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## INTRODUCTION

For the fifth consecutive year, Balkans Investigative Research Network has monitored court proceedings in supreme, district and municipal courts.

One-year monitoring efforts identified various weaknesses and violations in the process, including procedural, legal, technical and ethical, despite numerous efforts to improve the justice system in Kosovo, and numerous recommendations provided by BIRN since 2008.

In addition, this year BIRN has also monitored court cases involving corruption, in cases where charges against former ministers, members of parliament, permanent secretaries, etc. were confirmed and defendants were sentenced. In other cases, counts of indictment were drafted erroneously by prosecutors, and judicial procedures were not followed.

An on-going feature of the judiciary is the lack of transparency. Failure to announce trials in the announcement boards, and hearings held in judges' offices, continue to remain sources of concern. As a result, members of the public interested to attend the trials were deprived of this possibility.

Despite the fact that from the start of this year, municipal, district and supreme courts have placed LCD projectors used to electronically announce trials, BIRN monitoring identified many cases where the practice of announcements has fallen short.

Similar to previous years, BIRN has also identified procedural and parties' rights violations in court hearings. Our monitors have identified procedural violations in delays in the commencement of hearings, and holding hearings without the full composition of the trial panel, failure to read

rights of witnesses and other parties in procedure. The monitoring teams have also identified other procedural violations.

This report also addresses other substantial issues faced by the Kosovo judiciary. When scheduling court hearings, judges and prosecutors have often been uncoordinated. As a result of this lack in communication, there were lots of clashes identified between court hearing with many scheduled for the same time and venue. In addition, delays in the commencement of hearing sessions also had an impact in delaying other hearings and increasing the backlog.

Despite minor improvements, BIRN has observed that technical issues have largely not been addressed, although raising them continuously.

Other technical findings, which, unfortunately, are considered as light violations, include the use of mobile phones in trials, failure to wear court uniforms, issues in translation during hearings, inaccurate minute-keeping, etc. Even though they can be regarded as technical shortfalls, they nevertheless have an impact the course of court proceedings.

The report also addresses other issues related to the Kosovo judiciary, summarizing main problems associated with courts and the entire justice system in Kosovo.

## METODOLOGY

The methodology employed for the monitoring process belongs to observatory methods whereby the observations from court hearings are reflected in the cases illustrated in the report. The court monitoring extended to 26 Kosovo municipalities including all district and municipal courts.

This report is also based on the findings of 1,441 questionnaires completed in hearings monitored during 2012. Of the monitored

court hearings, 1,040 were conducted while 401 were not conducted at all.

While in 2008 (March 2008 – March 2009) 513 court hearings were monitored, in 2009 (June 2009 – March 2010) the monitoring exercise covered 1,248 hearings. In 2010 (April 2010 – February 2011), the number of monitored hearings was 2,147, while between March 2011 and December 2011, BIRN monitored a total of 2,525 hearings.

Period	2008/09	2009/10	2010/11	2011	2012	Total
Hearings	513	1,248	2,147	2,525	1,441	7,874

Case nature (2012)	Criminal District	Criminal Municipal	Civil Municipal	Supreme	Commercial District	Minor Offence	Not held	Total
Number of hearings	316	681	424	5	6	9	401	1,441

### Findings of court hearing monitoring

#### 1. Monitoring of corruption cases

In 2011 and 2012, BIRN was also focused in monitoring high profile cases that involved public officials.

The prosecution failed to uphold the charges in at least two cases, in several cases indictments were confirmed, and in others

senior officials had already been found guilty, while the majority of cases are on-going.

Among the many changes introduced as of January 2013 are sentences for criminal offences related to corruption, which now foresee sentences of up to 12 years of imprisonment, differently from the imprisonment in the previous code with maximum ten years.

<sup>1</sup> District courts in Prishtina, Peja, Prizren, Gjiilan and Mitrovica; Municipal Courts in Prishtina, Peja, Mitrovica, Prizren, Gjiilan, Ferizaj, Gjakova, Klina, Istog, Deçan, Vushtrri, Skenderaj, Drenas, Podujeva, Lipjan, Dragash, Rahovec, Malisheva, Kaçanik, Vitia, Kamenica, Shtërpce, as well as the Commercial Court in Prishtina.

Such cases were under the jurisdiction of municipal and district courts, depending on the sentence, and as of 2013 they will be adjudicated by basic courts in Kosovo.

The following table shows the number of corruption cases tried until November 2012.

Court instance	Total cases	Inherited	Admitted	Adjudicated 2012	Total pending
District court	81	53	28	14	67
Municipal court	353	218	135	113	240

It is clear from the table that until September 2012 district courts have inherited 53 cases from previous years, admitted 28 and adjudicated only 14 cases leaving a backlog of 67 unresolved cases.

