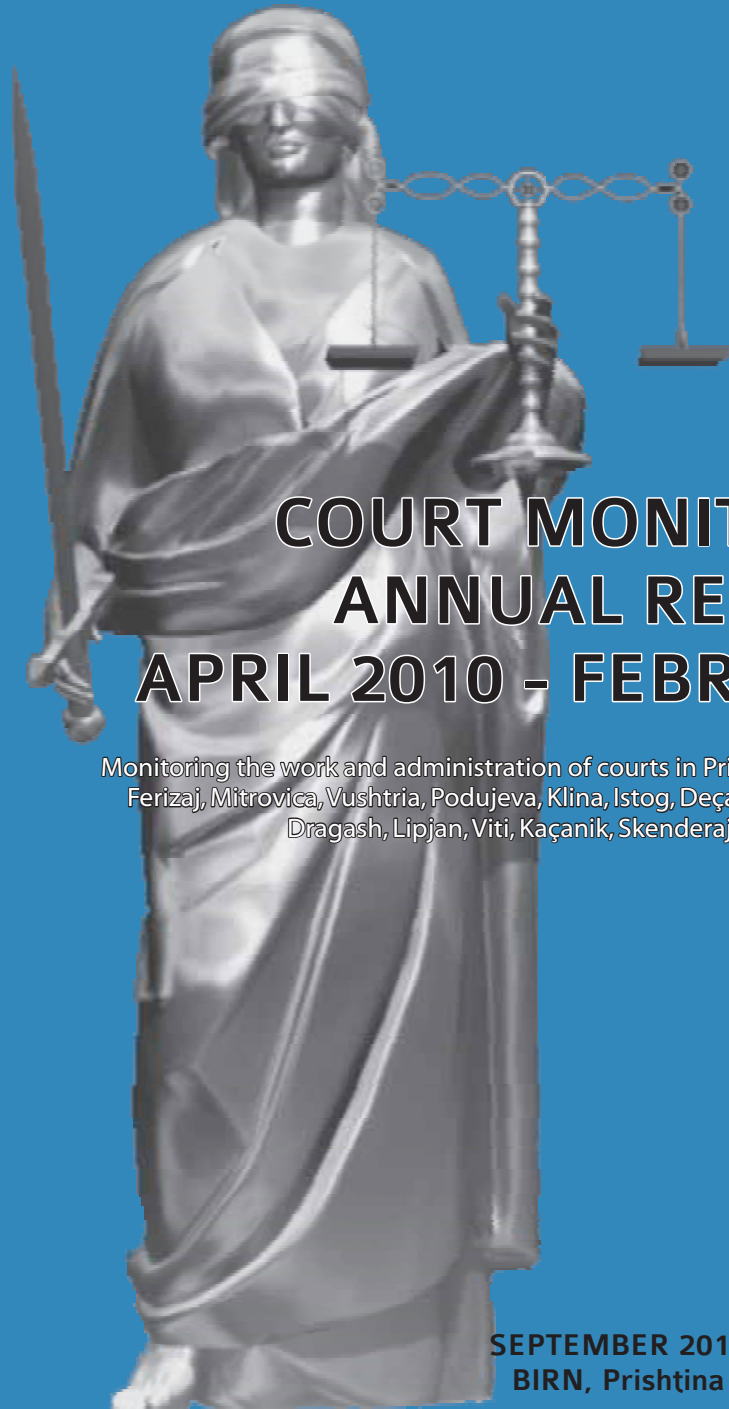




Balkan Investigative Reporting Network



COURT MONITORING ANNUAL REPORT APRIL 2010 - FEBRUARY 2011

Monitoring the work and administration of courts in Prishtina, Peja, Prizren, Gjiilan, Gjakova, Ferizaj, Mitrovica, Vushtria, Podujeva, Klina, Istog, Deçan, Rahovec, Malisheva, Suhareka, Dragash, Lipjan, Viti, Kaçanik, Skenderaj, Kamenica, Drenas

**SEPTEMBER 2011
BIRN, Prishtina**



Balkan Investigative Reporting Network
Rrjeti Ballkanik i Gazetarisë Hulumtuese

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Publisher: 
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*This publication has been produced with the assistance of the European Union.
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LIST OF ABBREVIATIONS

BIRN – Balkans Investigative Reporting Network

KJI – Kosovo Judicial Institute

KJC – Kosovo Judicial Council

IJPC – Independent Judicial and Prosecutorial Commission

KPC – Kosovo Prosecutorial Council

CCK – Criminal Code of Kosovo

CPCK – Criminal Procedure Code of Kosovo

LCP – Law on Contested Procedure

MoJ – Ministry of Justice

UNMIK – United Nations Mission in Kosovo

USAID – United States Agency for International Development

INTRODUCTION

As part of the Courts Monitoring Project, BIRN has monitored judicial proceedings in the country's supreme, district and municipal courts.

Despite numerous attempts having been made to improve the justice system in Kosovo, BIRN monitors have identified significant legal procedural, technical and ethical shortcomings and violations in this process.

A lack of transparency is a feature associated with the judicial system, despite being continuously underscored as an issue since the end of the war. A lack of trial announcements on bulletin boards, and the holding of court sessions in judges' offices remain of concern this year as well. Half of the sessions monitored were not announced on bulletin boards. Consequently, interested parties and the public as a whole did not have opportunity to attend all public hearings.

Such a lack of transparency had a great impact upon the public perception that the judiciary is purposefully creating confusion and vagueness to mask irregularities and misapplication of the law. This perception is blemishing the positive efforts and developments in the judiciary, particularly having in mind that the announcement of trials on bulletin boards is something that can be implemented very easily, thus showing an effort and determination to being open to the public.

In addition, BIRN monitoring has identified procedural violations and infringements of the rights of parties in judicial procedures. Our monitors have in particular identified the opening of sessions without the full composition of trial panels, problems in delivering court summons and a lack of preparation among prosecutors as serious procedural violations.

BIRN monitoring has also identified several cases in which the rights of parties were not respected according to judicial procedure, thus violating regulations (namely, the Code of Criminal Procedure and the Law on Contested Procedure).

The police was not always efficient in ensuring summoned parties attended court sessions. On the other side, judges have not always undertaken the necessary measures to report to the appropriate level in the police's chain of command when arrest warrants were not respected by their officers.

When setting court hearings, judges and prosecutors were often uncoordinated.

Subsequently, many hearings could not be held because of scheduling clashes that resulted in prosecutors not being available.

In addition, delays in opening court sessions had a domino effect in the postponement of other hearings, thus increasing the backlog.

Other technical findings, which are unfortunately deemed 'minor violations' and are thus permissible due to the extensive backlog and improper conditions in Kosovo's courts, included the use of mobile telephones during trials, a failure to wear uniforms, problems with the provision of interpretation and translation in trials, and issues with the keeping of accurate records. Though technical, such issues have a significant effect upon the progress of judicial procedures.

This report also addresses the judicial appointment and reappointment process. Despite numerous delays, the lack of basic laws and attempted political interference, the appointment process could be considered successful, as the general objective of laying a sound basis for the renewal of the judicial system was achieved. Failure to fill all the announced vacancies for judges and prosecutors, however, remains an obstacle and a factor contributing to the failure to reduce the case backlog.

In most cases, judges only issue sentences at the legal minimum, confirming once again the lack of a coherent sentencing policy for the entire system that would correspond to the real situation on the ground.

Room space in courts has also been addressed in the report, making comparisons between model and non-model courts, indicating the advantages of model courts and the weaknesses that have resulted after their transformation, when they have started to operate within the system.

This report also addresses other topics relating to Kosovo's judiciary, providing a general overview of the main issues faced by the courts and the justice system as a whole.

METHODOLOGY

In 2008, the Balkan Investigative Reporting Network (BIRN) initiated a public services monitoring project covering three sectors: the judiciary, education, and health.

Court monitoring initially covered seven of Kosovo's municipalities, including 4 district courts and 6 municipal courts, but expanded in 2009 to cover 13 municipalities, monitoring 18 regular courts in Kosovo: district courts in Prishtinë, Pejë, Prizren, Gjiilan, and Mitrovicë¹; municipal courts in Prishtinë, Pejë, Prizren, Gjiilan, Ferizaj, Gjakovë, Deçan, Vushtrri, Podujevë, Lipjan, Kinë and Istog, and the Commercial Court in Prishtinë.

This year, taking the outcome of previous monitoring efforts into consideration, particularly in the judicial system, BIRN has expanded the monitoring project to cover 26 municipalities, including all municipal and district courts in Kosovo.

This Court Monitoring Report was drafted after continuous monitoring in such regular courts. BIRN monitoring involves quantitative measures, with questionnaires filled out by monitors during direct observation of court sessions.

513 questionnaires were completed in 2008 (March 2008 – March 2009), 1,248 in 2009 (June 2009 – March 2010), and 2,147 questionnaires in 2010 (April 2010 – February 2011). Questionnaires include questions on the progress of court processes, for which BIRN issued recommendations in last year's report.

Considering the irregularities identified the previous year and the findings of this year's monitoring, this report is divided into chapters according to the weaknesses identified, including issues of transparency, procedural violations and other substantive violations, and then technical and other issues.

The questionnaire results are listed in the report in the form of quantitative data. In terms of qualitative data, this report only includes occurrences which have occurred across all monitored courts during the monitoring period. At least one concrete example of something a monitor has observed is presented for each section of the report.

¹ Because of the political situation in Mitrovica, and the court's location in the northern part, the BIRN monitoring team was not present. BIRN only monitored sessions of this court held in the premises of Vushtrri Municipal Court, working in extraordinary conditions after not being able to use their legitimate building in Mitrovica.

In order not to inflate the report, in most cases examples are included as footnotes. The identity of parties involved in procedures – the trial panel, prosecutors, defence counsels, etc – is not disclosed in examples, but rather the case numbers and titles, the court and the date of the trial, in order that relevant institutions can have the opportunity to carry out further analysis and undertake steps to avoid repeating mistakes.

Throughout the reporting period, in addition to directly observing court sessions, BIRN monitors have held interviews with court presidents, judges, chief prosecutors, prosecutors, counsels, other parties involved in procedures, judicial officials, and officials of the Kosovo Judicial Council (KJC), the Kosovo Police, the Kosovo Assembly Legislation and Judiciary Committee, and the Kosovo Chamber of Advocates etc.

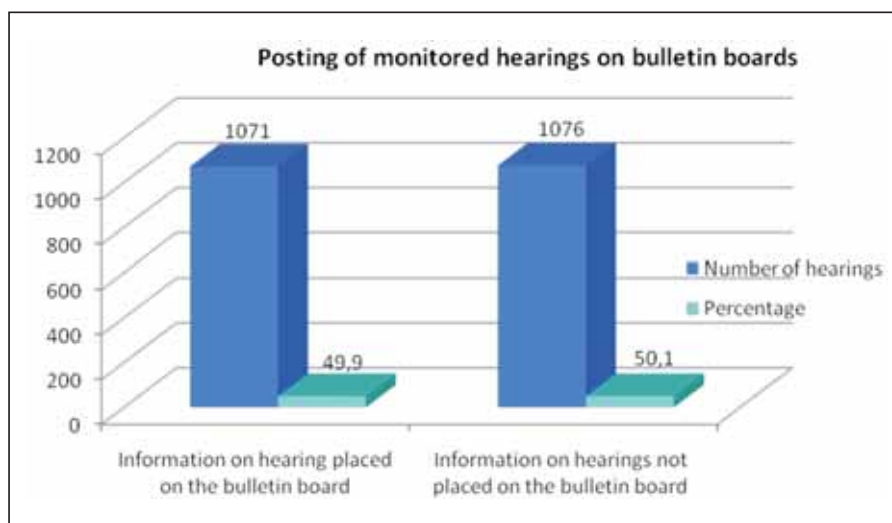
In addition to the doubling of the number of questionnaires completed – from 1,248 to 2,147 – BIRN has also started broadcasting a weekly TV programme, Justice in Kosovo. This programme has addressed topics related to recent developments within the country's judiciary. TV reports were also produced about positive and negative practices and phenomena that were identified throughout the monitoring year. On some occasions, these stories and reports had an immediate effect, and relevant institutions have undertaken concrete steps to overcome some of the situations highlighted.

I. TRANSPARENCY

1. Failure to announce trials on bulletin boards

Requirements for ensuring court transparency include the announcement of trials, or the lack thereof, on bulletin boards. The principle of public trials is guaranteed in the Constitution of the Republic of Kosovo, the Criminal Procedure Code of Kosovo (CPC), and the Law on Contested Procedure (LCP).²

According to this principle, court sessions are open to the public and every citizen has the right to be informed about public hearings. Failure to announce trials on bulletin boards, which is a requirement for all courts, has made courts less open and less transparent for the public.



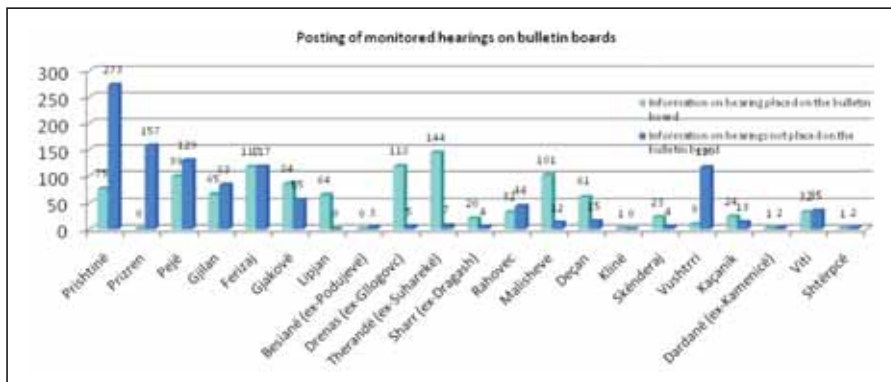
Last year, 37.7% of a total of 1,248 monitored sessions were announced on bulletin boards, and there was a slight improvement on this percentage this year.

Of 2,147 monitored sessions, 49.9% were announced. While this reflects an improvement in courts' transparency, the fact that over half (50.1%) of monitored sessions were not published on bulletin boards remains concerning.

² Criminal Procedure Code of Kosovo (CPC), Article 328 (1) Hearing sessions are open.
Law on Contested Procedure (LCP), Article 444.1 The main hearing session of the case is public.

BIRN monitoring found that the municipal court in Prishtinë has never announced its trials on its bulletin board. In other words, the largest municipal court in Kosovo, both in terms of its backlog and the number of residents within its jurisdiction, is the least transparent court in Kosovo.

To provide a clearer overview of the situation regarding the announcement of trial schedules, the chart below shows that compliance with the obligation of transparency towards the public varies between municipalities.



In addition to the municipal court in Prishtinë, the municipal courts in Prizren, Pejë, Gjilan, Gjakovë and Vushtrri in most cases did not announce trials on their bulletin boards.

The municipal court in Prizren, even after its renovation in 2011, did not announce trials on its bulletin board. Reasons given by the court include the lack of a place to post information.

The district court in Prizren is in a worse situation. Since June last year, when the court was renovated, it has not posted anything on a bulletin board. The president of the district court in Prizren, Ymer Hoxha, blamed this state of affairs on the fact that there was no bulletin board, despite having requested one from the KJC. He went on to say that, once he had learned that such a board costs only four Euros, he purchased one himself. On the other hand, the Chair of the Kosovo Judicial Council, Enver Peci, declared that he was unaware if a request for an bulletin board was ever submitted by this court, while KJC spokesperson Aishe Qorra Ramadani promised that every court shall be provided with bulletin boards, and that any court president that takes the initiative will be reimbursed four Euros.³

³ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

It was expected that after working conditions improved, transparency in model courts would increase. BIRN's monitoring, however, indicates that Prizren's courts have failed in this regard, which is particularly noticeable by comparing Prizren with other municipalities.

The District Commercial Court in Prishtinë, and the municipal courts in Ferizaj, Lipjan, Skenderaj, Drenas, Therandë, Malishevë and Dragash, in most cases, announced trials on their bulletin boards. This leads to the conclusion that the only reason for the lack of transparency as a result of non-publication of schedules is negligence and human error.

On the other hand, there has been a noticeable improvement in the district court in Prishtinë, where trials are now announced on the bulletin board, though this is mainly for cases involving imprisonment and civil cases.

Another finding, for which no explanation was identified, is the district court in Gjilan, which in most cases does not announce civil cases, but only criminal ones.

In a BIRN roundtable with the presidents of the district and municipal courts, and district and municipal prosecutors, some attendees declared that the announcement of trials on the bulletin board is a task that requires no more than five minutes, adding that, with only a small commitment from judges and court presidents, all trials could be announced, thus meeting an important requirement for court transparency.⁴

Announcement of trials on bulletin boards is the first direct indicator of court transparency, by which the public is informed about open public hearings.

