the records. The moment when the accused addresses the head of panel trial with the word "you," the lawyer Gashi addresses the head by saying "type this in the records." This made the head of trial panel Faik Hoxha rebuke him and tell him to "keep order in the courtroom or the hearing is over."

Again, in the Basic Court of Prishtina, in the case of Misappropriation in office, Article 425 paragraph 1 of KCPC, with the case number Pkr.295/14 held on March the 10th 2016, lawyer Ali Latifi used the telephone and for this the head of panel trial withdraw his attention. Lawyer Latifi, later got out the session without permission and this was pointed in the records, noting that he was expelled from that court session.[31]

After some minute lawyer Ali Latifi returned to the courtroom again, whom at that moment is notified from the head of the trial panel that he is expelled from this court session and the will notify The Kosovo Bar Association. Later, lawyer Ali Beka intervened appealing for withdrawal of the head's decision. Even Ali Latifi asked for forgiveness about his actions. Surprisingly the panel's decision was withdrawn about the expulsion of lawyer Ali Latifi.

The Miss Conclusion of the Real Matter in the Records

In the Basic Court of Prizren, case with number 278/14 held on February 29th , 2016, due to the criminal offence Misappropriation in office or formal authority in cooperation with Article 422 and Article 31 of KCPC, the head of the trial panel did not note on the records objections of the State's prosecutor, Mehdi Sefa, towards the question of the lawyers in some cases. She did not even let them object; in some cases even if the prosecutor did the objection she would not note it in the records.[32]

Non-delivery of the Invitations in Order

In the Basic Court of Peja, on March the 17th, 2016 due to the criminal offence Human trafficking from the Article 139 paragraph 1 of KCPC, which holds the case number

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29 Individual judge: Beqir Kalludra; Prosecutor: Fikrije Fejzullahu Krasniqi; the accused and the lawyers: Albin Kurti – Hedije Ademi, Abluelna Haxhiu, Ahemt Ahmeti, Faton Topalli, Haxhi Millaku and Donika Kadaj –Bujupi. Court session held in 02/23/2016.

30 Head of trial panel: Faik Hoxha; other panelists: Valbona Selimaj and Nora Bllaca; the accused: Shpejtim Bajrami and lawyer Bedri Krasniqi, damged Family Rekaliu represented by lawyer Tome Gashi.

31 Individual judge: Beqir Kalludra; Prosecutor: Shadie Gerguri; the accused: Bahri Shabani (represented by Basri Jupolli and Haxhi Millaku), Rahman Emini (represented by Ali Latifi), Sami Rahmani (represented by Ali Beka); damged party: BSPK.

32 Head of trial panel: Ajser Skenderi; other panelists Kimete Kicaj and Luan Berisha; Prosecutor: Mehdi Sefa, the accused: Nexhat Cocaj (represented by Bashkim Nevzati), Bekim Thaqi (represented by Hylki Kurtaj) and Bedri Ceku (represented by Osman Zajmi).

Pno.170/14, the court session was not held.

The reason of not emerging was to the fact that the defendant was missing, it turned out that she had not received regular invitations from the court.[33]

Also, in the Basic Court of Prizren – Branch Suhareka, in the civil case ''Property dispute'' with the number of case C.no.210/13 held on March the 10th, 2016 in the session were not present the defendants and their representatives. Lawyers Shpresa Berisha and Shemsije Sheholli, from the holding records of the court were not invited in a regular, legislative way.

Furthermore, lawyer Shemsije Sheholli was invited on the address written on the indictment, but the invitation was returned to PTK without clarification. The Court took a ruling that the sessions will not be held and will be postponed to a new date (April the 15th, 2016). [34]

Non-dismissal of the Witnesses from the Courtroom

In a court session held on March the 16th, 2016 in criminal offence on Misappropriation in office or formal authority from the Article 422 of KCPC, in the Basic Court of Prishtina with the case number Pkr.18/15 two witnesses were waiting to stand, (one of them Arber Krasniqi) they stood in the courtroom prom the beginning of the court session while the witness Granit Hasanaj gave his statement.[35]
On another case in the Serious Crimes Prosecution Department, Basic Court of Prishtina held on September the 6th, 2016 with the case number Pkr.no.362/16, because of the criminal offence Misappropriation in office or of formal authority from the Article 399 and Fraud on Duty from the Article 341 of the KCPC, the witness Bajram Kosumi, before giving his statement he was present the whole time while the trial panel presented the flaws and violations that the Court of Appeal had found on that case (the same case was in retrial, due to violations of essential of the indictment). [36]
Article 330 of KCPC defines the way of taking in question the witnesses in the courtroom; ''In principle, the witness who is not yet been interrogated, should not be present during the examination of the evidence also, the expert who has not given his opinion and findings cannot be present in the session until the other expert has given his opinion on the same matter''.

The Assignment of Two Court Sessions at the Same Time

In the General Department of the Basic Court of Prishtina, in case of Robbery, Article 252 paragraph 1 of KCPC, with the case number P.no.2101/11, the case judge at the same time did assign two court session. The court session with the case number P.no.2101/11 was called to be held at 09:30 am but started at 10:50 am, the parties waited around one and a

33 Head of trial panel: Sami Sharraxhiu; other panellists: Violeta Husaj Rugova and Sali Berisha; the accused: Dritunie Hoti, Kriste Tomaj, Nasuf Bardhi, Ardian Marku. Damged party: Afrora Sylaj.
34 Judge: Shaban Zeqiraj, the claimant Shyhrete Berisha represented by Naim Qelaj, the defendants Arben and Xhelal Berisha represented by Osman Zajmi.
35 Head of trial panel: Vladimi Mikula, other panellists: Alltene Mureseli and Arcadius Sedek; Prosecutor: Charles Hardaway; the accused: Esat Tahiri (represented by Armend Krasniqi), Milazim Lushtaku (represented by Artan Qerkini), Arben Gjuka (represented by Rame Gashi), Driton Pruthi (represented by Bajram Tmava), Hysni Hoxha (represented by Sahit Bibaj), Azem Duraku and Sami Lushtaku (represented by Arianit Koci), damaged party: Besa Security.
36 Head of trial panel: Suzana Qerkini, other panellist: Arben hoti and Agim Kuqi; Prosecutor: Hivzi Bajraktari; the accused: Astrit Haraqija (represented by Teki Bokshi), Valton Beqiri(represented by Shpresa Berisha), Armond Morina (represented by Arianit Koci), Nehat Fejza (represented by Osman Havolli); the damaged party: Ministy of Culture.

half hour in the court hallways until the judge finished the other case that had assigned at the same time.[37]

Poor Preparation of the Prosecutors for Trials

In the Serious Crimes Prosecution Department in the Basic Court of Gjilan, in case of corruption, criminal offence ''Misappropriation in office or of formal authority'' from the Article 422 paragraph 2 of the KCPC, held on March 31st 2016, the prosecutor of the case Shaban Spahiu while entering the courtroom said that he had no knowledge or what so ever of a court session!

The prosecutor asked by the case judge to give him a copy of the indictment, since he did not bring the case with him and came to represent the State Prosecution in a corruptive case completely unprepared.[38]

"This problem will persist for as long as we do not have a sufficient number of prosecutors. I am sorry to keep saying this every year, but while a prosecutor has to go in a court hearing to represent an indictment of his colleague because he is in another trial, then of course this will not be a dignified representation, because they do not know the case as they have not carried out the investigation themselves".
Besim Kelmendi – Prosecutor in the State Prosecution

In another case at the Basic Court of Prishtina, in case PKR.no.252/16 held on October 14 2016, due to the criminal offences, "Unauthorized bought, possession, distribution, and selling of narcotics, psychotropic and analog substances, from article 273, import, export, supply, transport, production, exchange, mediation or unauthorized selling of guns or explosive materials from article 372 of the RKCC, the case prosecutor in the hearing came unprepared.

Also the previous hearing in this case was postponed since the prosecutor did not offer support to all evidence, specifically a CD that contained the recording of the event. In the previous hearing the judge body had obliged the prosecutor to make copies of the CD to be offered to the defence but the prosecutor had not done so. The prosecutor, who also in the previous hearing had said that she would make the precision of evidence for this case, did not do so for the next hearing either. The judge was obliged to postpone the hearing since the prosecutor was completely unprepared. [39]

Unlawful Question Posing by the Prosecutor

In the Basic Court of Prishtina, in the case number Pkr. 86/13, held on October 28th, 2016 for the criminal offence of Serious Murder under Article 179 of the RKCC, the prosecutor interrogated the witness regarding the violation of Article 333 par. 1 and 2, under the Code of Criminal Procedure of the Republic Of Kosovo.

Despite the fact that witness Fahrudin Radoncic was invited by the prosecutor and that the latter is obliged to submit only direct questions, the given prosecutor repeatedly posed indirect questions to the witness. As such, Prosecutor Hughes received objections from the presiding judge for submitting indirect questions.

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37 Judge: Naime Krasniqi – Jashanica; Prosecutor: Hava Krasniqi; the accused: Hetem Ahmeti, damaged party: KEK
38 Gjyqtari Naser Maliqi, prokurori Shaban Spahiu, i akuzuari Naim Pira.
39 Head of judge body; Valbona Selimaj, members; Nora Bllaca and Faik Hoxha, prosecutor; Ferdane Sylejmani, the indicted; Arsim Fazliu with lawyer Behar Ejupi, Hysen Lala with lawyer Basri Jupolli, Naser Miftari with lawyer Selman Bogiqi.

A special element within this case was the fact that the Prosecutor deemed the witness "a hostile witness" although he himself invited the witness. This term does not exist at all as a concept in the KCPC.[40]

The Accused were Brought Late from the Detention Centre

In the Serious Crimes Department at the Basic Court of Prishtina, at the court hearing for case number PKR.nr. 218/14, held on 12.04.2016 regarding the criminal offence of "serious murder" from Article 147 par.3 and 9, in conjunction with Article 24 of the Provisional Criminal Code of Kosovo,[41] the hearing began with an hour-and-a-half delay because the accused had not been brought in from the detention centre on time.

Similarly, at the Basic Court of Prishtina for the court hearing of another case, number PKR 375/14 regarding the criminal offence of "aggravated murder," held on 27.10.2016, the hearing was scheduled to start at 09:00, but did not start until 11:00 because the accused was not brought by the transportation unit to court on time[42]

While Some Members are Missing, Hearings are Held

For case number PKR.nr.133 / 15, held on 24.05.2016 at the Basic Court of Prishtina regarding the criminal offence of "serious murder" under Article 179 of RKCC, member of the judicial panel Valbona Selimaj left the court room after around ten minutes, which was prior to the hearing's ending. The presiding judge, however, did not suspend the trial, and continued the trial with only one member of the panel.[43]

According to Article 19, paragraph 1, under subparagraph 1.22 of the KCPC, the judicial panel is composed of the presiding judge and two professional judges who examine the evidence and adjudicate them during the trial examination. In the existing case, although one of the members of the panel was absent, which was not documented on the record, the presiding judge allowed the trial to continue in the probation procedure without the presence of one of the stated members, who will afterwards, as a matter of fact, have to be part of the decision-making despite his/her absence in the session.