Municipal courts have inherited 218 cases, admitted 135 and resolved only 113 leaving a total of 240 pending corruption cases.

Monitored corruption cases included those against Ministers, Doctors, Ministerial Secretaries, former Central Bank of Kosovo Governor, former Chief of Anti-Corruption Task Force, former Judges, Customs Director General, doctors and other persons, who, in addition to being considered as public officials with public authority and high moral values, were also appointed to undertake services with a high public responsibility.

### **Trial of senior public officials**

Allegations against the Head of Customs,

Naim Huruglica and former Governance of Central Bank of Kosovo, Hashim Rexhepi were never upheld.

On 8 June 2011, Kosovo Special Prosecutor's Office presented an indictment against Naim Huruglica (Director of Kosovo Customs) and Lulzim Rafuna (Legal Officer at Kosovo Customs).

The defendants were accused of misuse of official duties or authorizations and misuse of economic authorizations. According to this indictment, the defendants had facilitated tobacco imports for large importing companies, having thus damaged Kosovo's budget for over 5 thousand euros.

In September 2011, the District Court in Prishtina rejected the indictment against the aforementioned officials presented by Kosovo Special Prosecutor's Office.

<sup>2</sup> Data are provided by the Kosovo Judicial Council

After the prosecution's appeal to this decision, the judges' panel partially upheld the indictment, namely item one thereof, which pertained to the misuse of official duties and authorizations. After several hearings, the court found both defendants not guilty on the basis of lack of substantiating evidence.

This case was led by the international prosecutor Joachim Stollberg. The judicial proceedings lasted over a year and during this period Huruglica and Rafuna continued to exercise their official duties in the customs service as its Director and Head of Legal Office, respectively.

Contrary to Huruglica and Rafuna, former Governor of the Central Bank of Kosovo, Hashim Rexhepi, was held in detention for over four months and the procedure against him went on for over 18 months. As a result, Governor Rexhepi had to dismiss his job.

The indictment against former Governor of the Central Bank, Hashim Rexhepi, which was paid great attention by the media, was never proven by the prosecution.

In October 2011, the District Court in Prishtina held an indictment confirmation hearing in the case against the former Governor of the Central Bank of Kosovo, Hashim Rexhepi, and former Director for Oversight of Insurance Companies in the Kosovo Central Banking Authority (KCAB), Ibish Mazreku.

The case prosecutor, Nazmi Mustafi, accused

Hashim Rexhepi of five criminal offences related to the misuse of official duties, extortion and fraud. The other defendant, Ibish Mazreku was accused of two counts of misuse of official duties and one count of aggravated theft.

Monitoring of this proceeding identified professional omissions by the prosecutor, during the qualification of criminal offences and substantiation of accusations with relevant proof. Moreover, these omissions were also confirmed by Prosecutor Mustafi himself during the indictment confirmation hearing.

For instance, the prosecutor had wrongfully burdened Ibish Mazreku with the criminal offence of "aggravated theft", which was withdrawn in the very beginning of the confirmation hearing, thus causing recess and undue delay of the aforementioned hearing.

Omissions were also identified in the presentation of proof conducted by Prosecutor Mustafi, who had mistaken a football club with a basketball club in the account of which former Governor Hashim Rexhepi was alleged to have made payments.

On 15 December 2011, EULEX confirmation judge issued a decision not to uphold the indictment and acquitted Hashim Rexhepi on all counts.

<sup>3</sup> Defendants declared they were not guilty and asked the preliminary procedure judge not to confirm the indictment. The prosecutor asked for the confirmation of the indictment.

<sup>4</sup> For three counts of the indictment presented by Special Prosecutor Nazmi Mustafi, the court found no elements of criminal offence, whereas for the remaining two counts, it found that the prosecution failed to provide sufficient evidence.

The impression drawn from this case is that the Kosovo Special Prosecutor's Office has put its credibility in question dealing with one indictment for 18 months and not being able to prove any charge thereof.

Former Special Prosecutor Nazmi Mustafi in the period when he charged the former Governor of the Central Bank of Kosovo, Hashim Rexhepi – June 2010 to April 2011 – was abusing his official position according to the indictment filed against him.

He is accused of also abusing his official position in September 2011.

Special Prosecutor Cezary Michalczuk charged him with two criminal offences of abusing his official position or authority and the criminal offence of unauthorized possession of weapon.

According to the charges of the Prosecutor Michalczuk, former Prosecutor Mustafi, in cooperation with others, “extorted” 30,250 Euro. The trial against former Prosecutor Mustafi and others is on-going in the District Court in Peja and BIRN will continue to closely monitor it.

Another corruption affair monitored by BIRN involves a judge, lawyers and other public officials.