Although such announcements pose virtually no costs to courts, and it would also meet an important principle of justice, unfortunately, they are seen in less than 50% of trials.

Conclusion

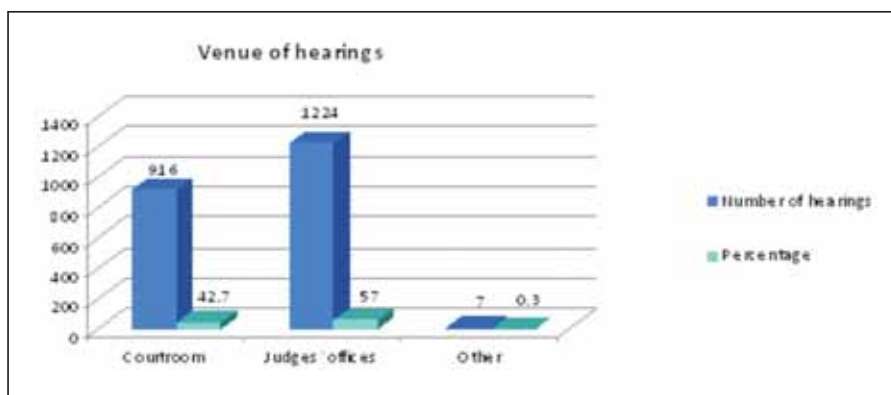
Presidents of courts assume the main responsibility for this shortcoming and should undertake the necessary steps to ensure that every trial is announced on bulletin boards, which would provide information for citizens and interested parties about public hearings.

⁴ Ibid.

By making a small effort to meet transparency requirements, presidents of courts and the KJC Public Information Office would give a signal that the public perception that courts deliberately hide behind, often banal, cover. This is frequently framed in public as convenient for judicial officials to mask inaction, misuses and corruption.

2. Holding trials in judges' offices

Another weakness identified by BIRN monitoring is the holding of court hearings in judges' offices. Holding trials outside of courtrooms is a serious obstacle to public participation in hearings. Hence, publicity, as a basic principle for court hearings⁵, is again violated.



Of the 2,147 sessions monitored by BIRN, 57% (1,224 sessions), were held in judges' offices. Even when courtrooms were available at the time of hearings, some sessions were nonetheless held in judges' offices.⁶

Only 916 sessions, or 42.7%, were held in courtrooms, with 0.3% (7 sessions) held elsewhere.

The municipal court in Prishtinë was the court with the highest number of trials held in offices. This court only had one courtroom, during its renovation into a model court, in which a second courtroom was constructed. Although one courtroom does not come close to covering the needs of the court, this provides no justification for holding court hearings in offices when the courtroom was available.

Although some suggest this represents a demonstration of the saying that “if there is a lack of something – there are always leftovers” if scarce resources are well managed, we consider that the president of the court should ensure that the existing facilities, though insufficient, are used efficiently. Currently, an impression has

⁵ CPCR, Article 328 (1) The main trial shall be held in an open court.

LCP, Article 444.1 The main hearing session is held publicly.

⁶ Prizren District Court case “Sexual abuse of persons under the age of sixteen”, (P.nr.160/07) under Article 198 paragraph 1 of the CCK., held on February 7, 2011; Prizren Municipal Court case “Physical separation of joint real estate property” (Ndr.nr.393/07), held on February 21, 2011. Although courtrooms were vacant, these monitored hearings were held in judges' offices, despite the large number of participants.

been created that courtrooms are reserved only for hearings with EULEX judges.

The holding of trials in judges' offices even when courtrooms are vacant and unused, was also prevalent in the municipal courts of Prizren, Pejë, Gjakovë and Therandë, among others.⁷

As additional information, at a BIRN roundtable to discuss the Court Monitoring draft report, Gani Zabeli, the president of the municipal court in Lipjan, said he had requested the KJC furnish the existing courtroom with inventory and required equipment. However, the KJC disregarded his request and, as a result, all trials were being held in judges' offices.⁸

The municipal court in Ferizaj is in a better position in the use of courtrooms. Of 234 monitored sessions in the court, 232 were held in courtrooms.

Most cases in the municipal courts of Skenderaj, Drenas and Viti were also held in courtrooms, thereby enabling the fulfilment of the principle of publicity in court proceedings.

In addition to the insufficient space and otherwise difficult conditions for the holding of trials, when hearings are held in judges' offices, court proceedings are frequently interrupted by third parties opening and closing the door in search of unrelated information.

BIRN monitoring also identified cases when the public, either parties to the hearings or people interested in following hearings, were forced to leave the room due to insufficient space.⁹

Holding trials in judges' offices has occurred for several years. Due to such behaviour, the public is prevented from participating in trials, even though such participation is guaranteed under international conventions and Kosovo's own legislation.

⁷ Monitored trials in municipal courts that were not announced on bulletin boards included: Pejë Municipal Court case "Aggravated theft in co-perpetration" per Article 253 paragraph 1, in conjunction with Article 23 of the CCK (P.M.nr:13/10), held on September 23 2010; Prizren Municipal Court case "Theft" under Article 252 paragraph 2 of the CCK (P.nr.114/08), held on January 17, 2011; Vushtri Municipal Court case "Attacking official persons performing official duties" per Article 317 paragraph 2 in conjunction with paragraph 1 CCK, and "Threat" as per Article 161 paragraph 2 in conjunction with paragraph 1 of the CCK (P.nr. 114/08), held on February 8, 2011.

⁸ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

⁹ Prizren Municipal Court civil case "Physical separation of joint real estate property" (Ndr. nr.393/07), held on February 21 2011. This session was held in the judge's office, despite the presence of 15 people, and the fact that the courtroom was vacant. Prizren Municipal Court criminal case "Sexual abuse of persons under the age of sixteen years" (Pm.nr.160/07), held on February 7 2011. This session was also held in the judge's office, despite the presence of 15 people and the fact that the courtroom was vacant.

Statistics show similar figures on this issue over several years, leading to the conclusion that court presidents have accepted this situation and are not inclined to undertake actions to remedy it.

Our monitors have identified neither actions nor plans worth mentioning among competent bodies to improve this situation. This has left the impression that the situation will not change until the construction of the planned Palace of Justice.

3. Lack of transparency among judges and prosecutors

The entire justice system is still facing a lack of transparency and proper communication with the public. In addition to the fact that non-model courts lack information offices, judges and prosecutors are reluctant to speak on issues relating to the courts and prosecutors offices.

Journalists and the general public remain dissatisfied with the level of transparency shown by the KJC and the judicial system as a whole, despite the fact that the KJC has a Public Information Office, and its meetings are open to the public.¹⁰

Throughout the monitoring process, BIRN and the Justice in Kosovo programme team faced repeated difficulties in the form of silence from judges and prosecutors, as well as their reluctance to make public statements regarding issues of professional competence and responsibility.

Contrary to the law, the whole state prosecution system has only one spokesperson, who was hired at the end of 2010, while the municipal and district prosecutions have no spokesperson.¹¹

There is a similar situation in the courts. The only public information service is that of the KJC, established in 2007. The KJC, as the body administering Kosovo's judiciary, declared that the presidents of courts are expected to play the role of spokespeople. It is our conclusion that this is a significant part of the problem with transparency in the courts, as these officials are already overloaded with work and other duties.

On the other hand, the KJC spokesperson stated that the KJC Operation Manual for Courts does not require spokespeople for courts, thus denying measures that would potentially facilitate an increase in transparency. According to her, the judiciary has no budget to appoint more spokespeople, so it is envisaged that court presidents are also responsible for public and media relations on issues pertaining to their courts.

It is not only citizens and journalists that complain about the lack of transparency and public relations. The president of the municipal court in Ferizaj, at the BIRN roundtable on the annual Court Monitoring 2010 draft report, expressed his concern

¹⁰ "How problematic is it to communicate with judicial officials?", aired on January 16 2011. Journalists working for various newspapers in Kosovo expressed their concerns about problems in communicating with officials from judicial institutions: <http://www.jetanekosove.com/drejtesia/668/Alb>

¹¹ "Lack of transparency in the justice system in Kosovo", aired on January 16 2011. A debate on the lack of transparency in the judicial system: <http://www.jetanekosove.com/drejtesia/669/Alb>

about the lack of a website for publishing court judgments and decisions.

He also expressed his belief that the KJC should open its own website to be used for the publication of judgments/decisions and other information. This information should not be used only by the public and journalists, but would also be useful for judges for professional purposes.

This suggestion was supported by other judges and prosecutors attending the roundtable.

It is BIRN's opinion that there is a lack of real commitment to overcome this situation by recruiting media and public relations professionals, which would help the KJC, courts and prosecutors offices to improve both transparency and cooperation with the media and the wider public.

II. PROCEDURAL VIOLATIONS IN COURT HEARINGS

All court hearings, both criminal and civil, are to be held in accordance with the appropriate procedural legislation.¹² However, throughout the monitoring period, BIRN monitors witnessed cases in which judges did not fully adhere to the procedural provisions for court hearings.

In criminal cases, the presiding judges and trial panel members must respect all procedural rules as laid out in the CPCK. However, BIRN monitored cases in which hearings were opened without a full trial panel, the rights of parties were not respected according to regulations, and when the guaranteed rights of parties were not read out, among other violations.¹³

BIRN believes that judges must pay special attention to respecting procedural provisions, especially the rights of defendants, damaged parties and witnesses in court hearings.

1. Hearings opened without the full composition of the trial panel ● ● ●

Although CPCK Article 22 and Article 403, paragraph 1, item 1¹⁴ provides that hearings must be held with a fully composed trial panel, a significant number were opened and adjourned without this condition fulfilled. Therefore, the presiding judges in these cases committed substantive violations of Kosovo's criminal procedure.

BIRN monitors noticed that hearings were opened and adjourned without the full composition of the trial panel, thus violating the procedural provisions of the CPCK.¹⁵

¹² In criminal cases, court proceedings are held pursuant to the CPCK; civil cases are held pursuant to the LCP.

¹³ BIRN has identified cases in all courts in which defendants' rights were not read to them, damaged parties were not offered the possibility to ask questions to parties, or where defendants were not offered the possibility to ask questions to witnesses etc.

¹⁴ Article 22 (1) Municipal courts adjudicate in a trial panel composed of one judge and two lay judges. (2) Criminal offences punishable by a fine or imprisonment of up to three years shall be considered by an individual judge of the municipal court. Article 403 (1) There is a substantial violation of the provisions of criminal procedure if: 1) The court was not properly constituted or the participants in the rendering of the judgment included a judge or a lay judge who did not attend the main trial or was excluded from adjudication under a final decision.

¹⁵ Pejë Municipal Court case "Grievous bodily harm" per Article 154 paragraph 1 of the CCK. (P.nr:243/08), held on December 22 2010. Two lay judges were absent from the hearing, which constituted a violation of criminal procedures, specifically Article 22 and 403 paragraph 1 item 1 of the CPCK.

In the municipal court in Prishtinë, criminal trial P.nr 196/10 was held without the presence of one trial panel member, although the presiding judge concluded in the trial record that all members were present, thereby forging the trial record.¹⁶

In addition to cases in which the entire trial was held without the full composition of the trial panel, BIRN monitors also identified cases in various municipal courts in which hearings were opened without one trial panel member, who joined during the course of the trial,¹⁷ and other cases in which a trial panel member left during the course of the hearing.¹⁸

Although in such cases the presiding judge should not open the hearing, or should ask for it to be rescheduled, there were cases monitored in which this provision was violated by the presiding judge, thereby committing substantive violations of the criminal procedure, and providing a bad example for all the other judges present.

In addition, in a BIRN roundtable discussing weaknesses in Kosovo's judicial system, judges also expressed concerns about such occurrences, and said that it is a tragedy when hearings are opened, continued or adjourned without a full trial panel. Taking into account that this is a violation of procedural provisions, they also stated that this should not happen again.¹⁹

Conclusion:

Opening hearings without a full trial panel constitutes a wrong approach and reflects an inappropriate attitude. What is difficult to understand is how such a practice was turned into a regular occurrence that is continuously unsanctioned, thus creating a chain of negligence, from the municipal courts up to the Supreme Court.

¹⁶ Prishtinë Municipal Court case "Endangering public traffic" per Article 297 paragraph 5 of the CCK (P. nr. 196/10), held on January 10 2011. The hearing was conducted with the presence of only one lay judge, although the trial record indicates that both were present.

¹⁷ Gjilan Municipal Court case: "Theft and Aggravated theft" per Article 252 paragraphs 1 and 2, and Article 253 paragraph 1 of the CCK (PM.nr: 183/10), held on February 8, 2011. One member of the trial panel left the hearing before it was adjourned.

¹⁸ Rahovec Municipal Court case: "Legalisation of false content" per Article 334 paragraph 4 of the CCK (P.nr: 59/09), held on September 23 2010. A lay judge arrived after the opening of the hearing.

¹⁹ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011..

2. Delivery of court summons

Through court summons, the court informs the parties or other necessary individuals to attend a court hearing. This is regulated in procedural legislation, specifically the CCK and the LCP.²⁰

However, similar to last year, BIRN monitors identified many problems with court summons. In most cases, these problems are related to recipients being registered at multiple or incorrect addresses.²¹

This is concerning because it means that some hearings are not held at all.²² This obviously impacts the work and efficiency of the courts, resulting in delays and the postponement of court hearings.²³

This problem with summons remains one of the main problems faced by the judiciary this year. The delay and postponement of hearings and the resultant increase of the case backlog are direct results.

Another problem is also the irregular serving of summons. In some cases, receipts returned to courts, predominantly in rural areas, stipulate that summons were duly served to the parties; however, in reality the named people were not contacted at all.

²⁰ CCK Article 321, paragraph 1: "The defendant and his attorney, the plaintiff and the damaged party and their legal representatives, authorised representatives and the interpreter are all summoned in the court hearing. Witnesses and experts proposed by the plaintiff in the indictment and the defendant after the submission of the indictment are summoned in the hearing, excluding those whose presence, according to the trial panel, is deemed unnecessary. The plaintiff and the defendant may repeat their proposals in the main hearing which were not approved by the presiding judge."

LCP Article 123.3: "The submission which was the cause for initiation of the procedure is attached to the summons which includes the place, the room and the time of the proceeding. If the submission is not attached, the summons includes the litigant parties, the object of dispute and the activity to be undertaken in the proceeding."

²¹ Interview with judges from Prishtinë Municipal Court, May 2011.

²² Ferizaj Municipal Court civil case "Compensation of damages" (C. nr. 184/03), held on September 13, 2010. The session was not held because the court summons was not received; they were not duly served because of a change of address. Prizren District Court criminal case "Attempted murder" per Article 147 paragraphs 1-4, in conjunction with Article 20 of the CCK (KA. nr. 103/10), held on July 26 2010. Pejë District Court criminal case "Theft, aggravated theft, and other offences in co-perpetration" per Article 255 and Article 253, in conjunction with Article 23 of the CCK (P.nr:97/10), held on June 22 2010. The defendant was not present in the hearing, as he had not received the court summons delivered to his address. Pejë Municipal Court criminal case "Aggravated theft" (P.M.nr:13/10), held on April 14 2010. The juvenile defendants were not present at the hearing, and neither were their legal representatives. Prosecutors appointed by the court were present in the hearing. The court summon stated that defendants had changed addresses. In Prishtinë Municipal Court, hearings were not held at all because of incorrect addresses for parties in cases including "Tampering with an electric meter" (P. Nr 515/08) and "Threat" (P. Nr 460/06), both held on February 1 2011.

²³ Ferizaj Municipal Court criminal case "Light bodily harm" (P.nr.671/08), held on September 13 2010. The hearing was adjourned at the request of the defendant, on grounds that summons were not duly served. Pejë Municipal Court criminal case "Grievous bodily harm, attacking official persons performing official duties, obstructing official persons in performing official duties, and mistreatment in exercising duties" per Article 154, paragraph 1 item 1; Article 317, paragraphs 1 and 2 in conjunction with Article 23; Article 316, paragraph 1 in conjunction with Article 23 and Article 164 paragraph 1 of the CCK (P.nr:158/09), held on October 7 2010. The hearing was postponed due to the absence of the parties, who were not served summonses.

This claim is repeated by the couriers for the municipal court in Prishtinë. However, they claim the reason for this is a lack of staff. Judges and the KJC have undertaken no measures to reduce this problem, which further deteriorates the state of the judiciary.

When discussing the weaknesses identified by BIRN, some judges claimed that this issue is also the fault of some among their peers who do not undertake all measures to ensure that parties are duly summoned.