Such actions serve as a sufficient basis for the dissolution of the case from the second instance, due to the essential violation of the provisions within the criminal procedure under Article 384 par. 1 sub-section 1.1 and 1.3 of the KCPC, according to which the essential violation of the procedural provisions constitutes cases where the composition of the panel did not comply with the law, or when the trial examination is held with no individuals present whose presence at the main trial is required by law. Such negligence, and allowing such violations by the trial panel, contributes to the case being returned for retrial for essential violations, and at the same time, represents a prolongation and duplication of time for conducting a case, and also the budget suffers unnecessary procedural costs. If the trial panel were careful when conducting the main trial, the previously mentioned actions would not happen at all.

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40 Head of Judicial Panel; Ana Adamska Gallant, members; Syzana Qerkini and Mariola Pasnik, the prosecutor; Andrew Hughes, the accussed; Naser Kelmendi with his lawyer Besnik Berisha, the damaged; Ramiz Delaliq's Family.

41 Judicial Panel: Arcadius Sedek, Naser Foniqi and Mariola Pasnik,the accussed: Enver Sekiraqa-av.Bostjan Penko and Kosovare Kelmendi, the damaged: Riza family

42 Head of Judicail Panel; Ana Adamska Gallant, members; Syzana Qerkini and Mariola Pasnik, the prosecutor; Andreë Hughes, the accussed; Naser Kelmendi with his lawyer, Besnik Berisha, the damaged; Familja Delalic

43 Judicial Panel: Faik Hoxha, Valbona Selimaj and Nora Bllaca, the prosecutor,:Mirushe Llugiqi, the accussed: Besim Istrefi (av. Bajram Sherifi), Besart Istrefi (av. Ali Beka), Jeton Saraqi (av. Mentor Neziri), the damaged: Gërvalla Family

Witnesses Change their Declarations

At the court hearing held in the Basic Court of Prishtina on 29.04.2016, due to the criminal offences "incitement to murder" in violation of Article 24 and Article 147 (3) and (9) of the RKCC, "Detention" in violation of Article 267, paragraphs (1) and (2) of the RKCC, "Rape" in violation of Article 193 paragraph (1) and (2), in case number PKR.No.218 / 14[44] Prosecutor Carney expressed in a final statement that it is a common phenomenon in Kosovo society for many witnesses to change their statements from what they initially submitted to the prosecution. Also, Carney expressed his nervousness on the given expertise performed during the trial, while calling the expert an amateur and absurd. Safete Gashi-Naka is the expert on the given case, the expertise of whom was deemed absurd by Prosecutor Carney's final statement. According to Naka, Triumph Riza was drunk at the time of his assassination. This finding was brought in the aftermath of calculating Riza's verified blood alcohol concentration at the time of the autopsy, and claiming that the alcohol level decreases with each passing hour, she confirmed that the amount of alcohol in Triumph Riza's blood at the time when he was shot was much higher than when the autopsy was performed. Bearing in mind that the prosecutor and the panel did not agree with the given expertise, they requested expertise in Zagreb, results of which have not been in line with those of Naka's.

Court Hearing Takes Place in the Office, Instead of the Courtroom

The court hearing, which took place on April, 26th, 2016, in the Basic Court of Prishtina on the civil case "ownership attestation," C.nr.362 / 11, was held at the judge's office, although there were at least 5 free halls to hold the hearings during this same time frame in the same building.

The court hearing hosted 12 individuals, including the judge, the legal secretary, the plaintiff along with her lawyer, four defendants, the lawyer of the two defendants, two interns, and a monitor from BIRN and I/KS.

Apart from the lack of air inside the closed office, the plaintiff with her lawyer and the defendants were sitting next to each other, which often contributed to initiate a dialogue between them, and as such, the intervention of the judge was deemed necessary to calm the situation down.

According to the judge of the given case, Faton Bajrami, he was told that there are no available time slots within that building, considering that there are many court hearings being held from the Serious Crimes Department. Judge Bajrami said:

"All judges dealing with civil matters, including myself, should come together to push further the idea that our hearings should take place in the courtrooms considering that some are interested to hold the hearings in the courtroom, and some find it easier to place the sessions within their offices, rather than having to move cases from one courtroom to another."

The Hearing is Postponed – the Prosecutor is not Present in the Trial

At the Basic Court of Prishtina on June, 21st, 2016, in case number PKR no. 32/2015, due to the criminal offence of "attempted murder," the hearing was not held.
The hearing did not take place due to the absence of Prosecutor Ilaz Beqiri, did not warn of

44 Judge body: Arcadiusz Sedek, Mariola Pasnik and Naser Foniqi, prosecutor: Andreë Carney, the indicted: Enver Sekiraqa with lawyers Bostjan Penko and Kosovare Kelmendi, the damaged: family of Triumf Riza.

his absence. Presiding Judge Aferdita Bytyqi said that she will notify the chief prosecutor on this matter, which caused the session to be postponed. Furthermore, the defendant was absent at the beginning of the hearing, but he was on his way to trial.[45]
Similarly, in the Basic Court of Prishtina's Serious Crimes Department, in the case number PKR.nr.205 / 08, scheduled to be held on August 12th, 2016, due to the criminal offence "acquisition during the exercise of duty" under Article 340 of the KCPC, the hearing did not take place.

The absence of Prosecutor Hivzi Bajraktari caused the failure of the court healing. Presiding Judge Shashivar Hoti informed the parties that on the day of the hearing, the submission has announced that the prosecutor will not attend the session, considering that he is on leave. In this case, as such, the prosecutor of the case has shown no seriousness, considering that this case has been disregarded by court proceedings since 2008. As a result of the given case, the prosecutor should not, by any means, be the factor that contributes to the hearing postponing.

Also, although this hearing did not take place, the presiding judge Shashivar Hoti entered the session with only one member of the panel, Judge Shpresa Hasaj Hyseni, while the other member Nexhmedin Sejdiu was absent. The trial panel should, at all times, consist of all members, and as such, no action should be taken without the presence of all three members of the panel.[46]

At the Basic Court of Prishtina, on the other case, Pkr. 622/15, which was scheduled to be held on November 17th, 2016, due to the criminal offence of "misuse of duty or official authority" under Article 422 of the RKCC, the hearing did not take place at all, considering that Prosecutor Besa Krajku was engaged in another case within the same institution. The presiding judge announced that she was engaged in a pre-trial detention case.

Although pre-trial detention cases remain of paramount importance, this, as such, should not be justified by the postponement of the hearing on the absence of a prosecutor, considering that corruption cases are also deemed a priority.

There have been postponements, moreover, regarding this case even earlier. The hearing due to Lulzim Gashi's absence was postponed on November 1st, and due to the absence of a member of the panel, the hearing was also postponed beforehand on October 18th, considering that Judge Shashivar Hoti was engaged in another hearing session.[47]

The Trial Is Postponed Due to the Negligence by the Court

In the court hearing for case number PKR.no.66/2016, which was planned to be held on July 7th, 2016 in the Basic Court of Gjilan, The Department for Heavy Crimes, regarding the criminal offence "organization of and participation in a terrorist group" based on article 143 of the RKCC, the court hearing was not held at all. The postponement happened due to the negligence of the court. The head of the judge body informed that the court had forgotten to send an order to the Kosovo Police that the indicted for terrorism should be brought to court.

The lawyer of the indicted expressed his discontent by mentioning the fact that the postponement of this trial damages the indicted the most. On the other hand, the head of

45 The Judicial Panel: Afërdita Bytyqi Presiding Judge, Arben Hoti and Syzana Qerkini members, the prosecutor Feti Tunuzliu, the accussed Sahit Sopa, the damaged, Rrahman Arifoviq.
46 Head of Judicial Panel, Shasivar Hoti, one of the members Shpresa Hasaj Hyseni, the prosecutor Hivzi Bajraktari, the accused Sami Zeneli and Mehmet Gerguri, the damaged, Biblioteka Kombëtare e Kosovës.
47 Head of judge body; Elmaz Zenuni, members; Valon Kurtaj and Shashivar Hoti, prosecutor; Besa Krajku, the indicted; Lulzim Gashi with lawyer Asman Gashi.

the judge body justified himself by saying that such mistakes happen because they are technical.[48]

Indictments Not Read and Not Received by Lawyers

In the court hearing held on June 6th, 2016 in the Basic Court of Prishtina, the Department for Heavy Crimes, with case number Pkr. 72/2014 regarding the criminal offence "unauthorized production and processing of narcotics, psychotropic substances, analogs and tools, narcotic equipment and materials" from article 274 par. 1, and also the criminal offence "fake documents related to taxes" from article 314 par. 2 of the RKCC, there were a few violations in the criminal procedure.
In this hearing, despite the fact that it was the initial review, the indictment was not read, while this was not objected by any of the pairs who were present in the hearing.
The reading of the indictment in the initial review is obligatory and avoiding this reading contains procedural violations and in the meantime heavily damages the principle of publicity since in such a case of corruption, the role of media becomes more difficult in providing information fairly as to what the indicted are accused of since the hearing of their indictment is denied.

Also, another more flagrant violation is that in this hearing, two lawyers were not equipped with the indictment, which violates the right of the lawyers and the indicted since the non-equipment of lawyers with indictment makes the declaration of the indicted for admitting guilt impossible. [49]

In Custody for Over 3 Years Without Indictment

In the Basic Court of Gjakova, in case number PKR.no.250/13, planned to be held on June 27th, 2016, due to the criminal offences "murder" from Article 178, "holding in property, unauthorized control and possession of guns" from Article 473, and the criminal offence "light bodily injury" from Article 188 from the RKCC, the indicted Nikollë Shyti is found in custody for more than three years without having any indictment issued.[50]

Disrespecting Legal Deadlines for Holding the Initial Review
In the court hearing with case number PKR.no.14/16 in the Basic Court of Prishtina, held on September 9 2016, because of the criminal offence "Misuse of the official position or authority" from article 422 par. 1 of the RKCC, the indictment towards the defendant was issued on January 13 2016, while the initial review was finished on September 8 2016, regardless of the fact that the KCPC determines the initial review to be held 30 days after the indictment has been issued.[51]

In another case in the Basic Court of Prishtina, number PKR.no.369/16, held on October 20th, 2016, due to the criminal offences "misuse of official position or authority" from article 422 par 1 and 2, and "unconscious medical treatment" from article 260 par. 1 and 4 from the RKCC, despite the fact that the criminal offence from the chapter of corruptive acts, for which cases a priority treatment was foreseen, the indictment in this case was issued on June 15th, 2016, while the initial hearing was held four months after, on October

48 Head of judge body Agim Ademi, members Ramush Ademi and Naser Maliqi, prosecutor Elez Blakaj, the indicted Vilson Halili with lawyer Abdylaziz Sadiku.
49 Individual judge Elmaz Zenuni, prosecutor Faik Halili, the indicted Blerim Sinani, Skender Sinani, Fatmir Sinani, Isa Derguti, Sabit Sogojeva, Enver Hasani and Mentor Emini, the damaged Kosovo's Budget.
50 Head of judge body Gëzim Pozhegu, members Ilir Rashkaj and Manduhije Syla, the indicted Nikollë Shyti with the lawyer Ndrec Dodaj and Pren Shyti with the lawyerMeshari Selimaj, the damaged File dhe Jozef Ndrecaj with representative lawyer Avdi Rizvanolli.
51 Individual judge Shashivar Hoti, prosecutor Abdurrahim Islami, the indicted Enver Hasani with the lawyer Bajram Tmava.

20th, 2016.[52]

The Long Stay in Custody until the Second Judicial Review

In the Department for Heavy Crimes near the Basic Court of Prizren, in case PKR.no.85/16 held on 17.10.2016, due to the criminal offences "organized crime, money laundering, usury and imposition," the indicted were in custody from May 2015, while the hearing for the second review was held in October 2016. Therefore the stay in custody was 17 months without having the case enter the main review.[53]
In this court hearing there were problems from the beginning. One of the main problems was that the lawyers did not have room to sit and to place their files (which were quite voluminous due to the nature of the case). The lawyer Hazër Susuri reacted to the judge body that he first did not have a place to sit, and then complained that there were poor conditions, because he did not have somewhere to place the files, which he had to keep in his hand.

TECHNICAL PROBLEMS

Delays in the Start of the Trial

On June 29 2016, in the Basic Court of Prishtina – Department of Serious Crimes, in the case number P.nr.362/14, due to the criminal offence "misuse of influence" according to article 345 paragraph 1 of the Provisional Criminal Code of Kosovo, after many hours of waiting the court session was not held and was postponed.

This court session was planned to start at 10:00 but during this time in Court appeared only the accused with his defender and the damaged party. Around 10:00, the President of the panel of this case used the break for another case (with case number Pkr.nr.344/15) stepped out in the hallway and informed the parties that the session will be postponed for 13:30.

The session started at 13:35 and only the president of the panel Arben Hoti was present, whereas two other members were absent, Aferdita Bytyqi and Elmaz Zenuni, as well as the prosecutor. President of the panel briefly gave the notification that in absence of the prosecutor the conditions were not set to hold the judicial review and after three hours of waiting the session was postponed for July 28, 2016[54].
Whereas in the Basic Court of Prishtina, at the Department of Serious Crimes, the case with the number Pkr.135.15, due to the criminal offence of murder according to article 178 of the RKCC, there were many technical problems.

The case judge said many times that he complained about the monitor that was far and he had to step away from his desk to follow the registration. During the court session,

52 Head of judge body; Shadije Gerguri, prosecutor; Agron Bajrami, the indicted; Ferid Agani, Gani Shabani, Ali Hocalogu, Astrit Bakiqi, Borche Petrovski, Lulzim Brovina, Gani Bajraktari, Nexhmi Zeqiri, Daut Gorani, Elfedin Muhaxheri, Reshat Emra, Bedri Zaiti, Hamza Selmani, Ismail Avdimetaj, Afërdita Selmanaj, Sali Shala, Nehat Rexhepaj, Agron Besimi, Petrit Ademaj, Bajram Meziu, Agron Leka, Driton Miftari, Masar Gashi, Besim Guda, Mirdi Strana, Shemsedin Shabollari, Fisnik Hima, Luan Pazhari, Ferid Susuri, Galia Berisha, Bajram Preteni, Arton Beqiri, Driton Sylejmani, Abdullah Tuna, Mahmut Çakmak, Shpend Elezi, Blerim Zuna, Lulzim Kamberi, Sami Gjoka, Faik Shatri, Ejup Pllana, Florim Sadiku, Halim Halili, Agim Krasniqi, Hajdin Qitaku, Afrim Bekteshi, Edmond Haliti, Besnik Koliqi, Afrim Poniku, Ferihane Sefa, Banush Gashi, Nebih Musliu, Dardan Koqinaj, Xhevdet Krasniqi, Lazer Prekpalaj, Murat Abazi, Rexhep Manaj, Raif Qavolli, Kelmend Pallaksa, Arlind Batalli.
53 Head of judge body; Xheladin Osmani, prosecutor; Merita Binaj- Rugova, the indicted; Tunë, Kastriot, Gjon, Marjan, Gjekson and Gëzim Kqira, Benson Buza, Besfort Omaj, Zyrafete Hukolli, Ragip Fazlija, Ekrem Leci, Hil Kaqinari, Sejdë Kaqorraj and Zef Oroshi.
54 Judge body: Arben Hoti kryetar, Afërdita Bytyqi and Elmaz Zenuni anëtarë, the indicted Sadik Rashiti with lawyer Shemsedin Pira, the damaged Riad Rexhepi, Afrim Pira, Skofiare Pira and Lavdije Ajvazi.

many times there was an exchange of raised voices between the lawyer Haxhi Millaku and Ramiz Krasniqi, whereas the judge was more tolerant than expected while the lawyers were talking and arguing in front of the judge during the court sessions.

Also this court session was interrupted for few minutes and after the judge scheduled another session and both parties should have been informed that the court hearing would not be held.[55]

This problem appeared especially in hall number 17 on the first floor, because it is the biggest hall and there is not a monitor in front of the panel, whereas in the past there were other halls where monitors are now placed. The problem continues to be present in hall number 17. Ramiz Krasniqi is one of the lawyers of the accused, whereas nothing was undertaken related to their on-going debates except a verbal warning that was not put in the judicial records.

Lack of Monitor Creates a Problem for the Panel

In the court session held on June 14, 2016 at the Department of Serious Crimes in the Basic Court of Prishtina with the case number PKR.nr 275/14, in the hall number 17 on the first floor of the Justice Palace, due to the criminal offences of organized crime, bribery and abuse of official duty, there was a problem the lack of monitors.
The lack of one monitor for the panel in this session created a lot of problems because the president of the panel interrupted the parties many times, offering to the record keepers to see what was being written in the minutes.[56]

55 Head of judge body: Faik Hoxha with members Valbona Selimi and Nora Bllaca, prokurori, , të akuzuarit dhe avoketët: Besim Istrefi – av. Ali Beka, Besart Istrefi – av. Haxhi Millaku dhe Jeton Saraqi –av. Ramiz Krasniqi dhe Nuhi Paqarizi, të dëmtuarit: Naim Gërvalla dhe Lutfi Saraqi. Seanca gjyqësore u mbajtë me datë: 4.02.2016
56 Trial Panel: Faik Hoxha, presiding judge, Valbona Selimaj and Nora Blaca, members, prosecutor Abdurrahim Islami from the SPK, indicted: Hasip Kiku etc, injured party: TAK and Kosovo Customs

II. SPECIFIC ANALYSIS;
1. ORDER FOR COMMUNITY SERVICE WORK

The RKCC, which started to be implemented in January 2013, foresees the sentence with an order to conduct service work for the community as an alternative punishment.
This kind of order is considered a substitute for an imprisonment sentence up to one year or punishment with a fine up to 2,500 euros.

A community service order is determined with a duration of a minimum of 30 hours up to 240 hours of community service work, with the condition that the duration of the completed hours does not to exceed one year.

Community service can be done as an individual or as a group, which will significantly reduce repeat offences. This alternative sentence is in the interests of the offenders as well as society considering the fact that the main purpose is rehabilitation of the offender.
One of the judges that has applied this sentence in six to seven cases during 2016 does not see it as an unfair advantage to apply kind of this sentence.

"The purpose of this alternative sentence is that the offenders are not isolated, not deprived from the freedom of movement, also this kind of sentence involves attributes of a moral and financial punishment and certain obligations towards the damaged party and the society, for which the offender has to meet."57

Realizing the importance of this punishment, the Report has secured data from the Basic Court for 2016.

The table below illustrates the application of this punishment in seven Basic Courts of Kosovo.

COURT	COMMUNITY SERVICE SENTENCES DURING 2016
FERIZAJ	73
PEJA	27
GJAKOVA	0
GJILAN	0
PRIZREN	0
PRISHTINA	NO DATA PROVIDED
MITROVICA	NO DATA PROVIDED
TOTAL	100

As seen on the table, excluding the Basic Court of Prishtina and in Mitrovica which did not provide any statistics, the other three big basic courts like Prizren, Gjilan and Gjakova, it seems like in 2016 Article 60 of the RKCC did not exist at all, they did not sentence any

57 Sulltan Dobraj, judge in Basic Court of Peja- branch in Deçan

punishments for service to the community. The table shows that Ferizaj and Peja courts are the only ones that have applied this punishment.

Considering the fact that a person's stay in prison has a financial cost to the state budget of 29-30 euros per day,[58] and taking into the account other negative factors which can affect in non-rehabilitation of the sentenced person because the person will stay with repeaters, the Report has shown the positive side of this sentence for the offender, society, and the state.

Community service orders do not isolate the offender, do not deprive the person of freedom of movement, and at the same time, these orders involve attributes of moral and financial consequences and certain obligations towards the damaged party and the society, for which the person has to fulfill. This kind of sentence is foreseen as a substitute for the imprisonment sentence or fine punishment. Community service work as an alternative order is consistent with the court verdict and the offender will perform the obligation within a certain timeframe. Examples of community service work that is in the interests of the public include cleaning city streets or parks, taking care of the elderly, et cetera. The service will be performed unpaid and under the supervision of the probation officer.[59]

Taking into the account the positive impact in the application of this order from one side and few applications in practice on the other side, BIRN and I/KS encourage the courts to apply this alternative order more frequently in the future as a good opportunity to affect the rehabilitation of perpetrators of minor offences and also on lowering the costs of the state budget.

58 Report from the Kosovo CentreCentre for Rehabilitation of the Torture Survivors, QKRMT 2014, pg 55

59 Note: http://juridiksi.e-monsite.com/faqe/e-drejta-penale/leksione/denimet-alternative.html

NEGOTIATION OF PLEA AGREEMENTS IN KOSOVO COURTS 2015 – 2016

In the Monitoring Reports of Kosovo Courts and the Prosecution, judges and prosecutors have constantly emphasized the high volume of cases they deal with in their work and their inability to treat cases in a timely manner and according to the provisions of the RKCC. Along with the legal timeframes for solving and treating cases, the RKCC has foreseen the alternative procedures for closing penal cases through plea agreements, as it is one of the procedures.

Plea agreements are in the RKCC for lowering the number of cases that are admitted in the prosecutor's office and in Kosovo courts and as such in the justice system, from which the country benefits.
Article 233, par. 1, of the RKCC foresees exactly the time and manner of entering into the plea agreement:

"Any time before the indictment, the state prosecutor and the defender can negotiate the conditions of the written plea agreement, according to which the accused and the state prosecutor agree on the charges involved in the indictment and the accused agrees to plea agreement in exchange for: 1.1. The state prosecutor's consent to recommend a softer sentence to the court, but not under the minimum stipulated by law, or 1.2. Other considerations in the interest of justice such as exemption from punishment according to Article 234 of this code."[60]

The Criminal Code also foresees that after the indictment and before the completion of the judicial review, the state prosecutor and defender can negotiate the plea agreement in writing, according to which the defender accepts the guilt in exchange of the previously mentioned privileges.