Moreover, the president of the district court in Prishtinë said that judges in such cases should confirm at least one month in advance that summons were delivered to the right destination, in order to identify eventual problems that may delay the hearing.²⁴

KJC Chair Enver Peci, at the BIRN roundtable, said that the KJC should evaluate couriers, and that in cases of a failed delivery of summons, court presidents and administrators should inform the appropriate disciplinary committees.²⁵

In addition to increasing the workload of the courts, a greater issue is that the plaintiff may lose the trial because summonses were not received. According to the CPCK, if a court summons is not duly delivered, the court must issue an arrest warrant for the forced appearance of the defendant before the court. In civil cases, however, a failed delivery of a court summons would be considered as a withdrawal of that party from the suit.

The Ombudsperson Institution has also identified similar problems on this issue. In the BIRN roundtable on the Court Monitoring Annual report 2010 draft, Isa Hasani, a lawyer from the Ombudsperson Institution, said that there have been citizens who have complained to the Institution about cases in which a court has issued a ruling despite the non-delivery of summons. There are also cases in which the couriers have delivered the court summons without recording that the individual had received it, Mr Hasani said.

²⁴ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

²⁵ Ibid.

Conclusion

The KJC should undertake the necessary measures against couriers who do not deliver court summons in the required manner, and local administrations (i.e. municipal assemblies) should regulate on the registration of multiple residences, making them consistent, and adding numbers to the addresses of all houses. The KJC should also reach an agreement with the Postal Service of Post and Telecom of Kosova (PTK) to identify and inform the authorities about areas with significant problems with inaccurate addresses.

3. Prosecutors not prepared for the trial

According to the CPCK, the public prosecutor is a party in court proceedings, and ex officio must prosecute criminal offences described in Kosovo's criminal legislation.

Through its monitoring process, BIRN has identified several cases in which public prosecutors, having been assigned to a case, arrived unprepared to the court hearing.²⁶

There are even worse cases, in which public prosecutors went to a trial without the indictment documents, instead asking for a copy from the trial panel and thus causing delays and an air of unprofessionalism in trials.²⁷

BIRN monitors have also attended hearings in which a judge was forced not to confirm the indictment in the confirmation hearing due to a lack of evidence in the indictment.²⁸ The prosecutors in such cases could provide no support to the indictment in the form of proof or evidence, such that the judges were forced to return the case to their respective prosecutors for further investigation. This leads to the conclusion that the public prosecutor was negligent and unprepared. Due to a failure to properly draft and support the indictment, such prosecutors have delayed court hearings and impacted the efficiency of their courts.

The judicial appointment and reappointment process introduced new names to the list of prosecutors; however, not all vacancies in prosecutors offices were filled. It is a valid point that the insufficient number of prosecutors forces them to cover cases that should be represented by colleagues while unprepared.

In addition, judges and prosecutors who agree that coordination between them is lacking have stated that the number of prosecutors is one of the conditions preventing them from efficiently carry out their duties.

²⁶ Prishtinë Municipal Court case "Threat" (P. nr. 113/09), held on September 13 2010. In this session, the public prosecutor came unprepared, and did not have a copy of the indictment. His justification was that he was on call. Ferizaj Municipal Court case: "Forest theft" (P. nr. 620/08), held on August 23, 2010. The prosecutor did not have a copy of the indictment, and borrowed one from the trial panel. Rahovec Municipal Court case "Endangering public traffic" per Article 297 paragraph 3, in conjunction with paragraph 1 of the CCK (P.nr: 109/10), held on November 24 2010. During this hearing, the case prosecutor was completely unprepared for the trial, and all the evidence had to be explained individually. Prizren Municipal Court case "Endangering public traffic" as per Article 297, paragraph 3 of the CCK, in conjunction with paragraph 1 of the CCK (P.nr. 233/08), held on April 5 2011. The prosecutor arrived without a copy of the indictment and was unprepared for the hearing, noticeable during the entire session.

²⁷ Prishtinë District Court criminal case "Kidnapping and unauthorised ownership, control, possession or use of weapons" (KA. No 202/10), held on October 6 2010. In addition to the fact that the prosecutor arrived late to the confirmation session, he did not have a copy of the indictment, and instead obtained one from the judge.

²⁸ Prishtinë Municipal Court case "Sexual harassment of a minor" (KA. nr 171/010), held on June 28 2010. The public prosecutor arrived unprepared to the hearing, and did not have a copy of the indictment with evidence.

The Acting Chief Prosecutor of the Municipal Public Prosecution in Pejë expressed concern about the insufficient number of prosecutors in this office. According to her, she is asked to cover four municipalities, with a total of 211,386 inhabitants, with only four prosecutors. Another problem raised by prosecutors is the lack of vehicles. The District Public Prosecution in Prizren has only one vehicle between seven prosecutors. According to them, it is impossible for these prosecutors to represent all their cases under the jurisdiction of this prosecutor's office.²⁹

This is the most frequent reason given by prosecutors and is, to a great extent, an understandable one. However, this does not justify a lack of preparation, absence from hearings or appearances without case files. In such cases, the trial panel should decide whether the conditions to proceed with trial have been met.

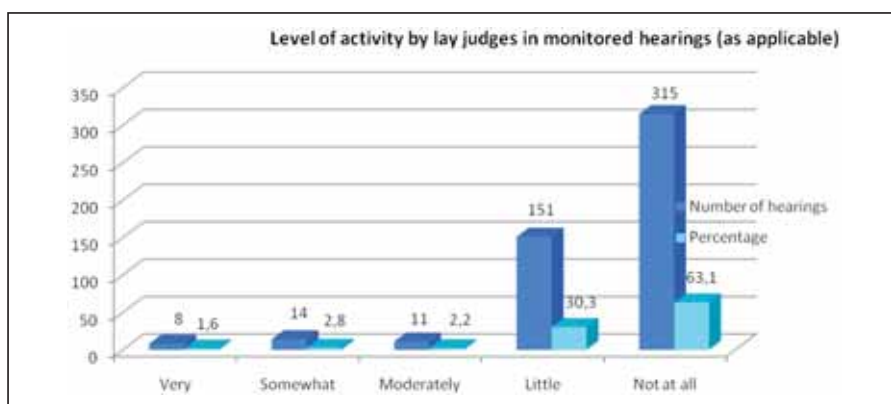
In addition, the trial panel should inform the Chief Prosecutor about the lack of preparation by the prosecutor, particularly for cases in which they have arrived without the indictment documents. The Chief Prosecutor should, as a minimum, undertake disciplinary measures against such prosecutors, in order to ensure that the public prosecution functions efficiently.

Instead of this, on behalf of an ultimately negative 'collegiality', if a public prosecutor arrives at a hearing without the indictment, members of the trial panel provide a copy, thus reflecting tolerance of such behaviour.

²⁹ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

4. Passivity of trial panel members (lay judges) during trials

According to Article 22 and 24 of the CPCK, courts adjudicate in a trial panel, depending on the seriousness of the crime. Of 499 hearings involving lay judges, BIRN monitored 315 in which lay judges were entirely passive. Last year, this occurrence was identified in 70% of cases, and this year it has shown only slight improvements, well below BIRN's expectations following the publication of recommendations in last year's Court Monitoring Report.



Trial panel members, specifically lay judges, have a right to active participation during trials, including the right to ask questions and vote in the deliberation procedure when a decision is taken. Unfortunately, both of these rights are hardly used by lay judges.

BIRN monitoring shows that, in most cases, lay judges are only in trials to formally meet the legal requirements on the composition of trial panels. They then remain passive throughout court proceedings.³⁰

Even worse cases have been observed by BIRN monitors during which lay judges, in addition to being passive, actually fell asleep during the hearing.³¹

Judges and prosecutors also accept the passivity of lay judges, justifying it by referring to their age.

³⁰ There were sessions in which trial panel members, predominantly lay judges, were passive throughout the hearing session, including Prishtinë Municipal Court case "Accepting Bribes" per Article 343, paragraph 3 of the CCK (1992/10), held on December 22 2010; Vushtrri Municipal Court case "Removing or damaging of official stamps or marks" per Article 322 of the CCK (P.nr. 310/06), held on January 25 2011; Therranë Municipal Court case "Endangering public traffic" per Article 297, paragraph 5 (P. nr 137/09, P. nr 309/09, P. nr 65/11), held on March 9 2011; Gjakovë Municipal Court case "Grievous bodily harm" (P. nr 509/07), held on January 26 2011.

³¹ Pejë District Court case "Aggravated murder" per Article 147, paragraph 3 of the CCK (P.nr:4/10), held on December 8 2010. A lay judge was snoozing throughout the hearing.

Most lay judges are pensioners, according to interviewed judges, and some of the people that appear on the lay judges' list are actually deceased. Judges have personally described cases in which lay judges dozed off during sessions, and claimed to have asked the KJC to reissue the vacancy for lay judges and update the list. On the other hand, the Chief District Prosecutor in Mitrovicë, Faruk Koronica, said that passivity – and sleeping – among trial panel members in hearings is a tragedy, and that the trial panel is to be blamed.

The chief prosecutor blames the trial panels for allowing hearings to proceed in such cases, as well as in those in which prosecutors arrive unprepared. “The presiding judge is dominus litis, and should decide if the conditions to start and proceed with a hearing are fulfilled”, said Chief Prosecutor Faruk Koronica.³²

Conclusion

Lay judges should be more active in hearing sessions. In addition to the active participation in trials, they should also be active in the deliberation procedure on voting and deciding on the case. The responsibility for this lies more with the presiding judges who should respect court procedure in deciding the appointment, assessing the performance and ensuring the fulfilment of the obligations of trial panel members.

³² Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

5. Witness testimonies at witnesses

In addition to material evidence, the testimonies of witnesses are also important non-material evidence used to shed light on the truth in hearings. In many cases, the testimony of a witness is the key evidence for their resolution.

During the court monitoring process, BIRN initially identified cases of non-appearance by witnesses at trials. Although CPCK Article 167 provides for fines in the event of a witness failing to appear in a trial, of 2,147 monitored sessions, BIRN monitors only observed one case in which a fine was issued against a witness due to his absence.³³

Another weakness identified was a failure to respect the procedures pertaining to the reading of rights to witnesses, and the failure of trial panels to read the oath statement to witnesses.³⁴

Article 164, paragraph 2 of the CPCK provides that a witness shall be informed of their rights. However, there are cases in which the trial panel does not respect this procedure. EULEX trials are an exception, and witnesses are always informed of their rights and are allowed to take an oath.

During their testimonies, witnesses often change their depositions given to the police and the prosecutor, thus compromising the case filed by the prosecutor. In most cases, witnesses try to justify this with the claim that a long period has passed since their initial statements, and that they do not recall what happened clearly.³⁵

³³ Pejë District Court criminal case “Rape and trafficking in persons” per Article 193, paragraph 1 in conjunction with paragraph 2 and Article 139, paragraph 1 of the CCK (P.nr:24/10), held on September 13 2010. Since the witness refused to testify, claiming she had nothing to say and could not remember the events in questions, the presiding judge drew attention to the fact that he could fine her. After she again refused to testify, the trial panel issued a ruling, as per Article 167 of the CPCK, fining the witness 200 Euro, for not testifying before the court.

³⁴ Pejë Municipal Court criminal case “Aggravated theft and aggravated attempted theft” per Article 253 paragraph 1, in conjunction with Article 20, of the CCK (P.nr:451/10), held on November 8 2010. The hearing started with the questioning of the witness/injured party, whose rights as a witness were not read out, in violation of Article 164, paragraph 2 of the CCK. This paragraph provides that “A witness shall first be told that it is his or her duty to speak the truth and that he or she may not withhold anything, whereupon he or she shall be warned that false testimony constitutes a criminal offence. A witness shall also be instructed that he or she need not answer any of the questions referred to in Article 162 of the present Code and the instruction shall be entered in the record”.

³⁵ Deçan Municipal Court criminal case “Electricity theft” per Article 285, paragraph 1 of the CCK (P.nr. 54/08), held on January 17 2011. After a long period had elapsed since the crime was committed, the witnesses could not recall the event or the description in the crime scene report from the case files of KEK representatives. Ferizaj Municipal Court criminal case “Causing general danger” per Article 291, paragraph 4 of the CCK, held on December 15 2010. There were discrepancies between the testimony provided now and the one provided at the police station, which was justified with the fact that there was a long time between.

Another problem is the lack of legislation on witness protection. The Law on the Protection of Witnesses, drafted by the Ministry of Justice, is yet to be adopted by the Kosovo Assembly. This creates a significant insecurity among witnesses, who are consequently reluctant to testify and contribute to shedding light to the case.

Conclusion

The trial panel is obliged by regulations to inform witnesses on their rights and obligations during hearings. In addition, another obligation of the trial panel is to issue fines against witnesses who do not duly respond to court summons. On the other hand, the Kosovo Assembly is obliged to promptly adopt the Witness Protection Law, which would ensure better and more complete cooperation by witnesses.

6. Police inefficiency regarding arrest warrants

In order to fulfil the conditions for holding a court hearing, all litigant parties must be present. Throughout the monitoring period, BIRN identified cases in which hearings were not held due to the failure of parties to appear, more specifically because the police did not enforce the court warrant to bring the parties before the court.

Pursuant to Article 341, paragraph 1 of the CPCCK, courts issue arrest warrants whereby the defendant should be compelled to appear before the court. However, producing defendants who have been issued compelling orders for mandatory appearance before the court remains a problem because such orders are not enforced by the police.

BIRN monitors observed cases in which hearings were not held, or were held without the presence of the defendant, constituting a violation of the provisions of judicial regulations by the presiding judge.³⁶ In such a case, the presiding judge should adjourn the trial and ask for the reasons for the police failure to enforce the court order. The police, in turn, should explain their failure to produce defendants at the trial.

BIRN has also monitored sessions that were not held due to the inefficacy of the police to compel defendants to appear in a trial.³⁷ According to judges from the municipal court in Prizren, in most cases, the police do not justify failures to produce defendants in trials at all.³⁸

³⁶ Prishtinë Municipal Court case "Repeated aggravated theft, and receiving stolen goods" (P. nr. 505/11), held on March 28 2011. The judge continued with the hearing without the presence of one defendant, thus violating procedural provisions.

³⁷ Deçan Municipal Court case "Light bodily harm" per Article 154, paragraph 1 of the CCK (P.nr. 65/10), held on November 22 2010. Pejë Municipal Court criminal case "Mistreatment in exercising duties and grievous bodily harm" per Article 164, paragraph 1 and Article 154, paragraph 1 (P.nr:558/08,) held on May 13 2010. The hearing was not held at all because the defendant did not appear before the court as he had not been served the court summons. The defendant was a police officer and the court had sent the court summons to the police station in Vitomiricë, after the court summon was returned prior to the hearing to the police station in Pejë. Officers from the police station in Pejë had concluded that the officer was working in the police station in Vitomiricë. However, the police station in Vitomiricë had returned the court summon with the conclusion that the officer worked at the police station in Pejë. Gjakovë Municipal Court criminal case "Grievous bodily harm" per Article 154 of the CCK (P.nr. 533/07), held on October 27 2010. After the defendant failed to appear in the hearing, the judge stated that an order was issued for the police to deliver him for trial and declared that the conditions to hold the hearing were not fulfilled and adjourned the hearing until November 10 2010.

³⁸ Prizren Municipal Court criminal case "Theft" per Article 252, paragraph 1 of the CCK, in conjunction with Article 23 (P.nr.1114/10), held on December 15 2010. Despite the fact that the court had issued an arrest warrant against the defendant, no information or explanation for the failure to bring the defendant before the court was sent by the police.

On the other hand, police officers declare that, in most cases, they enforce court orders, but that problems mainly relate to the registered addresses of defendants or witnesses. According to the police, there are streets whose names have been changed several times since the war.

In addition, they also stated that the police take significant costs to get hold of people wanted by courts. It may happen that a person is caught after significant costs have been incurred, and is then fined only 30 or 40 Euros or receives only a judicial admonition, even for repeat offenders.

The court cannot accept the costs incurred by the police for producing parties in court, and according to them an agreement should be reached with the KJC that all courts would accept them.³⁹

In addition, BIRN has identified similar reasons relating to this issue, including changes of residence and problems with addresses. Moreover, another problem is the communication between the police and the courts. The police rarely inform courts about a failure to find defendants before sessions commence.

Conclusion

The failure by the police to enforce court orders and inform the court of such failures in advance could be considered as non-performance by police officers, and the court should inform the appropriate level of the police chain of command of such failures.

On the other hand, judges should not hold hearings without defendants being present.

Failure to hold court hearings and the postponement of trials due to the absence of defendants further deteriorates the judiciary, and reduces the efficiency of the court system and increases the case backlog.