The initiative for application in practice of this option Kosovo can be taken by either the defender or the accused, and also the prosecutor. In the end, the court is always the one that evaluates if the agreement is within the provisions of the article 233 of the RKCC, and it can accept or refuse the agreement.

BIRN and I/KS, through this summary analysis, will shed light onto the extent to which plea agreements are being applied in Kosovo courts and the achieved results during 2015-2016.

Plea Agreements in Kosovo Courts

In the beginning of this analysis we are obliged to mention the fact that regardless of the attempts made by BIRN and I/KS, we have not been able to secure all data on this matter from the Basic Court and Prosecution in Prishtina and also from the Basic Court and Prosecution in Mitrovica. Data has not been secured by the Basic Courts in Peja and Gjilan (while having obtained the data from the Basic Prosecution in Gjilan, we are able to estimate the number of these cases that went to Court.)

60 Paragraph 1 article 233 KPPRK.

General Number of plea deal cases According to Courts

COURT	NUMBER OF AGREEMENTS
PRISHTINA	NO DATA PROVIDED
PRIZREN	25
FERIZAJ	8
GJILAN	NO DATA PROVIDED
MITROVICA	NO DATA PROVIDED
PEJA	NO DATA PROVIDED
GJAKOVA	2 35 AGREEMENTS
TOTAL	

3 agreements in the General Department and **22** in the Serious Crimes Department

Looking at these secured data from Kosovo courts, we notice a small number of cases, excluding the Basic Court of Ferizaj, Prizren and Gjakova. Other courts have not responded to BIRN and I/KS monitors with the justification that there is no section to register these cases.

From the data that the courts possess we can see that Basic Court of Prizren leads as one of the courts with the biggest number of cases, with a total of 25 cases, out of which there are three agreements in the General Department and 22 cases in the Department of Serious Crimes.

After Prizren, the second is the Basic Court of Ferizaj, which offered data only for 2016. According to the data from January 2016 until November 2016, there are a total of eight cases of negotiating the plea agreement.

The Basic Court of Gjakova reached only two plea agreements.

Considering the large number of unresolved cases at the country level, which appears to be over 417,000 cases,61 the number of applications of plea deals appear not to contribute at all to lowering the number of cases and serving justice in general, considering the mutual benefits of the client as well as the institution.

General Number of Plea Deal Cases According to Prosecutions:

PROSECUTION	NUMBER OF AGREEMENTS
PRISHTINA	NO DATA PROVIDED
PRIZREN	110 AGREEMENTS WITH 172 PERSONS
PEJA	149 AGREEMENTS WITH 175 PERSONS
MITROVICA	NO DATA PROVIDED
GJILAN	508 AGREEMENTS, NO DATA ON THE NUMBER OF PERSONS
FERIZAJ	60 AGREEMENTS WITH 72 PERSONS
GJAKOVA	76 AGREEMENTS WITH 89 PERSONS
TOTAL	903 AGREEMENTS

61 Six months report of 2016 of the Kosovo Judicial Council

The Prosecution of Kosovo's capital Prishtina and that of Mitrovica did not respond related to plea deals. Even worse, they have not answered questions posed by BIRN and I/KS— they ignored the questions completely. As it can be seen from the secured data, the Gjilan Prosecution is an indisputable leader in solving cases with plea agreements (with 508 agreements), but they have no data on the number of people involved in these agreements.

On the side of the prosecutors, The Prosecution of Peja had 149 agreements with 175 involved persons, the Prosecution of Prizren had 110 agreements involving 172 persons, Gjakova had 76 cases involving 89 persons, and the Prosecution in Ferizaj which comes the last one with 60 cases and 72 people involved in plea agreements.

Excluding the data of the prosecutions in Prishtina and Mitrovica, prosecutions have solved 903 cases with plea agreements, a considerable number that contributes to the economy and lowering the number of cases in general.

"The Basic Prosecution in Gjilan has reached the highest number of closed cases by instituting plea agreements, considering the fact that already in 2013 we have created a strategy for closing cases through alternative procedures, in particular via the option of agreements, so already in 2013 we have conducted via those instruments over seven per cent of the closed cases through alternative procedures, then in 2014 over ten per cent of the cases, in 2015 approximately 20 per cent, whereas in the following years we aim to go beyond 50 per cent of the general number of cases. I suggest to other prosecutions on the country level to devote more to these instruments because the experience in prosecution and in our court in Gjilan has shown their success by lowering the big number of cases and avoiding the unnecessary prolongation of court procedures to reach the meritorious placement of cases."[62]

Reaching the plea agreement in the investigation phase brings out multiple benefits for all parties involved in the criminal proceedings. Firstly, the prosecution is released from representing the case and without having to indict or conduct defence on the indictment on the judicial review. On the other hand, the suspect gains while reaching the agreement on an earlier phase of the procedure that reflects on the level of the punishment. The court will also benefit because it avoids the risk of being overburdened with criminal cases and it results in a bigger number of cases solved.

Considering the fact that the RKCC recognizes the court's right to officially accept or refuse the plea agreement – also that the chief prosecutor of the relevant office should sign the plea agreement – BIRN and I/KS have conducted a comparison of cases for which the plea agreement was refused.

62 Interview with the Chief Prosecutor of the Basic Prosecution in Gjilan, Mr. Jetish Maloku

Following is the table with the number of cases when the plea agreement was refused by the prosecution and the court.

CITY	REFUSAL OF THE AGREEMENT BY THE PROSECUTION	PROPOSED AGREEMENTS OF THE PROSECUTION REFUSED BY THE COURT
PRISHTINA	NO DATA	NO DATA
PRIZREN	1 CASE	0 CASES
PEJA	0 CASES	1 CASE
MITROVICA	NO DATA	NO DATA
GJILAN	0 CASE	0 CASES
FERIZAJ	0 CASES	0 CASES
GJAKOVA	0 CASES	0 CASES

From the data presented in the table above we see that courts and prosecutions in Kosovo have played a positive role in plea agreement cases.

From the total number of these solved cases with this instrument, only two cases were refused, one from the Court in Peja (no reason has been gives for refusal) and another one from the Prosecution in Prizren (in this case, case number PP.nr.152/16, the defender of the accused presented the request for a plea agreement, but the chief prosecutor of the Basic

Prosecution in Prizren did not accept negotiation considering the quantity of marijuana, weighing 10.3 kg, and the accused did not cooperate in divulging the intended destination for the above mentioned narcotics.) In this case, after the development of the judicial process, the Court found the accused guilty and issued a sentence of a 1,000-euro fine and imprisonment with two years and six months.

The Report appreciates the positive role of the prosecutions and courts in reaching plea deals, based on the secured data from these institutions where only two cases have failed to reach a plea agreement between the prosecution and the client.

Conclusion

With 903 plea deal cases within a two-year period of time (excluding here data from the Basic Court of Prishtina, with the biggest number of cases in the country, the Basic Court of Mitrovica, and the Basic Prosecutions in Prishtina and Mitrovica) we may conclude that this form of agreement deserves a better treatment and a wider use in Kosovo criminal procedures, particularly when considering the high number of cases that our prosecutions and courts are dealing with.

The 903 plea deals, compared to the total number of unsolved cases in Kosovo—which according to the first six-month report in 2016 of the Kosovo Judicial Council is 417,733 cases—is indeed a representative number.

We consider that the courts, and in particular our prosecutions, must be more open towards plea deals in the sense that this form of agreement should be practiced more in the courts through the legal framework of the RKCC, which foresees prosecutors having the opportunity to initiate implementing such agreements.

The report considers that a more frequent implementation of the plea agreement would be a resource of benefits for all parties in the procedure, including economization and lowering the number of cases in general.

3. MEDIATION AS AN ALTERNATIVE MEANS TO SOLVING CASES IN COURT

One of the alternative means to solving cases in court is mediation, which is applied for criminal offences punishable with a fine or prison time for a period of up to three years.

For such cases the state prosecutor may send the case to the independent mediator for mediation, who can thereafter be reached with the approval of the defendant and the damaged party.

In Kosovo, the 2008 Law on Mediation regulates mediation.[63]

According to the Law, "mediation" is defined as an out-of-court act which is conducted by a third party (the mediator) for solving disputes between subjects in accordance with the conditions regulated by this law.[64]

Mediation, as defined under the Kosovo Law on Mediation, is a facilitating method. Apart from the prosecutor, the case can also be sent to mediation by the judge during any of the phases, if the pairs agree for the case to be solved through negotiation. Based on the legal competencies guaranteed by law, BIRN and I/KS have collected the statistical data from the prosecutions and the courts for the cases that are sent to and solved through mediation.

Mediation According to 2015-2016 Statistics

BIRN and I/KS have collected statistical data for the mediation cases from the prosecutions, courts, and the Ministry of Justice.

According to the collected data, some courts and prosecutions have not responded at all, with the excuse that they do not posses such statistical data.

Having only scarce amount of data available, offered by the courts and basic prosecutions, and without the ability to have a thorough analysis with the data available, BIRN and I/KS also collected data on mediation from the Ministry of Justice for the years 2015 and 2016. Seven of the regions for which the Ministry of Justice has published statistics on mediation cases are the following: Prishtina, Ferizaj, Gjakova, Peja, Gjilan, Mitrovica and Prizren.

These statistics published by the Ministry of Justice also show which institution—the Court or the Prosecutor—that referred the parties to mediation, or if the case was self-referred. The statistics also show the number of cases referred to mediation that were solved, as well as how many cases were left unsolved during this period.

The tables below present the statistical data for mediation cases for the 2015-2016 cases received from the Ministry of Justice. Note that in the given data, there is a mismatch in the digits, which according to the Ministry of Justice happened due to the transferring of the cases from one calendar year to another. Another explanation for this, according to the Ministry, is the fact that not all referred cases make it to the process of mediation.

"For example, in the Mediation Centre in Prizren, the cases that were published were referred, but there were some that did not manage to enter the mediation process because the referred cases were selected by the CLE/USAID project, which stated that they were not

63 Law No. 03/ L-057, 18 September 2008
64 http://www.gazetazyrtare.com/e-gov/index.php?option=com_content&task=vieë&id=276&Itemid=28

proper for mediation and were thus returned without entering the mediation procedure," explained Saranda Salihu from the Ministry of Justice.