³⁹ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

III. SUBSTANTIAL FINDINGS

1. Courts in the North

The situation with the courts and prosecutors offices in the northern part of Republic of Kosovo continues to represent a distinct problem for Kosovo's judiciary. Although BIRN had an agreement with KJC to monitor the entire judicial system, because of the current situation in the north, BIRN was unable to monitor the courts in the north.

Even though three years have passed since the declaration of independence, courts and prosecutors offices continue to be not entirely functional, as no hearing was held by local officials in their facilities, located in northern Kosovo.⁴⁰

In February 2008, courts in Mitrovica were closed, after a failed UNMIK action to retake the court building, in which an UNMIK police officer was killed.⁴¹

As a consequence, the courts continued not to function and judges of these courts continued their work in the facilities of Municipal Court in Vushtrri. Only EULEX judges operate in the now non-functional facilities of the District and Municipal Courts of Mitrovica. The situation with the District and Municipal Prosecutors Offices is identical.

This situation was reflected in the severe state of the judiciary, especially in the region covered by the municipal and district courts and prosecutors offices of the Mitrovica region, which provide services to around 220 thousand citizens the Republic of Kosovo.

State

In fact, the local judges appointed in Mitrovica courts, do not operate from the official facilities of these courts.⁴² The large number of cases in the Mitrovica District, Municipal and Minor Offences Courts, and failure to address those cases, has caused many consequences and severely harmed the state of the judiciary not only in the region of Mitrovica but throughout Kosovo.

⁴⁰ Mitrovica District, Municipal and Minor Offences Courts, Leposavic and Zubin Potok Municipal Courts;

⁴¹ ICG –North Kosovo: Dual Sovereignty in Practice Crisis Group Europe Report N°211, 14 March 2011, page 19;

⁴² Mitrovica District, Municipal and Minor Offences Courts, Leposavic and Zubin Potok Municipal Courts

Of specific concern are the violations of certain vital human rights, such as:

- *right on access to justice;*
- *right to a timely trial, and*
- *right to freedom.*⁴³

After the declaration of independence and closing of courts in the north, the access of public to justice, namely to judicial proceedings, was much reduced. In practice, in the recent years, courts have operated only in emergency cases. Even the emergency hearings held were procrastinated and failed to reach a conclusion within a reasonable period.⁴⁴

This situation also resulted in further deterioration of court efficiency and increase of backlog. Although EULEX staff operates in these courts' premises, and to some extent this had a positive impact on the state of the judiciary, they merely tried cases of high importance, which fall under EULEX's competencies, therefore the situation remains grave.

Courts

District, Municipal and Minor Offences Court in Mitrovica currently operate from the facilities of the Municipal Court in Vushtrri, while the cases falling under the competence of Zubin Potok and Leposaviq Municipal Courts are delegated to the Mitrovica and Vushtrri Municipal Courts.⁴⁵

Mitrovica District Court only uses a courtroom, which also hosts all court staff, and an office used for civil cases. Judges for criminal cases have no office to hold their trials, and when priority cases appear (confirmation of indictment or detention), they have to ask the President of the Municipal Court in Vushtrri to find them an office to hold their proceedings.

The President of the Mitrovica District Court, Xhevdet Abazi, stated that it is not possible for all judges to come to work daily. This is due to the insufficient working space, and the compulsory application of rotational working hours.⁴⁶

⁴³ European Convention on the Protection of Human Rights and Fundamental Freedoms, Articles 5 and 6, and OSCE – “Judiciary in Mitrovica: Novelty regarding the status and continuous human rights concerns”, published in January 2011; European Convention on Human Rights;

⁴⁴ Interview with the President of the District and Municipal Courts in Mitrovica, June and September 2011.

⁴⁵ Interview with the President of the Municipal Court in Mitrovica, on 02.09.2011.

⁴⁶ Interview with the President of the District Court in Mitrovica, on 02.09.2011

Mitrovica Municipal Court uses only one office of around 24 m², in which the president of this court is seated. In the event that a session is held by any of the three judges of this court, the president has to leave the office for its conduct. The administrative staff of this court is located in a small office of around 18 m², which currently hosts 6 staff members of this court and 2 other staff members of the Vushtrri Municipal Court.⁴⁷

Mitrovica Minor Offences Court also uses only one office, of 12 square meters, where the president of the court and another 18 staff members of the court are placed. Due to the limited space, these officials also work on rotational basis, with half of the staff working one week and the other half working the following.

Prosecutors' offices

A similar situation also prevails in Mitrovica District and Municipal Prosecutors Offices.

Mitrovica Municipal Prosecutors Office, which uses an office of around 12 m², is in a worse state as regards the admission and procession of cases. This office, which hosts 10 officials, including Mitrovica municipal prosecutors, does not admit cases in regular procedure from the police.

Since 11 October 2009, only emergency cases and cases requiring pre-trial detention are admitted. The reason for this is the lack of filing space. Since the given date, the prosecutor's office only registers the files admitted through regular procedure, and then sends them back to the respective police station, where they are held by the respective investigator.⁴⁸

It should also be noted that the many prosecution cases are placed in shelves in the corridors of the Vushtrri Municipal Court, without any safety standard.

No better is the situation in Mitrovica District Prosecutor's Office. They are also located in a small space, respectively an office of 16m². The lack of space also reflects on its functionality, thus, the District Prosecutor is unable to cover all cases under its competence.

⁴⁷ Interview with the President of the Municipal Court in Mitrovica, on 02.09.2011.

⁴⁸ Sources within the Mitrovica Municipal Prosecutors Office, June 2011.

Conclusion:

The limited functionality of courts and prosecutor offices in the north seems to represent a lasting problem for Kosovo's judiciary. KJC and KPC have yet not managed to put these institutions under their umbrella, as they continue to function separately from those of Republic of Kosovo.

Finally, it may be said that the Mitrovica Courts and Prosecutor Offices can not be effective in their operations, since they merely treat priority cases, and leave aside those to be addressed through regular procedure.

As a result, many cases in these courts are prescribed. The Government of Kosovo, along with KJC and KPC, should extend its functionality in this part of the country's territory, to ensure rule of law for all residents of Republic of Kosovo.

2. Punitive policies in Kosovo's court system

The main concern of the judiciary of any country is punitive policy because, in all cases, when a person commits a criminal offence that poses a danger, society must undertake measures against the perpetrator of the offence. Such measures are aimed at preventing the reoccurrence of such criminal offences in the future, which is only possible if it is described in a law that is appropriate and fair, and which adjusts the punishment according to the significance of the crime and the social circumstances.⁴⁹

Punitive policy in Kosovo is covered satisfactorily in the law. The implementation of this punitive policy in practice, however, is not in accordance with this legislation and the various codes of the country.

Although the Criminal Code of Kosovo (CCK) lays out sanctions for criminal offences, they are only rarely applied, with actual sentences for criminal offences much lower than what is set out in the Code.

The fact that Kosovo's courts issue softer sentences was also identified in last year's BIRN Court Monitoring report,⁵⁰ which stated that, in 2009, the municipal court in Klinë, out of 127 judgments, did not pass down a single prison sentence. Furthermore, the municipal court in Pejë, out of 730 sentences issued, just 2% involved imprisonment, with other courts performing slightly better.⁵¹

In 2010 alone, the court in Rahovec judged on 37 cases of legalisation of false content, and judicial admonitions only were issued for all.⁵²

Out of 53 cases of the criminal offence of light bodily injury, as per Article 153 of the CCK, the municipal court in Ferizaj issued judicial admonitions in 33, issued fines in 14, and imposed imprisonment in only 6 cases.⁵³

Again, in 2010, the municipal court in Istog issued 72 sentences for criminal forestry theft, 70 of which were fines, one of which was a reprimand and just one calling for imprisonment.

⁴⁹ Article 34 of the CCK provides that: £The purposes of punishment are: 1) To prevent the perpetrator from committing criminal offences in the future and to rehabilitate the perpetrator, and 2) To deter other persons from committing criminal offences.£

⁵⁰ BIRN Courts Monitoring report, May 2010

⁵¹ "Types of sentences issued in municipal courts", aired on March 18 2010, in which the reporter reviewed types of sentences issued by municipal courts in Kosovo:
<http://www.jetanekosove.com/drejtesia/413/Alb>

⁵² Article 334 of the CCK does not allow for judicial admonition for this offence, but rather only imprisonment, of between three months and five years.

⁵³ Fines or imprisonment are envisaged for this offence, but despite the fact that the offence of light bodily harm is quite common in Ferizaj municipality, the court in most cases issues only reprimands.

In the municipality of Deçan, the offence of forestry theft is common. In 2010, 40 such cases were dealt with, for which fines were issued in 20 cases, admonitions in four and, different from Istog, imprisonment in 16 cases.⁵⁴

Noticing that this offence is occurring more frequently, the chair of the KJC, Enver Peci, declared that admonitions should not be issued in such cases, but only imprisonment, particularly because such offences damage Kosovo's environment and forests.⁵⁵

In addition to issuing sentences below the envisaged minimum, courts do not display uniformity in sentencing. The Supreme Court, the highest instance court in the country, made insufficient efforts to standardise on this issue, because for similar offences, different – and, in some cases, even the same – courts issue different sentences for the same crimes.

In 2010, the district court in Prizren issued 47 sentences for the possession of an unauthorised weapon, of which only two involved imprisonment, 12 were suspended sentences and 33 cases were fines. However, even in cases for which fines were issued, there were significant inconsistencies between decisions.⁵⁶

With regard to the offence of possession of an unauthorised weapon, the KJC chair, in the BIRN roundtable on the Annual Court Monitoring report draft, stated that nationwide standardisation must be sorted out for this criminal offence. However, Mr. Peci also stated that this should be done by the Supreme Court of Kosovo.⁵⁷

The presidents of the district courts in Prishtinë and Gjiilan also agreed that sentences issued for this offence are too soft, and that they had received a letter from the Supreme Court of Kosovo stating that they should be harsher, or result in larger fines.⁵⁸

⁵⁴ This also shows that Kosovo's courts issued lower sentences, and that there is no standardisation of sentencing, because for the same offence one could be fined in Istog, but imprisoned in Deçan.

⁵⁵ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

⁵⁶ We provided examples where for the same offence (of the same paragraphs of the relevant codes), various sentences have been issued

Case	date	court	sentence
P.nr. 165/10	17.01.2011	Prizren	fine: 200 euro
P.nr.40/09	02.03.2011	Prizren	fine: 350 euro
P.nr.75/11	13.04.2011	Prizren	fine: 400 euro
P.nr.16/10	03.03.2010	Prizren	fine: 500 euro
P.nr.35/11	03.03.2011	Prizren	fine: 1,300 euro
P.nr.21/10	15.02.2010	Prizren	fine: 1,500 euro

⁵⁷ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

⁵⁸ Ibid.

Kosovo's courts have failed in this task, including the assessment of mitigating and aggravating conditions, which has led to the issuing of disputable decisions.

This irregularity was noticed without exception in all municipal and district courts, as well as the Supreme Court. We consider that the Supreme Court, as the highest instance court, should carry out sentencing standardisation and create a common punitive policy in accordance with the circumstances and conditions in Kosovo.

Conclusion

To achieve a punitive policy and sentencing standardisation for the whole territory of the Republic of Kosovo, there is a need for efforts to be made by the Supreme Court to organise roundtables with judges of lower instance courts, in coordination with the KJC.

3. Functioning of model courts

The majority of court buildings in Kosovo are old, built in the times of the former Yugoslavia, or even earlier. Many courts operate in buildings shared with prosecutors and lower instance courts.⁵⁹ Not all courts meet the requisite technical standards; they are basically ordinary buildings.

Shortfalls of the facilities identified by BIRN monitors were:

- *insufficient courtrooms,*
- *insufficient office space for judges and court staff,*
- *lack of separate rooms for protected witnesses,*
- *insufficient rooms for trial panel deliberation and voting,*
- *insufficient public space,*
- *insufficient space for prisoners,*
- *insufficient space for detainees waiting to appear before the pre-trial judge,*
- *insufficient car parking space,*
- *insufficient, or lack of, emergency exits and entrances,*
- *lack of separate entrances for defendants or prisoners,*
- *lack of entrances for witnesses (particularly for those under protection),*
- *lack of separate entrances for court staff and judges,*
- *insufficient space for counsels and prosecutors to leave items not required during trials,*
- *insufficient case archiving space,*
- *insufficient in case management offices,*
- *insufficient space in enforcement offices, and*
- *insufficient, or lack of, storage for material evidence and other seized items, etc.*

Since the war, the interiors of nearly all courts have been refurbished, but in all cases they have retained the original spatial organisation of offices for judges and other court staff.

Nonetheless, in July 2007, USAID⁶⁰ established the Justice Support Program⁶¹, estimated at \$3 million. This programme envisaged the establishment of model courts, and its implementation started in December 2007 in six district and municipal courts, and was expanded in April 2009 to four additional municipalities.

⁵⁹ Court buildings in Pejë, Istog, Klinë, Gjakovë, Ferizaj, Vushtrri, Deçan, the District Commercial Court building in Prishtinë, etc.

⁶⁰ United State Agency for International Development

⁶¹ <http://www.drejtesia-ks.org/?cid=1,2>

The inaugural model court was in Ferizaj, established in September 2009,⁶² and other model courts have been opened since. Under this programme, model courts now have a changed internal structure, in which administrative departments are placed in one floor with open booths and other floors accommodate offices and courtrooms. This new internal structure was meant to enhance functionality, so that administration is made open to the public.

This change of building layout is also thought to provide more access to courts for the public, thanks to more transparent offices with booths for administration, and the subsequent construction of more courtrooms.

Although better court operation was envisaged under the model system, there are some problems remaining, identified by BIRN monitors.

Model courts still have insufficient space, as the existing space was only redesigned. Shortcomings are thus mainly the same as above:

- *insufficient courtrooms,*
- *insufficient offices for judges and other court staff,*
- *insufficient rooms for witnesses,*
- *insufficient rooms for detention,⁶³ and*
- *insufficient space for counsels and prosecutors, etc.*

A judge from the district court in Pejë, Lumturije Muhaxheri, denied a monitor's report that his court lacks a detention room. After verification, BIRN reached the conclusion that Judge Muhaxheri was referring to a four square meter space as a 'detention room' that, instead of a door, had a thin piece of a board and no other conditions to be classified as a detention room. On the other hand, this room is formally listed as a cell by the court.⁶⁴

Although the model court programme envisages that Case Management Central Offices (CMCO) should have responsibility for case management, thus eliminating case archives in judges' offices, this has not been realised in the majority of model courts.⁶⁵ Cases are still usually handled in judges' offices, while CMCOs deal with settled cases and new cases arriving in the court.

⁶² <http://www.jetanekosove.com/shikovideo/188/Alb>

⁶³ The district and municipal courts in Pejë have no detention rooms.

⁶⁴ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

⁶⁵ The municipal courts in Ferizaj, Gjakove and Prishtinë and the district and municipal courts in Pejë, among others.

Although many court staff training events have been organised on the new case management system and organisation of work in courts, BIRN monitors found that the actual application of new practices rarely occurs, as case documents remain in judges' offices, and the majority of judges continue to hold hearings in their offices. Model courts are now more open to litigant parties, as they have information offices where citizens can obtain basic information pertaining to the court and trials.

In addition, these offices refer parties to the appropriate people tasked with their case. However, information offices mainly refer parties to judges' offices, as cases are still archived there, despite the requirements laid out for model courts.

Conclusion

Model courts' staff and judges should implement the case management systems envisaged, as it would have a positive effect upon their efficiency and would reduce the workload of judges and other court staff.

IV. TECHNICAL FINDINGS

In addition to substantial findings, BIRN monitors also observed a number of 'technical violations', which, although identified as violations in last year's report, had not been addressed.

Poor coordination between prosecutors and judges in the scheduling of court hearings, problems with court summons, and the late opening of hearings all constitute technical violations, which, nonetheless, have a significant impact on the work of courts by delaying cases and adding to the backlog.

Audio and video recordings of sessions, the use of phones and problems with interpretation and translation were also identified as technical failings during the monitoring process, and these problems also seriously affect hearings.

A slight improvement was recorded as regards the wearing of uniforms by judges, prosecutors and counsels in some courts. This was particularly noticeable in the district court in Prishtinë, where progress was made after an instruction was issued by the president of the Supreme Court about the use of uniforms in hearing sessions.

Nevertheless, although this instruction was addressed to all courts, it is not respected by a majority of them. Of a total of 2,147 monitored sessions, in 1,128 of them (52.5%) uniforms were not worn by any officials. The use of uniforms in trials, in addition to making a distinction between individuals involved in the procedure, also gives the perception of a more serious, formal and official trial. In many cases, monitors were told that by litigant parties that "if judges do not respect their workplace, why should we?"

1. Uncoordinated trial scheduling between judges and prosecutors ● ●

According to the LCP and CPCK, court hearings are called by the court.⁶⁶ In most cases, the court strives to coordinate the schedule of hearings with other people involved in proceedings, such as the public prosecutor and the party counsel etc.

However, BIRN monitors found that such coordination does not always occur. This continues to represent a shortcoming for courts of all levels in Kosovo, with the lack of coordination between judges and prosecutors representing a specific concern.

Overlapping sessions and a failure to coordinate on the date and time of proceedings represent problems in many district and municipal courts.

In these courts, a large number of cases are delayed due to lack of coordination between judges and prosecutors or because of prosecutor absences.⁶⁷ As a consequence, court proceedings are still not being held or are being delayed, resulting in an increased backlog.

BIRN monitoring identified that the district and municipal courts in Pejë and the municipal courts in Deçan and Gjakovë are among those that most frequently delay the start of proceedings due to prosecutors' absence or simultaneous engagement in other trials.⁶⁸

The insufficient number of prosecutors, even after the appointment/reappointment process, is the common justification given by prosecutors' offices for such delays and failures of representation.

⁶⁶ Article 123 of the LCP: "The proceeding is initiated by the court whenever so determined by the law or required by procedure." Article 319, paragraph 1 of the CPCK: "The day, hour and venue of the main trial shall be determined by an order issued by the presiding judge."

⁶⁷ Deçan Municipal Court criminal case "Theft" per Article 252, paragraph 1 of the CCK (P. No. 86/10), held on November 15 2010. Although the trial was scheduled for 10:30, it was delayed by 50 minutes because the public prosecutor was attending another trial at the same time. Deçan Municipal Court criminal case "Theft" per Article 252, paragraph 1 of the CCK (P. No. 106/90), held on February 14 2011. Although the trial was scheduled for 09:40, it commenced at 11:10, because the public prosecutor was attending another trial at the same time.

⁶⁸ Pejë District Court case "Attempted murder and battery" (PP. Q. No. 115/10), held on September 8 2010. The trial was scheduled for 11:00 and commenced after a 45 minute delay, initially because the judge was late and then because the prosecutor was late, attending another session for the confirmation of an indictment. Pejë District Court case "Unauthorized ownership, control, possession or use of weapons" per Article 328, paragraph 2 of the CCK (P. No. 80/10), held on October 12 2010. The trial was scheduled for 10:00, concurrent with a trial scheduled by EULEX for case P. No. 112/10. Both required the presence of the District Prosecutor, though it was impossible for him to attend both trials. Pejë Municipal Court case: "Aggravated theft and attempted aggravated theft" per Article 253, paragraph 1 and Article 253, paragraph 1, in conjunction with Article 20, of the CCK (P. No. 451/10), held on November 8 2010. In this trial, the prosecutor was late, and when contacted by the presiding judge, said that she was at the municipal court in Deçan, attending to certain review procedures, although she would get to Pejë immediately. The presiding judge informed all present that the trial would recommence at 11:00, after the prosecutor had arrived.

This was especially noticeable at the Municipal Prosecutor's Office in Pejë and the District Prosecutor's Office in Prishtinë, in which the number of prosecutors after the appointment/reappointment process has dropped.⁶⁹ Related, judges also expressed their concern about the absence of prosecutors and the subsequent delays caused. At a roundtable organised by BIRN, Zijadin Salihu, the president of the municipal court in Kamenica expressed his concern, saying that prosecutors “have to be begged to come to trials”. He also promised that, after the appointment of new prosecutors, judges will no longer wait for prosecutors and will not be as tolerant of absences.⁷⁰ Similarly, in other district and municipal courts, sessions continue to be delayed because of a lack of proper coordination between judges and prosecutors when calling hearings, which is more noticeable in criminal proceedings.⁷¹ A large number of municipal prosecutors were appointed to new positions at the district level, but a large gap in staffing in municipal prosecutor's offices remains. Due to delays in the appointment of new judges and especially prosecutors, this gap has deepened and caused a six-month period of chaos that has made the justice system operate in circumstances that resemble emergency operations.

Conclusion

BIRN considers that better coordination between judges and prosecutors is necessary when setting the times and dates of court hearings. In addition to the efforts of judges and prosecutors, BIRN considers that court presidents and chief prosecutors should enforce a higher level of discipline and ensure that respect is paid to the timely conduct of court hearings.

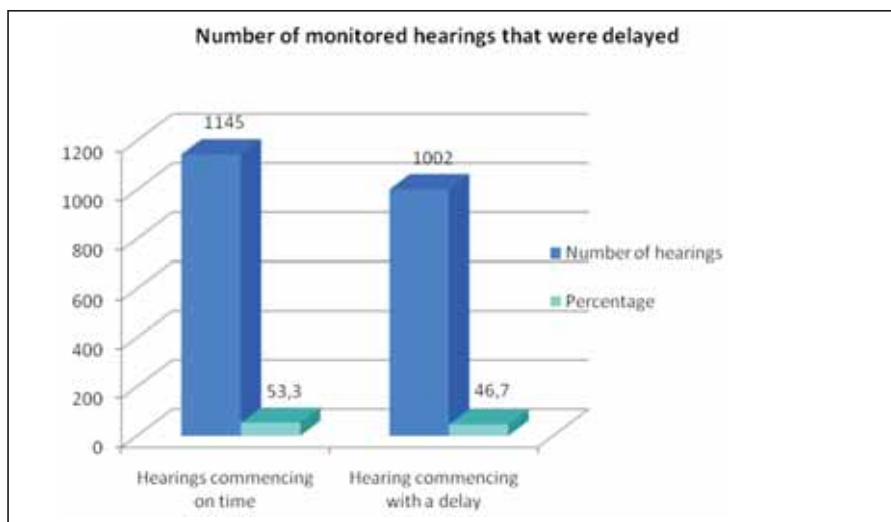
⁶⁹ The Municipal Prosecutor's Office in Pejë employs only 4 prosecutors, who cover four municipalities, namely Pejë, Deçan, Istog and Klina; Prishtinë District Prosecutor's Office employs six prosecutors, including the chief prosecutor and a delegated prosecutor. With such a small number of prosecutors, it is impossible to cover the many cases required, especially considering the growing number of court hearings.

⁷⁰ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

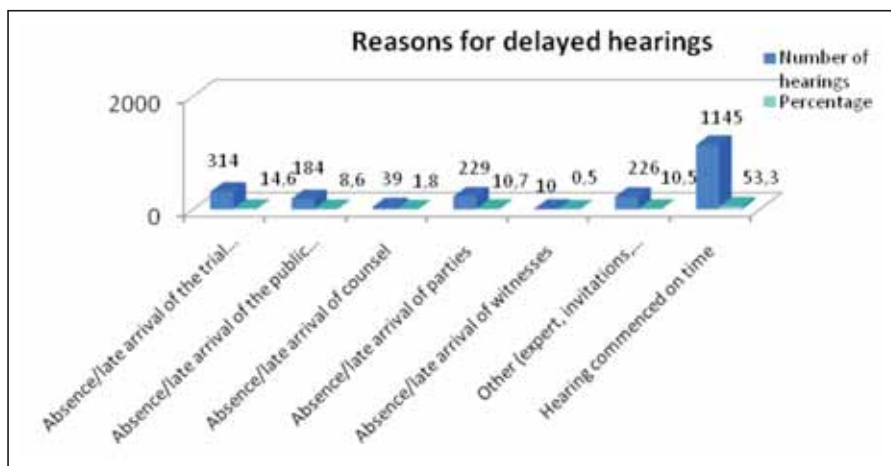
⁷¹ Prishtinë District Court case “Murder” (P. No. 265/09), held on November 3 2010. This session, which was scheduled to commence at 10:00, was delayed by one hour, although all the parties and other necessary attendants were present and waiting. The public prosecutor leading the case, Fekrije Fejzullahu, was attending another trial led by Judge Tonka Berisha. Thus, the insufficient number of prosecutors available resulted in the family of the perpetrator and the family of the victim having to sit in the same courtroom for an hour. Prishtinë District Court criminal case “Murder” (P. No. 38/10), held on December 20 2010. Prosecutor Haxhi Derguti was at the same time in another trial involving 14 defendants in pre-trial detention. This forced the presiding judge, Hamdi Ibrahim, to suspend the trial for the day. This was justified by reference to the insufficient number of judges and prosecutors available. Malisheve Municipal Court case “Endangerment of public traffic” per Article 297, paragraph 5 of the CCK (P. No. 33/06), held on July 8 2010. Although scheduled, the trial was not held due to the absence of the case prosecutor. When contacted by the judge, the chief prosecutor blamed the insufficient number of prosecutors. The municipal court in Lipjan continues to schedule multiple criminal case court hearings simultaneously, although the indictments in this court can only be represented by one representative of the Municipal Public Prosecutor's Office in Prishtinë. In the case “Purchase and distribution of narcotics in the Lipjan Pre-Trial Detention Centre” (P. No. 319/10), held on June 23 2010, the hearing began after an hour's delay because the case prosecutor, Manushe Llugiqi, was attending another hearing at the same time.

2. Delays in commencement of proceedings

Delays in the commencement of court proceedings represent another technical violation noted by BIRN monitors, which have continued to blight the judiciary this year. Out of 2,147 monitored sessions, 46.7% began after a delay.



This caused a delay to proceedings, which had a negative impact on court operations. Taking into consideration the large number of unresolved cases and the huge backlog, delays to the start of trials result in an even greater burden for courts. Delays in the appearance of trial panels represent one of the most frequent causes of late court hearings, even though it is the trial panels that determine the date and time

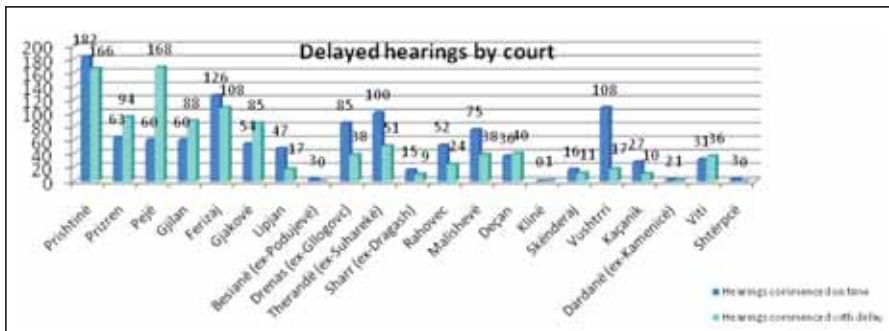


of trials in the first place.⁷² Out of the 2,147 sessions monitored, 314 (14.6%) began late because of delays in the appearance of the trial panel.

Further, late appearances by public prosecutors presented another reason for this problem in the judicial system, even though they duly receive notifications of trial locations and times. BIRN monitors identified that, in 184 of 2,147 sessions, late arrival by public prosecutors caused hearings to start late.⁷³

However, the start of other hearings were caused by the absence or lateness of defence counsels, litigant parties, or various reasons including transport and problems with summons.⁷⁴

Courts in Prishtinë and Pejë are among those most affected by the problems mentioned above. The municipal courts in Ferizaj, Vushtrri and Therandë were among the most punctual.



⁷² Pejë District Court criminal case “Double murder” per the former Criminal Law of Kosovo (P. No. 112/10), held on July 12 2010. The hearing was scheduled for 10:00 and started 20 minutes late, initially due to late arrival of the prisoner transport unit and then the late arrival of the trial panel. Ferizaj Municipal Court criminal case “Unlawful occupation of real property” per Article 259, paragraph 1 of the CCK (P. No. 94/07), held on December 1 2010. Prizren Municipal Court criminal case “Abuse of official position or authority” per Article 339, paragraph 2 of the CCK (P. No. 1018/09), held on July 21 2010. The hearing started after a 45-minute delay because of the late arrival of the judge, who was at the same time scheduled to act as a pre-trial procedure judge in another hearing.

⁷³ Prizren District Court criminal case “Aggravated murder” per Article 147, paragraph 9 of the CCK, and “Unauthorized ownership, control, possession or use of weapons” per Article 328, paragraph 2 of the CCK (PM. No. 05/09), held on September 13 2010. The trial panel and other parties in the hearing were forced to wait for the public prosecutor, who was 35 minutes late.

⁷⁴ Prizren Municipal Court criminal case “Aggravated theft” per Article 253, paragraph 1, in conjunction with subparagraph 1, of the CCK (KA. No. 111/10), held on November 15 2010. The trial started after a 75-minute delay caused by the late arrival of the attorney. Pejë District Court criminal case “Double homicide” per Article 30, paragraph 2 of the former Criminal Law of Kosovo (P. No. 112/10), held on September 7 2010. The hearing was scheduled for 10:00 and commenced after a 45-minute delay caused by the late arrival of the prisoner transportation unit from Dubrava and the police (the latter were required to control the public entering the courtroom). Ferizaj Municipal Court juvenile criminal case “Sexual abuse of juveniles under 16 years old” (P. No. 122/09), held on September 30 2010. This hearing started after a delay caused by an extended prior hearing held in the same courtroom.

Whereas judges blame prosecutors for delays in hearings, prosecutors' justification continues to be the insufficient number of staff. Lirije Morina, the acting chief prosecutor in Pejë Municipal Public Prosecutors Office stated that the insufficient number of prosecutors results in their inability to adequately deal with all indictments. Furthermore, she stated that there are cases when a number of hearings in which the same prosecutor is required are set simultaneously. According to her, until the number of prosecutor increases, no improvements in this regard should be expected.⁷⁵

Conclusion

Delays in the commencement of court hearings continue to represent one of their key deficiencies, which BIRN considers can be avoided with a little effort. Delayed court hearings cause problems for other hearings, which are subsequently delayed or postponed. Also, taking into consideration the large backlog of unresolved cases in courts, delays cause further complication to judicial proceedings and contribute to the ever-increasing backlog.

⁷⁵ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

3. Interpretation/translation in court hearings

According to the CPCK and LCP, litigant parties and other stakeholders are entitled to use their native language in court proceedings.⁷⁶ In trials, there are cases when proceedings have been led in more than one language. This occurs when the hearings are held by EULEX and when parties are members of communities that do not speak Albanian.

In such cases, pursuant to the CPCK and LPC (Articles 96.2 and 96.3), parties are entitled to speak in their language, while the court is obliged to provide adequate interpretation services.⁷⁷

BIRN found during its monitoring process that there are problems with interpretation, especially in EULEX-led hearings. Although EULEX employs professional interpreters, in some cases their interpreters faced difficulties in the adequate interpretation of wording, which lead to an altered understanding of the parties' statements during the trial.⁷⁸

Special Prosecutor Besim Kelmendi stated, at a roundtable organised by BIRN, that in lengthier and more complicated court proceedings, not only are the same interpreters not used for the entire cycle, interpreters are sometimes replaced during hearings, thus creating inconsistencies in the language used in interpretation, in terminology and in familiarity with the problem and topic at hand.

On the other hand, the KJC chair, Enver Peci, said at the same roundtable that there is often a lack of competent interpreters. This happens due to the low salaries that the KJC is able to provide for their services.⁷⁹

Most problems with interpretation were noted in well-known trials such as the 'Bllaca case' or the 'Tisa case'.

⁷⁶ LCP Article 96, paragraph 1: "The party and other participants in the procedure have the right to speak in front of the court in their own language or a language they understand."

⁷⁷ LCP Article 96, paragraph 2: "If the procedure is not conducted in the language of the party or other participants in the procedure, upon their request shall be provided verbal interpretation into their language or a language they understand of all submissions and evidences and of all that is submitted in the court session."

Article 96, paragraph 3: "The parties and other participants in the procedure shall be informed about the right to follow the verbal proceedings in their language through an interpreter. They may waive the right to an interpreter if they declare that they understand the language in which proceedings are taking place. The minutes will record that they were instructed about the right to use their language and the statements of parties and other participants about the instructions provided by the court."

⁷⁸ Pejë District Court criminal case "Double murder committed in a state of mental distress" per Article 148, in conjunction with Article 33, of the CCK (P. No. 03/10), held on April 27 2010. The EULEX interpreter was very poor and often changed the meaning of statements, and faced great problems with the interpretation of the terminology used by a meteorology expert.

⁷⁹ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

During these trials, both the defence counsels and the prosecutor remarked about the poor interpretation provided.

Other related complaints included incomplete or partial interpretation, problems with the dialects of interpreters from Albania, and textual translation without contextual adjustment. These deficiencies in interpretation result in an inability for witnesses and other parties to proceedings to follow developments and subsequently diminish the credibility of court proceedings in general.⁸⁰

BIRN monitors also identified cases in which judges took on the role of interpreters during trials.⁸¹

Conclusion

Problems in interpretation continue to impact the work of courts and comprise a violation of the human right for a fair trial in one's native language. This, in turn, negatively affects the quality of judicial reviews, as well as increasing the tendency among non-Albanian speaking communities to not fully trust Kosovo's justice system. Taking into consideration the current circumstances, it is important for the KJC to raise the level of trust among non-Albanian speaking communities by providing them with professional interpretation in their languages.