The table with the mediation cases for 2015

2015	PRISHTINA	FERIZAJ	GJAKOVA	PEJA	GJILAN	MITROVICA	PRIZREN	TOTAL
Cases referred by the Court	164	18	28	98	203	36	94	641
Cases referred by the Prosecution	267	102	129	56	16	77	122	769
Cases with self-referral	3		3	4	18	73	3	104
Total cases referred to mediation	434	120	160	158	238	182	219	1511
Total cases solved	515	103	129	139	213	165	18	1282
Total cases unsolved	11	6	19	40	7	20	15	118
Cases in process (the total amount varies)		12	17	8	4	10	6	57

The table with the mediation cases for 2016

TOTAL NUMBER JANUARY - AUGUST 2016	PRISHTINA	FERIZAJ	GJAKOVA	PEJA	GJILAN	MITROVICA	PRIZREN	TOTAL
Cases referred by the Court	239	3	46	26	108	22	1	445
Cases referred by the Prosecution	306	71	97	5	27	54	18	578
Cases with self-referral	3	1	1		6	23	1	35
Total cases referred to mediation	548	75	144	31	141	99	20	1058
Total cases solved	386	60	116	30	129	90	13	824
Total cases unsolved	8	1	15	5	9	8	2	48

According to the Ministry of Justice's statistics on cases referred to mediation for 2015, the Court of Gjilan leads with 203 cases in total, while in 2016 the Court of Prishtina led with 239 cases in total. In 2015, Ferizaj had the smallest number of cases that were referred by the court with only 18 cases, while for 2016 the court in Prizren referred the smallest number, with only one case in total.

Furthermore, the 2015 statistics from the Ministry of Justice show that for the prosecutions, the Prosecution of Prishtina referred the most cases with 267 cases, while the least number of referred cases by the prosecution for this year was Gjilan, which only referred 16 cases. While for 2016, the Prosecution of Prishtina again referred the most cases to mediation with 306 cases in total, while the least amount of cases were referred by the Prosecution of Peja, with only five cases.

Also, these statistics show that in 2015, the cases that were self-referred were mostly from the region of Mitrovica, with 73 cases in total, while Prishtina, Gjakova, and Prizren, there were only three cases of self-referral. For 2016, Mitrovica also leads in self-referrals with 23 cases, while Ferizaj, Gjakova, and Prizren only had one case each.

According to the data, the highest number of cases solved with the mediation procedure during 2015-2016 were in Prishtina with 515 cases in total and 386 cases respectively.

Meanwhile, Prizren had the least number of cases solved through mediation for the years 2015 and 2016 with 18 cases in 2015, and 13 cases in 2016.

Problems Faced by the Mediators

Mediation became an option enshrined into Kosovo law in 2008, but the implementation of this law did not begin until 2011 when the first mediators were licensed.
Like any other occupation, mediation has also had its various problems and challenges.

One of the challenges is the funding of mediation centres in Kosovo. Mediation centres were financed through external donors' projects since they had signed agreements with the Ministry of Justice.

From the beginning of 2016, funding media centres has been a challenge in Kosovo's regions, since the donors finished their projects. After the projects were completed, some mediation centres were closed. Mediation centres were funded by the donors' projects in Peja, Prizren, and Gjilan. After the project was finished on May 1st, 2016, these centres closed.

The Ministry of Justice did not offer any clarification related to the agreement and how it was determined to regulate the funding after the end of the agreement with the donors. Chris Thompson from USAID/ CLE Contract Law Enforcement told BIRN and I/KS that USAID supported the mediation centres in Prizren, Peja, and Gjilan from 2011 to 2016. The support was done in coordination with the Ministry of Justice and it did not have any agreement or memorandum since it was not required by law to do so.

The Head Prosecutor of the Prosecution from the Municipality of Prizren complained:

"We were not satisfied with the Mediation Office here in Prizren, this office did not function properly. This can be seen by the number of cases submitted for mediation, in reality they finished very few cases. Now this mediation office is closed, we are in contact with the central office in Prishtina and are waiting for the work of this office to be active again

because it would be quite helpful."[65]

From the Secretariat for Mediation said that the judges and prosecutors are not referring their cases sufficiently in the mediation procedure.

"The prosecutors and the judges are not sufficiently referring considering how many cases they have for mediation, but in Prishtina at the moment we do not have the human and logistic capacities to manage more cases than those that are currently under the mediation procedure."[66]

The Ministry of Justice did not provide any response regarding their capacities, but they declared that they have an increased number of referred cases for mediation, which resulted in the need for increased staff and an extra room at the Prishtina Mediation Centre.

According to the general statistics, 4,801 cases in total are referred, while 3,786 of them are solved through the mediation procedure. So, if we take into account the percentages, it means that approximately 80 per cent of the referred cases have been solved through mediation.

According to the responses of the Ministry of Justice, the financing of the mediation centres has remained undeveloped and depends on the projects of international organizations, but they hope that with the new Law on Mediation, which is under the amendment procedure, there will be a new legal and financial basis created for mediation.

The mediators spoke for themselves about the challenges they face during the development of the mediation process.
Mediator Ganimete Xhelili from the region of Gjilan spoke about the problems that appeared after the Gjilan centre closed. She said that the centre was in order during the time while it was functioning, but she complained that they did not receive a sufficient amount of mediation cases from the judges and the prosecutors.

"I think that the centre has functioned well up to a certain point quite normally, regardless of the fact that not so many mediation cases were referred by the judges and prosecutors, since it was put in order by the mediators. After closing down the office, I have had only two mediation cases," Xhelili said.

Xhelili requires the mediation centre to begin working again in Gjilan with continuous funding. Another mediator, Faton Morina from Prishtina, said that there are plenty of cases from the courts that were wrongly pending to be sent to mediation for years.

"What needs to be done more is to eliminate the hesitation for the cases that can be referred for mediation, to stay pending for a long time in courts, when instead they should be offered to the parties as a chance for alternatives."

Conclusion:

The Report considers that mediation, as an alternative means to solving court and prosecution cases based on statistics,[67] has minimally contributed to solving and decreasing the number of cases in courts and prosecutions.
For the proper non-efficiency of this alternative mean to solving cases, there were also

65 SylëHoxha- head prosecutor at the Basic Prosecution in Prizren
66 Vjosa Shehu, legal officer in the secretariat for mediation.
67 Note the tables with the cases of the years 2015- 2016 page 47 and 48

a few factors that contributed, one of which is the non-awareness of the citizens to ask for their cases to be solved through mediation since this method is faster, cheaper, and above all one of its' main benefits is also the fact that it excludes the defendant from the list of committing criminal offences since the investigations are off or the lawsuit will be canceled and the case is closed.

Another important factor in mediation not contributing enough to the decrease in case numbers is the hesitation of the judges and prosecutors to send cases to mediation.

"I also seek the help of the "Justice in Kosovo" in order to promote mediation as an alternative before the parties seek to go to Court".
Afërdita Bytyqi – head of the Basic Court of Prishtina

An additional factor is the absence of a solution to permanently finance the mediation centres and leaving them to the hands of the donors. The Report considers that such an issue could have been solved by the state institutions themselves.
The report recommends that during the process of fulfilling and changing the Law on Mediation, the Ministry of Justice should consider a better way to finance the mediation centres in the Kosovo. Also, there should be an awareness campaign for citizens to inform them that they can solve their cases through this alternative means.

The Report, noting the low number of cases solved through mediation, encourages the prosecutors, judges and citizens to send their cases to be solved through the procedure of mediation.

4. Dismissal of Indictments in the Second Hearing

When the new RKCC entered into force in 2013, many changes appeared even in the initial stage of the criminal procedure.

The stage of indictment confirmation was replaced with the initial trial hearing and the second trial hearing, a stage where objections for the evidence mentioned in the indictment occur. What is more important in this stage before the second hearing is to file any objections to the evidence listed in the indictment, either by requesting the dismissal of the indictment if it is legally prohibited or filing any requests to dismiss the indictment if it is not described in the law as a criminal offence.

It is clear from practice that the tradition of not dismissing indictments still continues, even in the cases when there is no sufficient evidence, just like previously in the stage of confirmation of indictment as the following section will describe.[68]
Regardless of the fact that the RKCC gives an authorization to the single trial judge or the presiding trial judge for dismissal of the indictment in the second hearing,[69] BIRN and I/KS noticed during the courts monitoring process in 2016 that this stage in the procedure turned into a process that parties take part in solely for the sake of it. [70]

Our findings show that even in the cases in Kosovo Basic Courts when the indictment does not fulfill the basic criteria to pass in the stage of the court hearing, very rarely they do apply the dismissal of the indictment as this right is guaranteed by the law in Article 253 of the RKCC.[71]

To make the comparison easier for non-dismissing the indictment without basis, the Report compared the number of Kosovo court decisions for dismissing the indictment and the number of the acquitted indictments as a lack of evidence. As a special indicator in non-dismissal of indictments in the second hearing, from Article 253 of the Criminal Code, according to interviews conducted by BIRN and I/KS i with judges it appears that the judges have no faith in the optimal application of the procedure provisions for fear of facing possible criminal charges. Such statements are taken from the judges themselves with whom we conducted interviews, and they preferred to remain anonymous.

The need to expedite the procedure for avoiding any misuses by the procedural participants and for a regular court process, as it is foreseen by the European Convention on Human Rights, where among other things it is stated:

"Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of his civil rights and obligations or of any criminal charge against him." 72

Even the RKCC states clearly the right to a fair and impartial trial within a reasonable time, according to which any person charged with a criminal offence shall be entitled to fair criminal proceedings conducted within a reasonable time.[73]

Second hearing sessions before entering into a court hearing have to do with the objection of evidence and dismissal of the indictment. In this stage the optimal application of the provisions of the Criminal Code prevents the misuse of the prosecution bodies in raising the

68 See table pg. 72
69 See article 253 of RKCC
70 See table pg. 72
71 See table pg. 72
72 ECHR, Article 6 paragraph 1
73 RKCC article 5, par 1

indictment without sufficient basis and manipulation of the prosecution.
From BIRN and I/KS's monitoring it has been noticed that the second stage of hearing is transformed into a formal application just for the sake of it. On the other hand, the incorrect application of this stage in the proceeding directly affects cost cuts and procedural expenses.

Holding and proceeding with the trials in all stages without sufficient evidence not only affects the enormous amount of procedural expenses, which in the end are paid from the Republic of Kosovo budget, but also affects violation of human rights and increases the number of backlogged cases in courts.

Findings from Basic Courts

The report has collected data from the Kosovo Basic Courts for 2016 related to the cases with indictment dismissals and compared this data with the acquitted verdicts from these courts, which were mainly due to lack of evidence.

Table with the cases of dismissed indictments from Article 253 and the acquitted verdicts as lack of evidence:

BASIC COURT:	DISMISSAL OF INDICTMENTS FROM ARTICLE 253 OF RKCC	ACQUITTED VERDICTS DUE TO LACK OF EVIDENCE
PRIZREN	4	14
GJAKOVA	1	30
MALISHEVA BRANCH	0	7
RAHOVEC BRANCH	0	?
PRISHTINA	?	?
FERIZAJ	8	19
GJILAN	2	48
MITROVICA	?	?
PEJA	?	?
KLINA BRANCH	5	1
ISTOG BRANCH	1	1
TOTAL	20	120

"Regarding this, the Court of Appeals in the begining had a completely different stance. Recently it has changes its stance and I believe we are in a good path for this stage. The Court of Appeals mains takes its decisions in the direction of having a trial review, but now it has noted that it is good to do so in this stage as well".
Ymer Hoxha – Head of the Basic Court of Prizren

-In the Basic Court of Prizren from January 2016, According to article 253 of the RKCC, there were a total of four dismissed indictments in the second hearing, considering that year there were 36 acquitted verdicts. Out of these acquitted verdicts, 14 were due to lack of evidence.
-In the Basic Court of Gjakova from January 2016, according to Article 253 of the RKCC, there was one dismissed indictment and 30 acquitted verdicts, and all of those were due to lack of evidence. Out of 30 acquitted verdicts, 20 are enforceable.

-In the Basic Court of Gjakova - Malisheva branch from January 2016, According to article 253 of the RKCC, there were no dismissed indictments, but then that year there were seven acquitted verdicts, all due to lack of evidence.
-The Basic Court of Peja did not answer on this matter.
-In the Basic Court of Peja – Klina branch from January 2016, According to article 253 of the RKCC, there were a total of five dismissed indictments in the second hearing, and this court did not provide any information on the acquitted verdicts due to lack of evidence.
-The Basic Court of Prishtina did not provide us with any data, with the justification that this court does not keep a special record on this matter.
-In the Basic Court of Ferizaj along with its branches in Kacanik and Sterpce from January 2016, According to article 253 of the RKCC, there were a total of eight dismissed indictments in the second hearing, and there were 19 acquitted verdicts, all due to lack of evidence.
-In the Basic Court of Gjilan from January 2016, according to Article 253 of RKCC, there were eight dismissed indictments in the second hearing, and there were 48 acquitted verdicts, all due to lack of evidence.
-In the Basic Court of Peja from January 2016, according to Article 253 of RKCC, there was one dismissed indictment, and this year there was also one acquitted verdict due to lack of evidence.

From the data presented in the table it is clear that courts dismissed a small number of indictments. There were even cases in which they did not dismiss any at all, whereas on the other hand they have a high number of acquitted verdicts due to lack of evidence. The report considers that the Courts lack of dismissal of indictments that are not well-grounded on evidence directly affects case backlogging, efficiency, citizens' trust in justice, and above all, it contributes to unnecessary expenses for the Republic of Kosovo budget. Considering that the number of prosecutors is rising, their indictments should be more complete. On the other hand, judges should not lack the professional courage for dismissing the indictments without being based on strong evidence.

5. SHORTCOMINGS OF THE INHERITANCE LAW IN KOSOVO

While in Kosovo customary laws a woman's position has been discriminated against regarding inheritance rights, the current inheritance law in Kosovo recognizes gender equality.

Inheritance rights are regulated by law in Kosovo.[74]

According to the Law on Inheritance, all physical persons under the same conditions are equal for inheritance.[75] Spouses in this law are part of inheritance in the first rank when she is a spouse or was in a non-marital relationship with the decedent for ten years and had one child within five (5) years.
In the second rank of inheritance, she is considered an inheritor when the mother is the decendent. In the third rank, she appears as an inheritor when the sister is the decendent.

"The decendent's inheritance shall go, prior to all others, to his children and spouse." 76 This article seems to have caused a lot of trouble in practice. According to this article, the deceased's inheritance goes to his children and his spouse above all others.

The current law on inheritance does not recognize the son's spouse as an inheritor of the father-in-law's wealth.
This legal gap appeared in the trial case of Shyhrete Berisha from Suhareka, who lost her husband and four children during the Kosovo War

Sixteen years after the war, she continues to deal with the legal procedures to search for property, denied to her by her husband's family.
Berisha is legally seeking for her home where she lived before the war with her husband and children. However, the house where the couple lived for many years was registered under her father-in-law and not in her husband's name.
Shyhrete Berisha's defense lawyer thinks that the current Law on Inheritance is discriminative towards women's inheritance.
According to him, Article 12 of the Inheritance Law disqualifies Shyhrete from her right to inheritance:

"Since the wealth was in the name of Shyhrete's father-in-law, the inheritors according to this article are children and the spouse of Shyhrete's father-in-law, but not the daughter-in-law. In other words Shyhrete Berisha, the daughter-in-law, cannot be the heir of the father-in-law in this legal framework."77

The report considers that the legal flaws encountered during the treatment of this case must reflect on legal changes as far as women's rights to inheritance are concerned, because the current law is not favorable and violates women's rights. This in fact shows that in the future we might have similar cases we could encounter, with similar discriminatory legal dispositions.

In this case, the discrimination against women appears in the legal aspect, because there is no factual dispute that Shyhrete Berisha's spouse and her children lived together in

74 Law on inheritance in Kosovo nr. 2004/26, date 4 February 2005, https://gzk.rks-gov.net/ActDetail.aspx?ActID=2407
75 Law on Inheritance in Kosovo Article 3.1
76 Law on Inheritance in Kosovo, article 12.1
77 Interview with lawyer Naim Qelaj

a separate house from other members of the family. However, the legal status over the property was and remains to be under her father-in-law's name.

"It is very unfair towards women who have lived many years in a house together with their spouse and children, but the war took everything from her and now the law will evict her from her own house because the law does not recognize her right to inheritance."[78]

According to this article, it is clear that in cases when the inheritor dies, the right is guaranteed only for their children and successors, whereas this right is not guaranteed for the spouse.

In the case of Shyhrete Berisha, the inheritor of her father-in-law is her husband, whereas his next of kin are his children, who are deceased. Therefore, as it is now, the law denies her right to inheritance.
Considering the case of Shyhrete Berisha, it is obvious that there are flaws in the law.

Therefore, the Report considers that the law should be changed in the direction of guaranteeing the rights of women to inheritance.
Member of Parliament Lirie Kajtazi, Chairperson of the Caucus on Human Rights, Gender Equality, Missing People and Petitions, said that the case of Shyhrete Berisha is known to the MPs and together with a group of women MPs they are striving to propose changes to this law.

"The law must be amended and changed precisely for these cases and I am, as an MP, in favor of changes to this law because the rights of women for property are being violated."
Shaban Zeqiraj, a judge in the Basic Court of Prizren Suhareka branch who handles civil cases and also serves as a judge on the Shyhrete Berisha case, while not speaking about this specific case, said that the cases in which a woman is the accuser are very sensitive.

"Property disputes where the woman is the accuser are very sensitive to be judged and I pay special attention so that the law is applied strictly, because most of the women are renouncing from property and inheritance in favor of their brothers, respecting the customary traditions, even though the law recognizes the right to inheritance."
Renouncement from inheritance, according to him, should be changed in the law on inheritance because getting the inherited share from the decedent would create stability for women in their families.

Few Women Seek Property Inheritance in Court

Another problem encountered in practice as far as the Law on Inheritance in Kosovo is concerned deals with women's renouncement of inheritance.

The first investigation conducted by BIRN and I/KS, in Kosovo courts during the period of January 2015 to May 2016 shows that a small number of women seek their property inheritance in courts.

It is a known fact in Kosovo that only a small number of women seek their right for property inheritance in courts. This fact is verified with the data provided by the Agency of Statistics, according to which in 2015 only 5 per cent of women in Kosovo own property, a house or an apartment.[79]

78 Interview with lawyer Naim Qelaj
79 http://kallxo.com/vetem-5-per-qind-te-grave-kane-prone/

In the investigation conducted within the period of January 2015 to May 2016, the courts in Kosovo accepted only nine cases in which women are included in inheritance from the overall number of 210 inheritance cases, excluding here the Basic Court of Prishtina, from which we did not get any response on the exact number of these cases.

Unlike Prishtina and Mitrovica, other Basic Courts in the country have divided the cases and the number of cases in the women's property inheritance in these below mentioned courts is as following:

Table with the number of inheritance cases in courts:

COURT	WOMEN'S INHERITANCE	NUMBER OF GENERAL CASES
PRIZREN	6	122
FERIZAJ	0	2
PEJA	1	42
GJILAN	1	37
GJAKOVA	1	7
TOTAL	9	210

This small number of inheritance cases in the courts stands for the fact that citizens now turn to the notary for inheritance because this right is recognized by law. The Law on Kosovo Notary Nr. 03/L-010 entered into force in October 2008 with Article 29 and recognizes that all the notaries deal with all civil proceedings on non-contentious inheritance. All the major cases of inheritance, excluding the contentious, seek for notary services.

Out of 74 notary offices in Kosovo, the Report has managed to secure data related to the inheritance civil procedures developed only in five of them. In five notary offices in different municipalities in Kosovo, in 2015 there were 635 cases in inheritance, whereas in 2016, from the same notary offices there were 797 cases. We could not secure data from other notary offices.[80]

The data show a big number inheritance cases that seek notary offices compared to a small number of inheritance cases in courts.

However, there are judges who think that clients should still seek courts for solving the cases of inheritance.

"I think that the clients should go to notary officials. However it is not bad that this competence is within the competencies of the basic courts and it is good that this competence is mutual that the clients depending on the time or possibility to solve faster their demands," said Xhemil Elshani, an inheritance case judge.

Despite the legal right for renouncement of the inheritance, and considering the large number of cases in which women renounce this right and the fact that the statistics show

80 Erdon Gjinolli, Head of Administrative Service, Notary Chamber of the Republic of Kosovo

only 5 per cent of property is registered in women's names, this figure is disturbing. Therefore the Report considers that there should be more work done in this direction, and besides the legal amendments there should be a wider campaign towards the guarantee and fulfilment of women's rights to inheritance.

6. INFORMATION OFFICES AND TRANSPARENCY

During 2016, the Report measured the level of transparency of the justice institutions throughout communication and press releases for the media and the citizens. Considering the engagement of the information officers in the police, prosecutions and courts, the Report has made a comparison between these institutions regarding transparency to the public and the accountability and competencies that these three institutions have. Due to the inability to collect the data because of the (non)response to the requests submitted to these institutions, the evaluation has been done only based on the activities and the data that were offered to the public from these institutions themselves.

From the collected data, the Kosovo Police results to be the institution having the most information office activities, followed by courts and lastly by prosecutions.

KOSOVO POLICE

One of the Kosovo Police's key objectives during 2016 was transparency and accountability towards the relevant institutions, the media and the public opinion, for which the Kosovo Police is evaluated as one of the most trusted and transparent institutions in the country.[81] The Kosovo Police has implemented a communications office in its structure at the central level, as well as eight offices at regional levels, throughout which the commitment of the Kosovo Police in transparency has been witnessed.
Kosovo Police regulated its communication with the public on two levels:

1) Communications office at the central level (Prishtina)

The communications office in Prishtina has the unit for media analysis, the unit for the internet and intranet, the unit for communication with the public, and the editorial office of the "Protector" magazine.

2) Communication offices at the local level (8 regions)

The legal basis for the functioning of information offices relies on the Law on Police; regulation no. 04/2015 for cooperation between the Police and the media; the communication strategy with the media from the MIA; the regulation related to Social Media/ is almost finished and SOPs (Standard Operation Procedures).

Based on the collected data, the daily tasks of the Kosovo Police are:
The publishing of the 24-hour media report with the events and incidents in all regions, web-page maintenance, intranet, the Kosovo Police Facebook Page and the publishing of all information, analysis and the summary of the daily press, media conferences, press releases, interviews, press statements, awareness campaigns, as well as participation in different public debates. Due to the lack of data for the level of returning information towards media requests, the public and different non-governmental organizations, the following collected data present the number of press releases in which the Kosovo Police decided to be open to the public.