⁸⁰ District Court in Prishtinë, criminal case: "Organised Crime, smuggling of immigrants", the TISA case, (P. No. 244/2010), in February 2011.

⁸¹ Prizren Municipal Court juvenile case "Causing general danger" per Article 291, paragraph 4, in conjunction with paragraph 1, of the CCK (PM. No. 114/08), held on February 3 2011. The prosecutor, being of Bosniak ethnicity, used his native language in half of his presentation, and the judge, in the absence of a court interpreter, interpreted the prosecutor's speech.

4. Trial records

Article 348, paragraph 1 of the CPCK expressly states that a written record of every trial should be compiled. This record should make note of the substantial and important points of the judicial treatment of the case. A similar provision is also made in the LCP.⁸²

However, BIRN monitors observed cases in which this legal provision was not respected. There are also cases in which judges did not include all procedural actions in the record.⁸³

In fact, in most cases, they summarise developments during the course of the hearing. BIRN monitors observed cases in which the indictments and responses to claims or charges were said to have been read, whereas in fact they were not. During the roundtable on the draft report, the judges justified this by stating that it suffices to include in the record the substance of the case, while excluding details⁸⁴. However, the result of this is that the members of the public present in the trials were not informed of the real contents of the indictment or claim.⁸⁵

This custom automatically results in poorer quality judicial proceedings, and creates confusion and mistrust in the courts' professionalism. Such an approach by irresponsible judges, who fail to be punctual or are reluctant to be detailed in drafting trial records, not only sheds a bad light on the courts and Kosovo's justice system in general, but also represents a practical problem when judgements are appealed and higher courts are expected to deliberate, but are deprived of full information about the case.

⁸² Article 134.1 A record shall be kept of each action undertaken in the course of court proceeding.

⁸³ District Court in Prizren, monitoring of criminal case: "Endangering public traffic", Article 297, paragraph 5, in conjunction with paragraph 3 of CCK, P. No. 148/06, held on 09/11/10. It was noted that the traffic and forensic expertise were read and that the CD of the autopsy were watched, whereas in reality this did not occur: the CD and memos were not read. Municipal Court in Rahovec, monitoring of civil case: "Verification of ownership", C. No. 21/10, held on 25/10/2010. Although the court stated in its decision that the court and the geometry expert had conducted a spot visit, it did not occur. The judge said the following to the parties: "let's pretend that we conducted the spot visit and came back to continue the hearing, in order not to bring you again to the court, as I know you are also quite busy", and stated on record that the court had conducted the visit and that the expert proposed to the court to postpone today's hearing for an unspecified term. Municipal Court in Rahovec, monitoring of civil case: "Verification of ownership", C. No. 148/10, held on 18/10/2010. Although no geometry expert was present in the hearing, the record stated that he was present. Municipal Court in Theranda, monitoring of criminal case: "Forest theft", Article 285, paragraph 1 of CCK, KA – 36/10, held on 08/02/2011. In the hearing the judge failed to notify the defendant of his rights, while the record stated that the defendant was informed of his rights.

⁸⁴ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.

⁸⁵ Municipal Court in Prizren, monitoring of civil case: "Ungrounded enrichment", C. No. 313/08, held on 29/06/10. The judge was replaced, thus, according to the law the claim suit needs to be read again, and although this did not occur, the records claim that the suit was read.

EULEX judges always include full details on the proceedings, statements and actions in the trial in their records.

Conclusion

BIRN considers it necessary for judges to respect procedural provisions when compiling trial records, and sanctions should be imposed on judges that neglect this important aspect of documentation. This would result in greater respect of the principle of publicity in judicial hearings, and it would enhance public trust in courts and assist higher instance courts when deliberating on appeals.

5. Problems with transport of pre-trial detainees to hearings



Prisons and pre-trial detention centres have a limited number of transportation means for prisoners, a situation that has barely improved since last year. For example, Dubrava prison, which holds around 900 prisoners, has only four vehicles for prisoner transportation.

Other pre-trial detention centres are in even worse situations than Dubrava, having as they do only one vehicle at their disposal. Therefore, these centres often ask Dubrava prison to lend them vehicles, even though the latter faces deficiencies in this regard, in absolute terms.

The lack of vehicles for transporting prisoners and pre-trial detainees directly results in delayed or cancelled court hearings. This all results in the delay of court proceedings.

BIRN monitors often noted another phenomenon – that of prisoners brought to courtrooms sweaty, tired, dehydrated and exhausted because of the difficult transport conditions. We consider this an infringement of prisoners' rights, because in such a state, they are unable to carefully follow court proceedings and protect their interests.

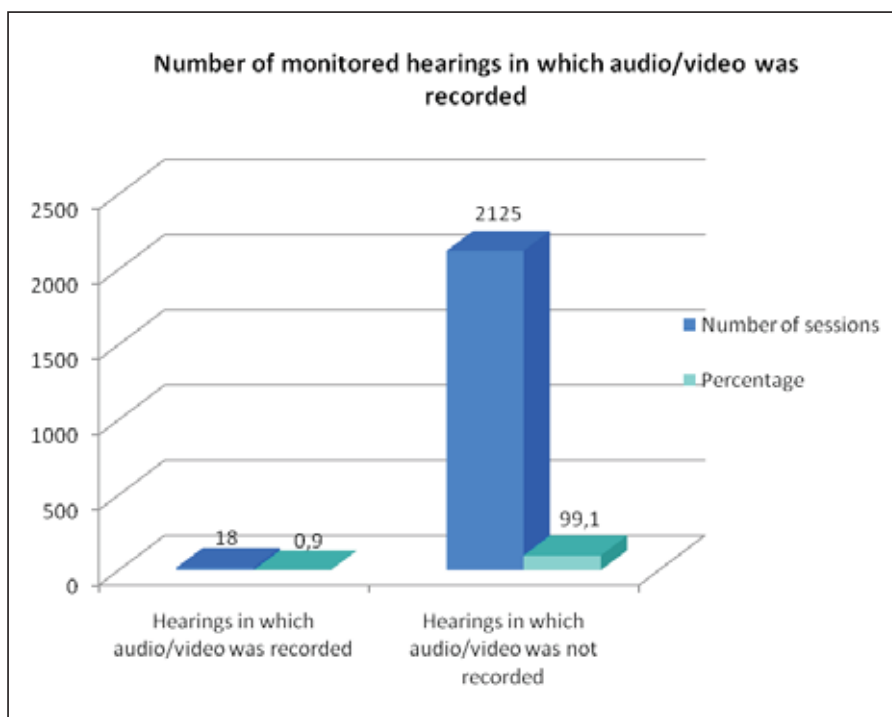
6. Failure to use electronic equipment in courts

According to Article 348, paragraph 5 of the CPCCK, the presiding judge should decide on the manner of trial recording. Paragraph 2 of the same Article expressly stipulates that entire hearings can be audio recorded.

Although the law envisages this technological facility, which would help overcome most of the problems described in section 5 of this chapter (on trial records), not all courts are fitted with adequate equipment to allow this form of documentation and archiving of proceedings.

All district courts have one courtroom that is equipped with audio recording systems; however, these systems are very seldom used.

BIRN monitors noted the use of audio recording in equipment in just 20 sessions (0.9%) of 2,147. The district court in Prizren recorded audio in 13 hearings, the district court in Prishtinë in two, and the district court in Gjiilan in three sessions.



Although the holding of trials in judges' offices can be heard as a justification for the failure to use audiovisual recording equipment, we consider that there is no valid reason whenever the opportunity actually exists.

We consider that with minimum effort, the KJC could overcome all the obstacles related to the lack of relevant training in the use of audiovisual equipment. Also, with minimal engagement by court presidents, such equipment could be used more, thus ensuring better standards of court documentation.

Conclusion

The situation with the recording of court hearings does not differ at all from that of last year. Audio recording of court sessions is important to ensure that correct procedures have been followed in hearings, and should serve for the clear preservation of data, such as statements by litigant parties, witnesses and judges, and also the presentation of other material evidence.

Judges should make use of audio recording equipment, especially in hearings considered more significant. Although electronic equipment exists in some of the courtrooms where hearings are held, it remains unused.

7. Use of mobile telephones during court hearings



The use of telephones during court hearings continued to be a common occurrence this year. Although such behaviour is forbidden, that rule is continuously violated. Indeed, it is disturbing that phones are being used by those that are charged with ensuring that they are not used during hearings.

BIRN monitors identified cases in various district and municipal courts in which telephones were used during hearings. Worryingly, it is actually the judges and prosecutors that are doing this.

The president of the district court in Prishtinë, Isak Ademi, stated at the BIRN roundtable on the draft Annual Court Monitoring report that no measures are taken against those that use phones and no measures are taken against those that are responsible for preventing this, namely presiding judges and court presidents.

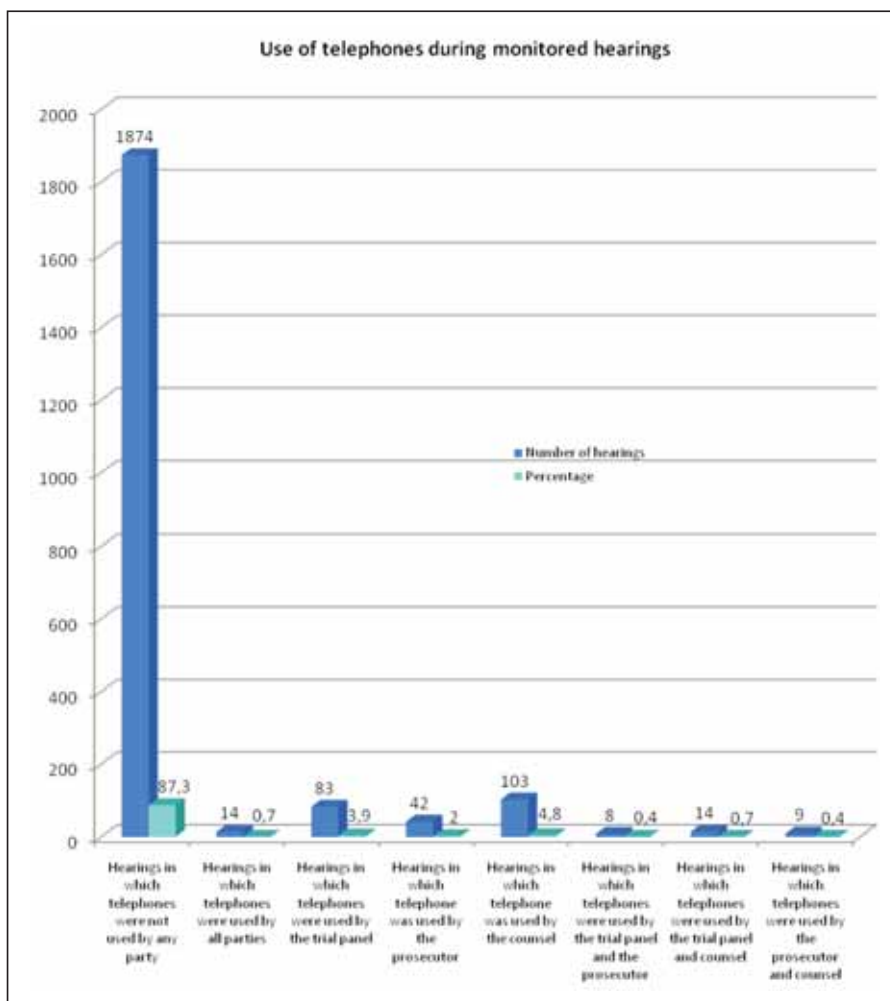
He, among others, also pointed out that courts have insufficient facilities to prevent this phenomenon. According to him, at the court entrance there should be lockers for the temporary secure storage of mobile telephones while parties are within the court premises. Only then could sanctions be issued and appropriate discipline ensured.

Although BIRN agrees that it would be proper for each court to have such lockers, it considers that, with a small commitment by judges and court presidents, greater discipline relating to the use of telephones during hearings could be accomplished.⁸⁶

It is natural under such circumstances that non-adherence to elementary rules such as the prohibition of using mobile phones by judges and prosecutors is replicated by defence counsels and other parties in trials (plaintiff, respondent, damaged party, etc).

This not only reflect a lack of respect towards the court as an institution, but the frequent ringtones, conversations and SMS exchanges also hinder the conduct of the hearing. At the same time, this represents an endangerment of witnesses' safety and a threat to the integrity of purportedly unbiased and impartial trials.

⁸⁶ Roundtable on the Court Monitoring Report 2010 draft, organised by BIRN on June 14 2011.



BIRN monitors noted that telephones were used by members of the trial panel, the prosecutor and/or the defence council in 300 out of 2,147 hearings. It is the obligation of the presiding judge to ensure the appropriate conduct of court hearings, including prohibiting the use of telephones during trials, if only to ensure a dignified and professional hearing.

This year, the use of mobile phones during hearings continued at the same level and intensity as last year. Last year trial panels/case judges used telephones in 4.9% of monitored sessions; however, this year, this figure dropped to 3.9%. In 2% of hearings, prosecutors used phones, and in 4.8% defence counsels did so.

While these percentages show a slight improvement, BIRN considers that it could be reduced further, because of the serious impact that such violations have on the conduct of hearings.

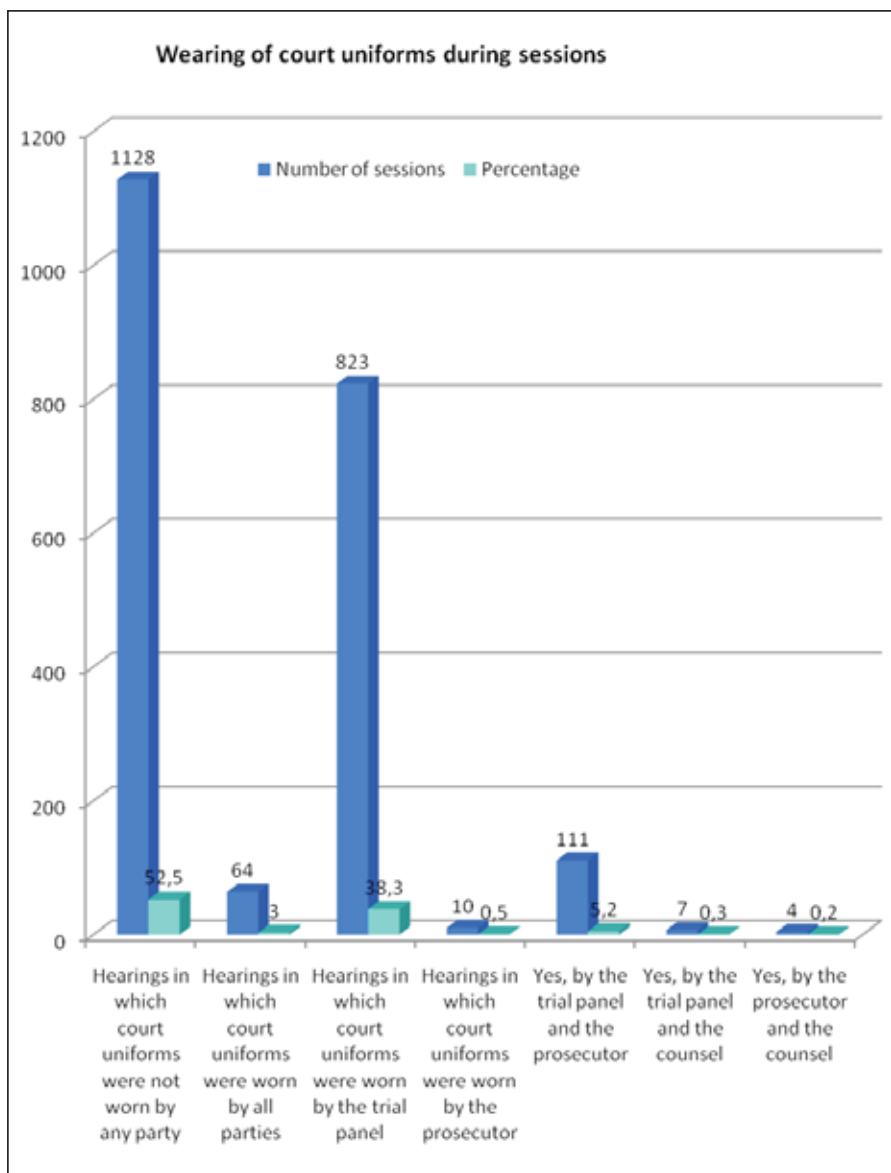
Conclusion

Presiding judges should ensure that trials are not interrupted due to the use of mobile telephones, and should administer warnings to all those infringing this rule.

Presiding judges should also issue sanctions against those that use telephones in trials, but this is yet to happen. Furthermore, judges themselves continue to use telephones during trials, which is unacceptable.

8. Failure of judges, prosecutors and counsels to wear uniform during hearings

Wearing uniform during court hearings is required under legal provisions. In comparison to the previous year, this indicator has improved by around 20%. Whereas last year uniforms were not worn in 70% of the 1,248 monitored sessions, this year they were not worn in 52.2% of the 2,147 monitored sessions.



The trial panel, public prosecutor and counsels are obliged to wear uniforms during trials. Noting that this obligation was being ignored by many, the president of the Supreme Court issued an order calling on all court presidents to ensure that their judges wear uniforms in all sessions. These instructions also called on all prosecutors and counsels to do the same.

During the roundtable organised by BIRN to discuss the Annual Court Monitoring draft report, some judges and prosecutors presented their arguments on the matter, stating that the uniforms were tailored in only one size, which does not fit everyone, and that there is no legal foundation making it obligatory to wear uniforms.

The first argument was immediately countered by the head of the KJC and the president of the Supreme Court, who both said that the uniforms were tailored to fit everyone. As far as the legal foundation argument is concerned, the president of the Supreme Court emphasised that his order represents sufficient legal grounds to make wearing uniforms mandatory.

BIRN noted that some district courts have started to show respect for the order and started wearing uniforms during court hearings; however, the general level of uniform use still remains low.

Conclusion

Failure to respect administrative orders represents a violation of the Code of Ethics and Professional Behaviour for Judges and Prosecutors.⁸⁷ The wearing of uniforms by officials in judicial proceedings would meet the respective Supreme Court order, and would provide a more formal and official air to court hearings. Parties and other attendants in trials would show much more consideration and respect for both the trials themselves and the institution.

BIRN considers that wearing uniforms should be obligatory for all judges, prosecutors and counsels taking part in court hearings. Presiding judges should ensure that this rule is respected by prosecutors and counsels at the beginning of hearings.

⁸⁷ Code of Ethics and Professional Conduct of Judges: 10.2.C “Specifically, judges will adhere to Administrative Orders, to the extent that orders aim to ensure respect of the applicable law, which directs the administrative activity of courts and ensures their free judgment in their adjudication functions”.

V. MISCELLANEOUS

1. KJC budget requests

In total, the KJC obtained around 1% of Kosovo's consolidated budget, which equated to 14,242,101 Euro. Its budget request for 2010 actually amounted to 15,901,140 Euro, which means that they received 1.66 million Euro less than requested.

During 2010, the KJC received various calls for budget increases, including increased pay for judges, more administrative staff, as well as requests for goods and services, public utilities, capital expenses, subsidies and transfers.

Unfulfilled requests included a call for 150 additional administrative court staff to support the 70 new judges; funding for 76 court interns, who were cut in 2005; funding for 237 additional positions called for by the courts to meet their current staffing requirements; and a request for three additional staff for the judicial auditing unit. Thus, there were requests for, in total, 466 new positions.

The approval of these requests would have displayed great support for young judges and would have facilitated better operations in courts. The internships would have been greatly appreciated by young lawyers, who would have been able to improve their professional skills and become better prepared for future employment as judges and prosecutors.

2. The hiring of defence counsels

Defendants are not always financially able to hire defence counsels to help them defend themselves. Article 73, paragraph 1 of the CPCK stipulates the conditions under which defendants are to have a defence counsel for their trials.⁸⁸

⁸⁸ CPCK Article 73, paragraph 1: "The defendant must have a defence counsel in the following cases of mandatory defence:

- 1) From the first examination, when the defendant is mute, deaf, or displays signs of mental disorder or disability and is therefore incapable of effectively defending himself or herself;
- 2) At hearings for those in detention on remand and throughout the time when he or she is in detention on remand;
- 3) From the filing of an indictment, if the indictment has been brought against him or her for a criminal offence punishable by imprisonment of at least eight years; and
- 4) For proceedings under extraordinary legal remedies when the defendant is mute, deaf, or displays signs of mental disorder or disability or a punishment of long-term imprisonment has been imposed."

In the event that the party is unable to provide for a defence counsel, one is to be provided by the court at the public's expense.⁸⁹

The court or the presiding judge represents the bodies competent to allocate a defence counsel ex officio for those cases in which such defence is mandatory. However, BIRN monitors noted that the counsels' list was not respected in the process of appointing counsels on such occasions. The Kosovo Chamber of Advocates is obliged to compile a list of counsels, whereas the court and the presiding judge are obliged to respect the rotational principle of this list and to appoint a counsel in an orderly fashion. BIRN found that courts and trial panels often do not respect this list. Some of the counsels from the list have never been appointed, whereas others are appointed very frequently.⁹⁰

However, on the other hand, court administrators and presidents claim that the list is not respected by the counsels themselves. This is because the financial compensation tariffs for hiring through the list are lower than the market price, and some counsels reportedly consider attendance at hearings based on such official duties to be a waste of time.

Conclusion

The hiring of counsels based on official lists represents an obligation for all counsels licensed with the Kosovo Chamber of Advocates. Court presidents and judges should respect the list of advocates to be hired based on this official list, thus showing respect to the institutions.

⁸⁹ CPCK Article 74, paragraph 1: "If the conditions are not met for mandatory defence (Article 73 of the present Code), a defence counsel shall be appointed at public expense for the defendant at his or her request or at the request of the persons referred to in Article 69 paragraph 6 of the present Code but not against the will of the defendant, if:

- 1) The proceedings are being conducted for a criminal offence punishable by imprisonment of at least eight years; or
- 2) The defendant is financially unable to pay the cost of his or her defence and the court or the competent authority conducting the proceedings in the pre-trial phase determines that appointment of defence counsel at public expense is required by the interests of justice."

Paragraph 2: "The defendant shall be instructed on the right to defence counsel at public expense under the previous paragraph before the first examination."

Paragraph 3: "The request for the appointment of a defence counsel at public expense under paragraph 1 of the present article may be filed throughout the course of the criminal proceedings. The president of the court or the competent authority conducting the proceedings in the pre-trial phase shall decide on the request and appoint a defence counsel. If the police or the public prosecutor refuses the request of the defendant for the appointment of a defence counsel at public expense, the defendant may appeal to the pre-trial judge."

⁹⁰ "Ex officio appointment of defence counsels", aired on February 21 2011. This report addressed the appointment by judges of only a select number of preferred attorneys to represent parties in procedures, at public expense: <http://www.jetanekosove.com/drejtesia/704/Alb>

3. Non-enforcement of sentences

Regardless of the objective and subjective difficulties faced by Kosovo's judiciary, it is distinguished in the region for managing to handle 41.3 light and heavy cases per judge per month in 2010.

BIRN notices that there is a threat for all this valuable work to be overshadowed by the failure to enforce final judgements and decisions, because although a case may go through all procedures, it may fail at this final stage.

<i>Year</i>	<i>Number of cases awaiting enforcement</i>	<i>Number of sentences enforced at year-end</i>	<i>Number of sentences unenforced at year-end</i>
2010	116,122	9,973	9,973

At the beginning of the reporting period there were 89,201 cases carried over from 2009, while a further 26,921 cases were added in 2010. Out of the total, in 2010 only 9,973 judicial decisions were executed, leaving 106,149 still to be enforced at the beginning of 2011.

Thus, this situation is apparently deteriorating from one year to another, as in 2009 there were 19,864 open cases from 2008, for 15,117 of which a sentence was enforced in 2009, leaving 102,059 to be carried over into 2010. The greatest problem in this regard is faced by civil cases.

BIRN monitoring of the enforcement of civil decisions in courts show that, in 2010, around 76% of creditors' claims supported with authentic documents have been filed by the public utility companies. Only 5.23% of the cases open in 2010 were enforced by the end of the reporting period.

The largest creditor presenting such authentic documentation is Kosovo Post and Telecommunications (PTK), covering 57% of the court decisions based on authentic documents. Only 3.17% of these decisions were enforced during the reporting period.

Second in line is the Kosovo Energy Corporation (KEK) with 19% of the decisions and an enforcement rate of 4.6% in 2010.

The situation is different in the enforcement of decisions based on enforcement documents. Statistics show that 97.7% of the decisions enforced in 2010 were of a monetary nature – court fees, lien, mortgages and judicial expenses – whereas only

2.3% of such court decisions related to non-financial issues.

The most common justification for the large number of unenforced decisions is the insufficient number of enforcement judges. In most courts, enforcement is dealt with by specialist officers, who are scarce in comparison to the number of decisions with which they must deal.

These enforcement officials often claim to be threatened by parties when carrying out their work. Another reason for the low rate of court decision enforcement is the lack of vehicles to be used for field work.

According to court officials, the failure to enforce judicial decisions for criminal cases is a consequence of the absence of proper addresses, as in most cases the individuals sought are registered as residing abroad by family members.

The municipal court in Prishtinë has the greatest number of cases that await enforcement. According to the KJC's annual report for 2010, the number of cases awaiting enforcement in this court is 28,096.

Following this court are the municipal courts in Pejë and Prizren, with 11,837 and 10,666 cases, respectively. BIRN notes that this situation has been getting worse each year.

The president of Prishtinë Commercial District Court, Suzana Sejdiu, also noted the difficulties this court faces in executing on monetary cases, even those involving claims of millions of Euros. She claimed that the problem lies with commercial banks, as the court had sent 255 cases for enforcement, but were told in around half of the cases that debtors have no accounts open in the registered banks, while for the other half no response was ever received. She also underlined that this situation could be improved through regulation by Kosovo's Central Bank requiring commercial banks to submit reports to courts.

During the roundtable for discussing the draft Annual Court Monitoring report, Ms Sejdiu identified the failure to enforce sentences as the single greatest problem faced by Kosovo's judiciary. The inability of courts to implement their own decisions in the final stage is perceived as problem that will not be resolved with existing capacities.

In January 2011, thanks to USAID support, the KJC began a project for the

categorisation and enforcement of backlogged cases. This project is considered a ray of hope that will have an impact on the number of cases awaiting enforcement.

Conclusion

The USAID-supported KJC project for the categorisation and enforcement of backlogged cases seems initially to be a successful initiative. This project should be further extended to all courts that require support with sentence enforcement.

4. Notaries

The notary service continues to represent another problem for Kosovo's judiciary. The establishment of this service was envisaged to cover a great number of legal tasks currently performed in courts. However, the 640,000 Euro project, funded by the Swiss government, is facing difficulties in implementation.

The committee appointed by the Ministry of Justice (MoJ) based on law, and the Swiss notaries hired by the Swiss donors faced difficulties and misunderstandings in formulating an appropriate assessment system for the candidates that passed a training programme led by Swiss notaries.

While the committee blames their Swiss peers for incorrectly crafting the candidate assessment in the form of a notary exam, the latter blame the committee for lacking seriousness and objectivity in addressing the matter, not excluding the possibility that some in Kosovo may have been interested in blocking the establishment of the notary service.⁹¹ As a result of this misunderstanding and lack of coordination, none of the 151 candidates was licensed as a notary following the first test.

Based on the Administrative Instruction on the notary exam, the MoJ and the International Institute for Advanced Notary Studies had requested the International Notary Union to delegate two experts to assess the decision of the commission.

Of the ten tests assessed by two international experts, only three passed this examination, thus placing the work of the commission into doubt once again.⁹²

⁹¹ "Notary exam", aired on January 30 2010. Representatives of judicial institutions were interviewed about the establishment of a notary service and the problems and challenges faced in its development: <http://www.jetanekosove.com/drejtesia/677/Alb>

⁹² Ibid.

The International Notary Union also stated that there were severe qualitative and quantitative discrepancies in the evaluation of tests by the committee.⁹³

However, there were problems and disagreements within the committee as well, resulting in the resignation of one of the committee members, who claimed to be in disagreement with the committee.

In addition to the evident problems in communication between the committee and the Swiss notaries, the committee had a similar problem with the MoJ, failing to submit the evaluated tests to the latter for a prolonged period of time and publishing the results without prior instructions from the MoJ, as required. Therefore, even though the committee, established by MoJ, failed to respect legal procedures, its membership remained the same.

Conclusion

A functioning notary service would allow a great number of legal tasks to be transferred and would subsequently relieve some of the burden from the courts. The MoJ should better manage the procedures for setting up the notary service.

5. Statutory limitation

The statutory limitation (prescription) of cases in courts and prosecutors offices in Kosovo continues to be a worrying phenomenon. Article 90 of the CCK envisages the conditions and timelines for statutory limitation of cases and the execution of decisions.

Courts are not only overloaded with prescribed cases, but also with cases that are in danger of being subject to statutory limitation.⁹⁴

⁹³ Ibid.

⁹⁴ Prishtinë Municipal Court, two counts of criminal offence “Aggravated theft in association”, (KCL No. 1029/01). The indictment and prosecutor's sanction proposal were reversed. The criminal prosecution against the defendants was terminated. The criminal act occurred on April 11 2001, and the envisaged punishment is between 6 months and 5 years of imprisonment. For such sanctions, statutory limit is reached at five years from the date of the crime, whereas this prosecution was terminated after double that period had elapsed. Prishtinë Municipal Court, two counts of criminal offence “Severe breach of traffic safety” per Article 171, paragraph 4, in conjunction with Article 165, paragraph 3 of the CPCK (P. No. 847/01). The prosecutor submitted the indictment on May 18, 2001. The court decided to terminate the criminal procedure against the defendant on the grounds of prescription. This decision was made on March 25 2011.

A significant problem continues to be the lack of statistics on cases subject to statutory limitation, which would not allow such a situation. Neither the KJC nor the courts have such statistics available.⁹⁵

The KJC's Department of Statistics categorises prescribed cases as “cases resolved in other manners”. There is an impression that such treatment of prescribed cases is intended to hide the inefficiency of courts, because this categorisation⁹⁶ does not provide a realistic overview of the situation.⁹⁷

Lack of a control mechanism for judges and prosecutors to check the prescription of cases could be one of the reasons for the large number of cases subject to statutory limitation. Another reason for doubts regarding potential abuse in the process of statutory limitation is that no judge or prosecutor has been held accountable for a prescribed case.

BIRN monitors managed to extract from different courts (albeit to different extents) the correct statistical data on prescribed cases, which showed alarming figures.⁹⁸

Conclusion

The large number of prescribed cases and those that are in danger of being subjected to statutory limitation continue to pose a burden to Kosovo's judiciary and drastically diminishes public trust in it. The KJC should have concrete and rather rigorous statistics about prescribed cases. In addition, all instance courts should possess adequate data on prescribed cases on their records.

⁹⁵ “Prescription of cases in courts and prosecutor's offices”, aired on November 21 2010. Concern was raised in this show about the large number of cases prescribed in Kosovo courts, something on which courts do not possess any concrete statistics or analysis: <http://www.jetanekosove.com/drejtesia/622/Alb>

⁹⁶ ‘Cases resolved in other manners’ also include cases closed due to being transferred or suspended due to the death of parties, etc.

⁹⁷ “Concealment of statistics on prescription of cases”, aired on November 21 2010. This report considered a number of procedures used to conceal exact statistics on the prescription of cases: <http://www.jetanekosove.com/drejtesia/621/Alb>

⁹⁸ In 2010, the Prishtinë Municipal Court dealt with 183 cases under absolute prescription and 37 cases with relative prescription. In the first quarter of 2011, there were 46 cases that faced absolute prescription and 54 facing relative prescription. Pejë Municipal Court prescribed 361 criminal cases between 2004 and 2010, whereas they have no statistics on civil cases, which are mainly prescribed under the initiative of the parties in procedure. Most of the criminal offences - 318 cases - cover those stipulated in Article 261 of the CCK (Fraud) and Article 332 of the CCK (Falsifying documents). In Ferizaj Municipal Court, the number of criminal cases prescribed in 2009 and first seven months of 2010 was 197 (148 with relative prescription and 49 with absolute prescription). Kacanik Municipal Court between 2001 and 2010 prescribed 582 criminal cases. Rahovec Municipal Court prescribed 667 cases between 2006 and 2010.

The president of the Supreme Court and the state prosecutor should address regular requests to courts and prosecutors offices to verify the status and extent of cases subject to statutory limitation in their institutions, as well as take adequate measures against judges and prosecutors that allow the prescription of cases.