81 The response of the information office from the Kosovo police: These evaluations were done based on different national and international factors including different non-governmental organizations, lately also Transparency International.

The table with the press releases of Kosovo Police for 2016:

KOSOVO POLICE	PRESS RELEASES
CENTRAL OFFICE	166
REGIONAL OFFICES	540
24H REPORT	335
TOTAL	1,041

Based on the given data in the table, it can be noted that during the time period of the year of 2016 until the time of this report, the information office at the central level of the Kosovo Police has published 166 press releases, 335 24-hour reports, while the information offices at regional levels have published around 540 press releases.

Through their information offices, the Kosovo Police, in addition to published materials, have also conducted radio and television interviews, journalism conferences, TV statements, as well as other activities. Thus the report considers that the Kosovo Police has showed a very good performance in regards to transparency and accountability towards the public compared to the prosecutions and courts, based upon the quantitative data offered by the Kosovo Police itself.

COURTS

The Kosovo Judicial Council, KJC, including all the other courts from all levels in Kosovo, have in total eight information officers. KJC has one information officer, the Supreme Court has one information officer, the Court of Appeal has one information officer, while the Basic Courts have five information officers, and two regions of the basic courts in Mitrovica and Gjakova do not have information officers at all.

Taking into account the number of information officers, the report has collected statistical data regarding the communication with the media and the public from the side of the information offices from January until December 2016.

COURTS	PRESS RELEASES
KJC	30
SUPREME COURT	15
COURT OF APPEAL	50
BASIC COURT OF PRISHTINA	40
BASIC COURT OF PRIZREN	50
BASIC COURT OF PEJA	32
BASIC COURT OF GJILAN	27
BASIC COURT OF FERIZAJ	35
BASIC COURT OF MITROVICA	0
BASIC COURT OF GJAKOVA	0
TOTAL:	279

Due to the lack of data for comparing the number of information requests from the media, the public and other non-governmental organizations, based on the statistical data received from the KJC and the courts, the Report found that during 2016 the courts, altogether with the Kosovo Judicial Council, have published 279 press releases, which is a much lower number compared to the Kosovo Police, who published 1,041 press releases in total.

Further, the press releases from the courts are lacking in data and are not contributing to transparency, due to the fact that for verdicts, courts publish press releases that hide the identity of the convicted persons, which for the media causes trouble for identifying cases. Court information offices base their reporting on the initials of the convicted persons through the administrative manual 02/2016 for the Anonymity and the Publishing of Powerful Verdicts. [82]

The report considers that this administrative manual taken from KJC affects transparency, and is also contrary to the RKCC, which apart from the allowance of public participation in open sessions and official audio and video recording also allows photographing, filming and TV recording for the media.

Considering the transparency that is guaranteed by the Criminal Code and the fact that media organizations follow and report the court hearings, including with video recording, it is unclear why that courts report on the same cases only with initials, thus hiding the identity of the convicted persons.

Further, when the fact that courts base the verdicts "in the name of the People" is taken into consideration, the decision for anonymity/hiding the names from "the people" on behalf of whom it takes a decision is incomprehensible.

PROSECUTION

As per information offices, the Kosovo Prosecutorial Council stands in a worse position, along with the prosecutions.

The Kosovo Prosecutorial Council has two officials for media communication, whereas the institution of the State Prosecutor has one information officer. Hence, the biggest problem of the prosecutions is the absence of information officers for the Basic Prosecutions and the Prosecution of Appeal.

The report, likewise for the Police and the courts, has taken statistical data from the press releases published by the institution of the State Prosecution.

The table with data from the press releases published by State Prosecution institutions:

PROSECUTION	PRESS RELEASES
KOSOVO PROSECUTORIAL COUNCIL	59
OFFICE OF THE STATE HEAD PROSECUTOR	154
TOTAL	213

82 file:///C:/Users/petritk/Documents/Doënloads/Udhezim%20Administrativ%20per%20anonimizimin%20dhe%20publikimin%20e%20aktgjykimeve%20te%20plotfuqishme%20(1).pdf

Conclusion:

The report considers that in order to increase transparency and accountability in the Judicial and the Prosecutorial council in Kosovo, these institutions should be engaged in increasing the number of information offices.
Kosovo's Judicial Council should implement information officers in the Basic Courts of Mitrovica and Gjakova.

The report recommends to the Kosovo Prosecutorial Council to instil information officers in the seven basic prosecutions in Kosovo, at the Prosecution of Appeal as well as in the Special Prosecution.

The report considers that more should be contributed to the improvement of public perception regarding the Kosovo State Prosecutor. The Media Office capacities of the State

Prosecution should be increased, by assuring and offering suitable trainings with the needs of information officers, as well as growing the ability of presenting properly during public appearances of the prosecutors and head-prosecutors.

The Kosovo Prosecutorial Council and the State Prosecution need consistent and systematic support on how to handle different cases when the audience is willing to be informed.

Hence, in this direction, a manual needs to be drafted in order to learn how to distribute information, which would help the prosecutors to know how to react in certain situations. The manual would enable the Prosecution to respond to citizens' needs for being informed in a suitable and legal way in order to save the professional work of the State Prosecution, but also to satisfy the need of the public to be informed in a fair way and at a reasonable time.

The report, while following the evaluation of the needs and evaluation, considers that trainings with modules should be prepared for the staff of the Media Office, the State Prosecution, Special Prosecution, as well as the Prosecutors of the Basic Prosecutions, with topics on public appearances, interviewing skills, preparation of media documents and building relations with journalists.
The Report, in this direction, finds it necessary to produce and broadcast a television program titled "The Prosecution."

Launching such a program would serve to show the actual experiences of the prosecutors and their challenges in solving cases. Producing such a show would be in close cooperation with the State Prosecution for organizing, filming, producing and broadcasting this segment, which would be dedicated to the work done for this institution. We would consider this as an excellent way to contribute to promoting results of the State Prosecutor and raising public trust of the prosecutors.

6. TECHNICAL VIOLATIONS

BIRN and I/KS, since beginning the monitoring project in 2008, dedicated special attention to treating the technical issues that were factors paving the way for other problems, which will be described as follows.

The likelihood for something to go wrong procedurally is high if, for instance, the court hearings do not start at the right time, the dress code is not respected, phones are used during court hearings which directly has an effect on losing focus, if the hearings are held in the office of the judge instead of taking place in the courtroom, or if the hearing takes place in the room and the official audio and video recording is not used.

As long as in practice we still tolerate small violations, it would seemingly make bigger violations harder to fight. Technical violations have oftentimes been and still remain to be a means to pave the way towards procedural violations.

In the previous year, BIRN and I/KS decided not to deal with technical violations since such violations may be considered as excessive. However, by noting the conditions in the area, we decided this year to return to monitoring court hearings in the regular courts and to see to what extent technical violations are an issue.

During 2016, BIRN and I/KS monitored 686 court hearings, 607 of which were for criminal offence subjects, while the remaining 79 were for civil subjects.

COURT HEARINGS

Civil	**79**	12%	Grand Total **686**
Criminal	**607**	88%	

77 per cent of the monitored court hearings from the BIRN and I/KS monitors are from the Department of Serious Crimes, while 23 per cent of them were from the General Department by including criminal and civil offence cases, where only one case is from the Departments for Minors.

DEPARTMENTS

Serious crimes	**528**	77%	Grand Total **686**
General	**157**	23%	
Minor	**1**	0%	

From the 686 monitored hearings, 160 of them were not held, while 526 were held. The number of 526 court hearings will be a sample for measuring the findings for technical violations.

WAS THE COURT HEARING HELD?

No	**160**	23%	Grand Total **686**
Yes	**526**	77%	

During 2016, the court hearings proceeded to be announced in the monitors placed in the entrance of the court, and also via internet in the websites of the courts. Among the 526 monitored hearings, 370 were announced, while 156 of them were not announced at all. The number of announced hearings also turned out to be high: in 30 per cent of the monitored hearings, the hearings were not announced despite the fact that the courts now have their information officers in charge.

The trajectory of the measures conducted by BIRN and I/KS from 2010 until 2016 of announcing the court hearings is noted below:

WAS THE COURT HEARING ANNOUNCED?

No	**156**	30%	Grand Total **526**
Yes	**370**	70%	

ANNOUNCEMENT IN THE ANNOUNCEMENT BOARDS

The following table reflects the court hearings that began on time and the ones that were delayed during 2016.

DID THE COURT HEARING START ON TIME?

No	**154**	29%	Grand Total **526**
Yes	**372**	71%	

For several years, many court hearings were held in judges' offices instead of taking place in the courtrooms, so the location of court hearings was continuously an object of interest for BIRN and I/KS.

Based on the data from our monitoring, 85 per cent of the court hearings were held in the courtrooms, while 15 per cent of them were held in the office of the judge. We present the displacement of court hearings as a concerning problem; instead, they should have taken place in the courtrooms to uphold transparency to the public.

WHERE DID THE COURT HEARING TAKE PLACE?

			Grand Total
Courtroom	449	85%	526
Office	77	15%	

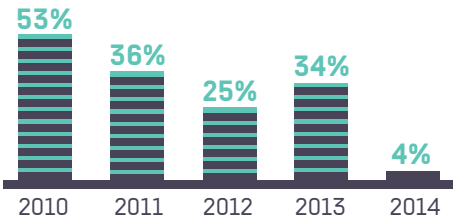
The Judicial and Prosecutorial Council took care to have uniforms for all judges and prosecutors. The Kosovo Chamber of Lawyers did the same. However, in reality, in 11 per cent of the monitored hearings during 2016, the uniform was not used.

The trajectory of the measurements of the report from 2010 until 2016 of not wearing uniforms is as follows:

WAS THE UNIFORM USED?

			Grand Total
No	56	11%	526
Yes	470	89%	

UNIFORMS NOT BEING USED



From 11 per cent of the monitored hearings, or from 56 court hearings, lawyers had the highest rates of not wearing uniforms, followed by prosecutors and finally the judges themselves.

WHO DID NOT WEAR THE UNIFORM?

			Grand Total
The lawyer	23	41%	56
The prosecutor	18	32%	
The judge body	15	27%	

Since during the court hearings there were also other parties present, starting from the judge body/the individual judge to the lawyers, prosecutors, the police and the audience, this year the Report also monitored the use of cell phones. In 2016, telephones were used in 10 per cent of the monitored hearings.

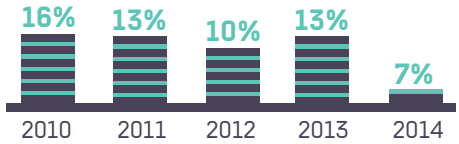
The trajectory of the report measurements from 2010 until 2016 of using telephones is as follows:

WERE TELEPHONES USED?

No	**474**	90%
Yes	**52**	10%

Grand Total **526**

TELEPHONE USAGE



Within this 10 per cent of cell phone use from the 52 monitored court hearings during 2016, the highest usage is by lawyers, followed by prosecutors and the judges themselves. The remaining usage is done by other parties including the police and the audience.