Justice in Kosovo shows

1. “Night clubs in Prishtinë”, aired on 07 November 2010

<http://www.jetanekosove.com/drejtesia/601/Alb>

Panel members:

Agim Dibrani, Director of the Directorate for Economy, Municipality of Prishtinë;

Baki Kelani, Spokesperson, Kosovo Police;

Behxhet Haliti, General Director, Kosovo Tax Administration; and

Drin Zatriqi, Vice-President of the Association of Prishtinë Cafeterias.

2. “Reappointment and appointment of judges and prosecutors in Kosovo”, aired on 15 November 2010

<http://www.jetanekosove.com/drejtesia/612/Alb>

Panel members:

Enver Peci, Chairman, Kosovo Judicial Council;

Fejzullah Hasani, President, Supreme Court of Kosovo;

Ismet Kabashi, State Prosecutor; and

Kadri Begolli, Coordinator, Office of Disciplinary Prosecutor.

3. “Prescription of cases in courts and prosecutors offices”, aired on 21 November 2010

<http://www.jetanekosove.com/drejtesia/622/Alb>

Panel members:

Fejzullah Hasani, President, Supreme Court of Kosovo;

Ismet Kabashi, State Prosecutor;

Hamdi Ibrahim, Judge, District Court in Prishtinë; and

Fahredin Verbovci, Acting Head, Department of Public Safety.

4. “Manipulation of electoral processes”, aired on 19 December 2010

<http://www.jetanekosove.com/drejtesia/645/Alb>

Panel members:

Dasdid Pallaska, Attorney;

Avni Zogiani, “Çohu” Organisation;

Shukri Sylejmani, Electoral Panel for Appeals and Complaints;

Ismet Kabashi, State Prosecutor; and

Fejzullah Hasani, President, Supreme Court of Kosovo.

5. “Counsels in Kosovo”, aired on 26 December 2010

<http://www.jetanekosove.com/drejtesia/655/Alb>

Panel members:

Enver Peci, Chairman, Kosovo Judicial Council;

Musa Dragusha, President, Kosovo Chamber of Advocates;

Bekë Lajqi, Disciplinary President, Kosovo Chamber of Advocates; and

Faton Ademi, lawyer.

6. “Lack of transparency in Kosovo's justice system”, aired on 16

January 2011 <http://www.jetanekosove.com/drejtesia/669/Alb>

Panel members:

Aishe Qorraj-Berisha, Spokeswoman, Kosovo Judicial Council;

Liridona Kozmaqi, Spokeswoman, State Prosecution;

Baki Kelani, Spokesman, Kosovo Police; and

Selviye Bajrami, journalist.

7. “Notary exam”, aired on 30 January 2011

<http://www.jetanekosove.com/drejtesia/677/Alb>

Panel members:

Mehdi Dehari, President, Notary Exam Committee;

Agron Beka, Member, Notary Exam Committee;

Samuel Waetly, Swiss Cooperation Office;

Sylejman Sopa, Acting Permanent Secretary, Ministry of Justice;

Adem Ademi, notary candidate; and

Hajredin Kuci, Deputy Prime Minister in Resignation.

8. “Theft in Banja houses”, aired on 6 February 2011:

<http://www.jetanekosove.com/drejtesia/690/Alb>

Panel members:

Ramadan Shatri, President, Municipal Court in Istog;

Lirije Morina, Acting Chief Prosecutor, Municipal Prosecutor's Office in Pejë;

Hasan Ceku, Commander, Police Station in Istog;

Hysen Berisha, Head of Investigations, Police Station in Istog; and

Jahir Miranaj, Banja resident.

9. “Inheritance”, aired on 13 February 2011

<http://www.jetanekosove.com/drejtesia/694/Alb>

Panel members:

Xhemil Elshani, Judge, Municipal Court in Prizren;

Shefqet Buqaj, Head, Civil Registry Sector in Prishtinë;
Mehmet Rukiqi, folklorist;
Valbona Saluhiu, Director, NGO “Norma”; and
Florent Spahija, lawyer.

10. “Law on oil trade”, aired on 20 February 2011

<http://www.jetanekosove.com/drejtesia/705/Alb>

Panel members:

Lirie Karaxha – Pula, Director of KPU inspect;
Nazmi Bytyqi, President of the Oil Trade Association;
Ramadan Buzhala, Ministry of Trade and Industry;
Fadil Gashi, taxi driver;
Selvete Hoxha-Krasniqi, National Institute of Public Health;
Berat Rukiqi, Kosovo Chamber of Commerce;
Osman Ejupi, President of the Competition Commission; and
Drita Hajdari, District Prosecutor in Prishtinë.

11. “Bargaining with the freedom of prisoners in Kosovo”, aired on 27 February 2011

<http://www.jetanekosove.com/drejtesia/719/Alb>

Panel members:

Resmi Hoxha, Commissioner, KCS; and
Astrit Kolaj, Spokesman, Ministry of Justice.

Life in Kosovo and Justice in Kosovo reportages

1. “How are defendants who are released pending trial defended in courts”, aired on 01 April 2010

This report described how defendants released pending trial are defended in courts: <http://www.jetanekosove.com/drejtesia/420/Alb>

2. “Failure to respect municipal court decisions”, aired on 22 April 2010

A report on how the Prishtinë municipal government fails to respect municipal court decisions: <http://www.jetanekosove.com/drejtesia/434/Alb>

3. “Draft Law on Judges”, aired on 22 April 2010

This report investigated whether there would be an increase in judges' salaries in January 2011 on the basis of the draft Law on Judges. Also, researcher Faton Ademi spoke about the publication of the names of officials suspected of corruption: <http://www.jetanekosove.com/drejtesia/433/Alb>

4. “Law enforcement”, aired on 6 May 2010

A report on Fadil Berisha, from Rahovec Municipality, who was wounded by Destan Berisha and Hajredin Berisha:
<http://www.jetanekosove.com/drejtesia/447/Alb>

5. “Destruction in Lipjan”, aired on 13 May 2010

This report discussed the decision of the municipal court in Lipjan to destroy the temporary buildings located on a highway, for which the owners requested compensation: <http://www.jetanekosove.com/drejtesia/453/Alb>

6. “Does Kosovo have forensic laboratories and experts to conduct investigations?”, aired on 20 May 2010

This report investigated forensic laboratories and experts in Kosovo, for use in criminal investigations: <http://www.jetanekosove.com/drejtesia/464/Alb>

7. “Problems in Gjilan Municipality”, aired on 20 May 2010

This report considered the problems regarding the appointment of directors in local government, which led the mayor of Gjilan, Qemajl Mustafa, to threaten to resign from his post: <http://www.jetanekosove.com/drejtesia/463/Alb>

8. “Justice in Kosovo - findings 8”, aired on 27 May 2010

A report on problems in the judiciary:

<http://www.jetanekosove.com/drejtesia/474/Alb>

9. “Justice in Kosovo - findings 7”, aired on 27 May 2010

A report on problems in the judiciary:

<http://www.jetanekosove.com/drejtesia/473/Alb>

10. “Justice in Kosovo - findings 6”, aired on 27 May 2010

A report on problems in the judiciary:

<http://www.jetanekosove.com/drejtesia/472/Alb>

11. “Justice in Kosovo - findings 5”, aired on 27 May 2010

A report on problems in the judiciary:

<http://www.jetanekosove.com/drejtesia/471/Alb>

12. “Justice in Kosovo - findings 4”, aired on 27 May 2010

A report on problems in the judiciary:

<http://www.jetanekosove.com/drejtesia/470/Alb>

13. “Justice in Kosovo - findings 3”, aired on 27 May 2010

A report on problems in the judiciary:

<http://www.jetanekosove.com/drejtesia/469/Alb>

14. “Justice in Kosovo - findings 2”, aired on 27 May 2010

A report on problems in the judiciary:

<http://www.jetanekosove.com/drejtesia/468/Alb>

15. “Justice in Kosovo - finding 1”, aired on 27 May 2010

A report on problems in the judiciary:

<http://www.jetanekosove.com/drejtesia/467/Alb>

16. “Why was Halit Muharremi suspended from the KJC”, aired on 3 June 2010

This report presented the reasons behind the suspension of Halit Muharremi from his position as director of the Secretariat of the Kosovo Judicial Council:

<http://www.jetanekosove.com/drejtesia/485/Alb>

17. “Statement of wealth by state heads”, aired on 10 June 2010

A report about statements of state leaders' wealth:

<http://www.jetanekosove.com/drejtesia/492/Alb>

18. “Delay and non-enforcement of cases”, aired on 10 June 2010

This report covered accusations against the president of the municipal court in Prishtinë, Nuhi Uka, for failure to execute a case decision:

<http://www.jetanekosove.com/drejtesia/497/Alb>

19. “Work permits for attorney's offices”, aired on 1 July 2010

A report on the problem faced by hundreds of attorney's offices that function without adequate work permits: <http://www.jetanekosove.com/drejtesia/505/Alb>

20. “Free legal aid”, aired on 8 July 2010

A report about the free legal aid provided to those unable to pay for such services: <http://www.jetanekosove.com/drejtesia/510/Alb>

21. “Non-unification of judicial certificates in Kosovo”, aired on 27 July 2010

In this report, researcher Faton Ademi talked about the non-standardisation of certificates issued by courts and the problems caused as a consequence:

<http://www.jetanekosove.com/drejtesia/530/Alb>

22. “Palace of Justice”, aired on 12 August 2010

This report discussed the construction of the Palace of Justice, which is expected to be completed in 2013, and shed light on problems between the different authorities in Kosovo: <http://www.jetanekosove.com/drejtesia/542/Alb>

23. “Ferizaj Municipal Court”, aired on 19 August 2010

This report discussed delays in serving summons to parties by the municipal court in Ferizaj, and the problems caused by such delays:

<http://www.jetanekosove.com/drejtesia/546/Alb>

24. “Influence on the judicial system”, aired on 29 October 2010

This report described developments in the judicial system and elaborated on the latest influences in the process of appointment and reappointment of judges and prosecutors: <http://www.jetanekosove.com/shikovideo/590/Alb>

25. “How was the appointment process conducted?”, aired on 14 November 2010

In this report on the process of judicial reappointments, researcher Faton Ademi talked about how over 20 new judges and prosecutors were appointed without having concluded their judicial training:

<http://www.jetanekosove.com/drejtesia/611/Alb>

26. “Viti Municipal Court”, aired on 21 November 2010

In this report, researcher Petrit Kryeziu spoke about the mutual accusations between the municipal court and police in Viti about the prescription of cases:

<http://www.jetanekosove.com/drejtesia/620/Alb>

27. “Concealment of case prescription statistics”, aired on 21 November 2010

This report revealed some of the procedures used to conceal exact information about statutory limitation of cases:

<http://www.jetanekosove.com/drejtesia/621/Alb>

28. “Concealment of official information”, aired on 26 January 2010

This report addressed the concealment of official information relating to the Kosovo Chamber of Advocates by the KJC Secretariat, which the latter had obtained from the Office of the Disciplinary Prosecutor:

<http://www.jetanekosove.com/drejtesia/668/Alb>

29. “Communication with judicial institution officials”, aired on 16 January 2011

Journalists that work for various Kosovo newspapers expressed their concerns about communicating with officials from judicial institutions in this report:

<http://www.jetanekosove.com/drejtesia/668/Alb>

30. “Problems with judges and prosecutors”, aired on 30 January 2011

This report considered the problems caused by the insufficient number of judges and prosecutors after the appointment process:

<http://www.jetanekosove.com/drejtesia/676/Alb>

31. “Theft – a phenomenon in Banje, Pejë”, aired on 6 February 2011

In this report, researcher Genc Nimoni considered the problem of burglary in the village of Banje in Pejë municipality:

<http://www.jetanekosove.com/drejtesia/689/Alb>

32. “Ex officio hiring of defence counsels”, aired on 21 February 2011

This report considered how judges invited only a number of preferred counsels to represent clients on official duty:

33. “The anomaly of a vacancy published by the Municipality of Vitia”,
aired on 21 February 2011

This report showed how the municipal court in Viti hired a person for whom a search warrant had been issued by this court:

<http://www.jetanekosove.com/drejtesia/706/Alb>

RECOMMENDATIONS

Recommendations for the Assembly of Kosovo:

- The Parliamentary Committee for Legislation and the Judiciary should be more efficient in drafting and amending legislation relating to the judiciary;
- The Parliamentary Committee on Legislation and Judiciary should more rigorously monitor the implementation of legislation relating to the judiciary;
- The Parliamentary Committee on Legislation and Judiciary should allow for more participation by civil society organisations and representatives in the processing and adoption of legislation on the judiciary; and
- The Assembly of Kosovo should adopt, as soon as possible, the Witness Protection Law and the Law on Legal Aid.

Recommendations for the government of Kosovo:

- The government of Kosovo should guarantee transparency in the compilation of legislation in the area of justice;
- The Ministry of Internal Affairs and the Ministry of Justice should establish a Judicial Police;
- The government of Kosovo should provide sufficient budgetary means to meet KJC requirements; and
- The government of Kosovo should provide sufficient budgetary means for the witness protection programme.

Recommendations for the Kosovo Judicial Council (KJC):

- The KJC should ensure the implementation of the judicial strategy for 2010-2012;
- The KJC should fill vacant positions for judges and prosecutors in courts and prosecutors offices at all levels as soon as possible;
- The KJC should request that all cases are processed by courts using the Case Management Information System (CMIS);
- The KJC should ensure greater transparency through the provision of more detailed information on the activities of the judiciary;
- Presiding judges should inform the chief prosecutor about the absence of public prosecutors in sessions they should be involved ex officio;
- The KJC should ensure that audiovisual recording of court hearings takes place;
- Presiding judges should not use mobile telephones during court hearings;

- Presiding judges should ensure proper conduct of court hearings by forbidding the use of telephones by all participants in hearings;
- Presiding judges and administrators should notify the adequate disciplinary committees when couriers fail to duly serve summons;
- The KJC should undertake all measures necessary to prohibit the use of telephones within court facilities;
- The KJC should ensure that regulations on the wearing of uniforms in court hearings are respected;
- The KJC should ensure that court hearings are held in courtrooms whenever possible;
- The KJC should provide all courts with a bulletin board for the publication of judgments;
- The KJC should ensure that notice of court hearings are posted on bulletin boards in all courts;
- The KJC should take all necessary measures against judges that violate parties' procedural rights;
- The KJC should renew the list of lay judges, republishing vacancies for the hire to fill any gaps;
- The KJC should provide adequate interpretation for parties in procedures that require such a service; and
- The KJC should set up a webpage providing information on the time and date of hearings, which could also be used for the publication of judgements.

Recommendations for the Kosovo Police:

- The Kosovo Police should respect and implement all warrants issued by courts calling for the presence of defendants and other persons in court hearings in full;

ACKNOWLEDGEMENTS:

BIRN sincerely thanks the following participants in two roundtables for their time, feedback and openness about discussing the problems of the judicial system and the findings of daily-based court monitoring:

Fejzullah Hasani, from Kosovo Supreme Court;

Enver Peci, head of the Kosovo Judicial Council, KJC;

Besim Kelmendi, from Kosovo Special Prosecution;

Baki Kelani, the chief of the Information Office in the Kosovo Police;

Isa Hasani, Ombudsperson;

Shefqet Beqaj, from Kosovo Police.

Aishe Qorri Berisha, from the Kosovo Judicial Council, KJC;

Isak Ademi, from the district court in Prishtina;

Suzana Sejdiu, economic court in Prishtina;

Lumturije Muhaxheri, district court in Peja;

Ymer Hoxha, district court in Prizren;

Zyhdi Haziri, district court in Gjilan;

Shyqyri Sylja, district prosecution Mitrovica;

Makifete Saliuka, municipal court in Prishtina;

Ramiz Azizi, municipal court in Gjilan;

Bashkim Hyseni, municipal court in Ferizaj;

Afijete Sada, municipal court in Gjakova;

Hëzër Duja, municipal court in Prizren;

Fejzullah Rexhepi, municipal court in Ferizaj;

Gani Zabeli, municipal court in Lipjan;

Jashar Gashi, municipal court in Klina;

Lulzim Paqarizi, municipal court in Malisheva;

Nuredin Abazi, municipal court in Suhareka;

Ramadan Shatri, municipal court in Istog;

Safete Tolaj, municipal court in Deqan;

Shaqir Zika, municipal court in Rahovec;

Skender Sherifi, municipal court in Viti;

Aziz Podvorica, municipal court in Podujeva;

Daut Behrami, municipal court in Glogoc;

Zijadin Spahiu, municipal court in Kamenica.

Lirije Morina, municipal prosecution in Peja;

Faruk Koronica, municipal prosecution in Mitrovica;

Shqipton Fazliu, municipal prosecution in Gjiilan;

Shpresa Bakija, municipal prosecution in Gjakova.

Supported by:



Ministry of Foreign Affairs



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September 2011, Prishtina