WHO USED CELLPHONES?

The lawyer	**15**	29%
The witness	**2**	4%
The judge	**10**	19%
Parties in procedure	**5**	10%
The policeman	**1**	2%
The prosecutor	**13**	25
The audience	**6**	12%

Grand Total **52**

The audio and video recording of court hearings turns out to be one of the most concerning findings in 2016. In 95 per cent of the monitored hearings, the equipment for official recording of court hearings was not used.
The lack of recording of the court hearings, which is also foreseen by Kosovo's Criminal Code, [83] results in disregarding the RKCC, also despite the fact that courts are prepared to do so.

83 Note article 208 of Kosovo's Criminal Code Procedure

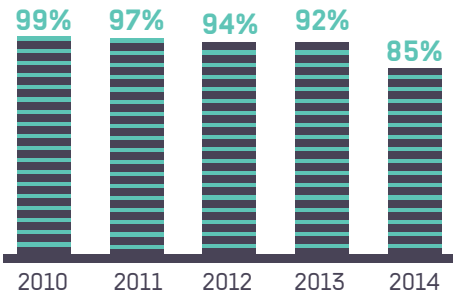
The trajectory of the measurements of the report from 2010 until 2016 of not-recording court hearings are as follows:

WAS AUDIO AND VIDEO-RECORDING IN COURT HEARINGS USED?

No	**502**	95%
Yes	**24**	5%

Grand Total **526**

THE NON-RECORDING OF COURT HEARINGS



During 2016, the monitors, who have extensive experience, noted the inactivity of the judges when they are members of the trial panel and measured their activity in their roles as members of the trial panel.

Oftentimes, judges with long and committed experience with work in which their names are at stake, are quite active in hearings where they act alone, while when the same judges are active in judge bodies, it seems to be a routine phenomenon for them to be passive.

From the report monitor's research, for 526 court hearings held, in 22 per cent of the hearings the judges turn out to be not active at all, not even asking any questions. In 14 per cent of the cases they were average in their activity levels, while in only 4 per cent of the cases they were quite active.

HOW ACTIVE WERE THE MEMBERS OF THE JUDGE BODY?

Not at all	**115**	22%
Average	**76**	14%
There were no members of the judge body	**217**	41%
Somewhat	**99**	19%
Very	**19**	4%

Grand Total **526**

THE EXPENSIVE JUSTICE TELEPHONES

The year 2016 was characterized by the usage of the state budget to buy expensive telephones in the justice institutions.

This was lead by the Constitutional Court of the Republic of Kosovo, which in February 2016 bought smartphones worth an amount of 7,950 euros.[84]
The call for contracts said that the Court planned to buy 10 smartphones.[85] According to the calculations, it turns out that one telephone for this Court cost 795 euros.

Ten months later, another smartphone was bought by a court in Kosovo. This time, it was the Basic Court of Mitrovica who bought a telephone worth EUR 995.

An announcement for signing the contract "Supplying with Mobile Phone Equipment- One (1) Mobile Telephone," was published by the Basic Court of Mitrovica in the Regulatory Commission for Public Procurement on December 7th.
The first of the Basic Court of Mitrovica, Ali Kutllovci, declared that the court is having difficulties with emails lately, and that they would want this issue to be fixed rather than buy a telephone.

"I'd rather want this issue to be fixed, instead of buying a telephone," Kutllovci said.[86]
In a statement for BIRN and I/KS, Kutllovci said that in the Court he leads, there are also other issues such as photocopy and printers.[87]
The Ministry of Justice also joined other state institutions that used the state budget to buy luxury things.

In the official site of the Regulatory Commission for Public Procurement (RCPP), the Ministry of Justice, on December 1st, 2016, published an announcement for signing the contract worth 4,128 euros for buying smartphones.
The Ministry of Justice bought 6 "Samsung" telephones worth 4,128 euros with money from the budget. According to the announcement for signing the contract, the Ministry paid 668 euros per telephone.[88]

The institution that spent the most on buying telephones was Kosovo's Judicial Council, which spent no less than 20,700 for buying 25 mobile phones.
The procedure for buying these telephones was initiated in May 2016, whereas the announcement for the contract was made on June 17th, 2016.

From the published announcement on the official site of the RCPP, it can be noted that the contract was signed on August 2nd 2016.
BIRN and I/KS have made efforts to learn more about the types and specifics of the telephone equipment bought from the KJC, but did not receive any response from them regarding the brand of the telephones or for the persons who will be using them.[89]

Based on a calculation of the general cost of this tender worth 20,700 euros and the amount of 25 mobile phones described in the announcement for this contract, it results that one telephone cost the KJC 828 euros.

84 https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&PCID=-1&CtlID=VieëNotices&ID=113258
85 https://krpp.rks-gov.net/Default.aspx?PID=Notices&LID=1&PCID=-1&CtlID=VieëNotices&ID=112859
86 http://kallxo.com/gjykata-ne-mitrovice-blen-telefon-995-euro/
87 Interview with Ali Kutllovci, 07.03.2017
88 http://kallxo.com/mbi-4-mije-euro-telefona-per-kabinetin-e-ministres-hoxha/
89 http://kallxo.com/keshilli-gjyqesor-shpenzon-20700-euro-per-25-telefona/

For 2017 as well, the Constitutional Court has again taken the first step for buying mobile phones. On the official site of the RCPP, the Constitutional Court published the announcement for a contract based on which it plans to buy smartphones.

Based on the call for contracts, the Constitutional Court planned to pay up to 3,500 for mobile phones. Based on the response received from this Court and another simple calculation, the Court plans to spend 583 euros for six telephones. The Constitutional Court has hesitated to give information about who will be using these mobile phones.

The table with the number and price of the bought telephones;

INSTITUTION	NUMBER OF TELEPHONES	PRICE
CONSTITUTIONAL COURT	10	7.950 EUROS
BASIC COURT OF MITROVICA	1	995 EUROS
MINISTRY OF JUSTICE	6	4.128 EUROS
KOSOVO JUDICIAL COUNCIL	25	20.700 EUROS
CONSTITUTIONAL COURT	6	3.500 EUROS
TOTAL:	48	37.273 EUROS

While justice institutions spend a lot of money from the state budget on buying smartphones, it is exactly these institutions that lack of essential equipment for work. According to official data from courts, these shortcomings have been identified:

The Basic Court of Mitrovica has shortcomings of scanners, printers, and photocopies.
The Basic Court of Gjilan, was facing shortcomings of printers, photocopies and computers in 2016. The shortcoming of computers in this court is an issue even in 2017.
The Basic Court of Gjakova has shortcomings in furniture, chairs in courtrooms, and cabinets. This court has shortcomings of sufficient computers.

The same problems at the Basic Court of Gjakova are also faced by the branches of that Court, such as in Malisheva and Rahovec.
Meanwhile the Basic Court of Ferizaj has issues with the spaces that the current building offers. According to the response of this court, the spaces are not comfortable for work and for this the General Department had to finish its functions in a rented building
The report considers that justice institutions should take care to spend Kosovo's budget in the most rational way possible by giving priority to requests and essential shortcomings for work before deciding to pay for luxury equipment.

While there are essential shortcomings for work in basic courts in Kosovo, such as with printers, scanners, photocopies and computers, it unfair and illogical that at the same time, justice institutions are equipped with mobile phones, which are considered as luxury equipment rather than equipment necessary to the work of these institutions.

RECOMMENDATIONS

1.KOSOVO PROSECUTORIAL COUNCIL

To undertake legal measures through the Office for Performance Evaluation for the prosecutors who do not adequately justify their requests for pre-detention;
Negotiations of plea deals should be applied;
Appropriate cases should be more frequently referred to mediation;
Penalties should be issued towards those who show up to court hearings unprepared;
Do not allow prosecutors to make procedural violations while they are representing cases in court hearings;
Take measures against prosecutors who do not show up to court hearings and not justify their absence in court;
A sufficient number of professional associates for prosecutors must be ensured with at least one professional associate for two prosecutors;
The Basic Prosecutions and Appeals should hire information officers

2.KOSOVO JUDICIAL COUNCIL

To justify in detailed writing the decisions for determining pre-trial detention;
To apply bail as an alternative measure to ensure the presence of the defendant in the procedure;
To accelerate the resolution of cases in detention;
Increase the number of judges, given that the KJC budget allows for 404 judges. The number of judges foreseen with the Brussels Agreement shall be added to this number. Currently, there are 346 judges in the Republic of Kosovo;
To increase the number of professional associates with at least one professional associate for two judges;
To engage information officers in all basic courts;
To engage paid interns in the court;
To sanction cases when there is evidence that the judicial body was not complete;
To sanction judges for failing to meet legal deadlines in scheduling sessions from the initial hearing to the second judicial hearing;
To apply agreement negotiations for accepting guilty pleas;
To not hesitate to dismiss the prosecution indictments in cases when there is no ground to continue further with legal review;
To refer issues to mediation;
To take action against judges who allow procedural violations;
To take action against judges who do not keep order in the courtroom;
To take action against judges who do not keep a record of the situation on the ground;
To have monitors in the courtrooms for all members of the judicial body, as well as for the prosecution and defence.
To audio and video record the court hearings;

3. MINISTRY OF JUSTICE

To strengthen the efforts and advocacy in Kosovo Government/Assembly in order to increase the budget of the KJC and KPC as to ensure the necessary conditions to engage professional associates, paid interns and information officers;

4. KOSOVO POLICE

Prioritize filing criminal charges to the Prosecution;

5. KOSOVO ASSEMBLY

Immediate increase of the budget for Kosovo Judicial Council and Kosovo Prosecutorial Council;

6. COURTS

Increase coordination so as not to schedule several court hearings during the same day for a judge;
To maintain order and calm during the proceedings of the court hearings;
Take measures concerning postponement of court hearings to ensure they do not have a huge time gap;
To ensure that the court hearings are held in full composition of the trial panel;
Judges should be more active in the cases where they are members of a trial panel;
Ensure compliance with legal time limits in scheduling court hearings from the first hearing up to the second one;
To justify ruling in setting the detention measure;
To apply bail as an alternative measure to ensure the presence of the defendant in the procedure;
To speed up resolving cases of detention;
The institution of negotiation of plea deals should be applied;
Cases should be referred for the mediation procedure;

7. STATE PROSECUTOR

Better preparation and more efficient representation of the object of the indictment, thus contributing in serving justice and safeguarding the budget of the state;
Closer attention paid during the trial proceedings;
To ensure justification of the requests of prosecutors to set the detention measure;
The institution of negotiation of plea deals should be applied;
Cases should be referred to mediation;

8. OFFICE OF THE DISCIPLINARY PROSECUTOR

Initiate disciplinary measures for judges and procedures for those who this report concluded have violated procedures and the code of ethics;
Establishing mechanisms to ensure better oversight of the justice system by the ODP;

9. CORRECTIONAL SERVICES OF KOSOVO

To enforce court ordinances to bring defenders in the court hearings in a timely manner;