Former President of the Municipal Court in Prishtina, Nuhi Uka, Olga Janicijevic, Civil

Judge in the Municipal Court in Prishtina, Ekrem Agushi, Civil Judge in the District Court in Prishtina, Ferid Bislimi, Civil Judge in the Civil Court, Sanije Muçolli, Civil Judge in the Municipal Court, Shemsije Sheholli, Civil Judge in the same Court, Rrahman Retkoceri, Civil Judge in the District Court, Tihomir Mikaric, Civil Judge in the Municipal Court, Hasnije Balidemaj, Official of the Socially Owned Enterprise “KBI” and Gazmend Gashi, Legal Representative in the Municipality of Prishtina, are all charged with the criminal offence of abusing official position or authority.

According to the indictment, in the period 2006- 2007, with the aim of obtaining illegal gain, the defendants have abused their official positions intentionally issuing illegal decisions in 15 cases of land property rights of the socially owned enterprises.

The trial is on-going in the Basic Court in Prizren.

In addition to the case of former prosecutor, former judges and other public officials, there are more cases still in court procedure against former Ministers, Kosovo Assembly Members and former Judges.

<sup>5</sup>In the first case Mustafi cooperated with the other two defendants Xhelal and Reshad Zherka, brothers from Gjakova, and through them, requested the damaged party Pashk Mirashi 50 thousand Euros, in return of ceasing the criminal investigation against him and termination of the house arrest, issued by the court.

<sup>6</sup>Other defendants Hasnije Balidemaj and Gazmend Gashi are accused for the criminal offence of abetting in the abuse of official position or authority. Balidemaj represented 15 cases involving the company's lands in court, although not hired by KBI. Her working relation was terminated in 2006, one year before she took charge of the cases. Gazmend Gashi, son-in-law of defendant Nuhi Uka, in his position of Lawyer of the claimant, represented the claimant in 6 of 15 cases tried in the Municipal Court. Gashi was fully aware on the competency of the Special Chamber of the Supreme Court, but choose to ignore the legal requirements for their referral.



In end of November at the District Court in Prishtina, the Special Prosecution of Kosovo, filed an indictment against Fatmir Limaj, former Minister of Transport, and current Member of Parliament charged with organized crime, abuse of official position and authority, involvement in harmful contracts, admission of bribery, money laundering, unauthorized possession-control-ownership or use of weapons and non-disclosure of assets received for the elections campaign.

According to the indictment, he and his two brothers Florim and Demir Limaj are also accused of organized crime and money laundering. Limaj and others are expected to face the Basic Court in Prishtina to stand trial for these offences while the indictment will not go through confirmation, as the new Criminal Code of Kosovo doesn't envisage such procedure.

In another high profile case (former ministers and producers), the indictment is confirmed. Specifically, in December 2012, the District Court in Prishtina confirmed the indictment of Prosecutor Drita Hajdari against two former Ministers of Culture, Astrit Haraqija and Valton Beqiri and producers Armond Morina and Nehat Fejza.

Haraqija is accused with the criminal offence "abusing official position or authority", as he exceeded his authority when he signed, in breach of the law, two

contracts with a value of 570,000 Euros. On the other hand, his successor, Beqiri, signed an Annex contract with "Morina Films", transferring 100,000 Euros as subsidies for the production of the film "Mysafir në Sofër". The films were never completed.

The indictment was confirmed in all its counts and the defendants are expected to stand trial in the Basic Court in Prishtina.

The District Court in Prishtina in 2012 has also received an indictment from the special Prosecutor Maria Bamieh, who charged the former Minister of Health, Bujar Bukoshi, of holding a meeting with Economic Operators prior to the issuance of decisions to award contracts, which is an uncommon practice. Former Minister is also accused of terminating contracts with three Kosovo companies.

By undertaking these actions he is suspected of committing the criminal offence of abuse of official position or authority and the indictment has been confirmed.

In this criminal matter, the indictment was also confirmed for Ilir Tolaj, former Permanent Secretary in the same Ministry. Tolaj's counts of abusing economic authorizations, signing harmful contracts and issuance of illegal court decisions were not confirmed. The hearing sessions in this case are expected to commence in January 2013.

<sup>7</sup> His assistant Endrit Shala is also accused of entering into harmful contracts, abusing official position or authority, admission of bribes, and obstruction of investigation. Other defendants are Nexhat Krasniqi, accused of organized crime, abuse of position, entering into harmful contracts, abusing official position or authority and bribery. Florim Zuka is accused of entering into harmful contracts, abusing economic authorizations, and admission of bribes, while Gani Zogaj is accused of destruction or concealment of archived materials.

<sup>8</sup> Tolaj will face the court on attempted abuse of official position or authority, mistreatment in exercising official duties, bribery, tax evasion, and obstruction of evidences.

Another ministerial case is also on-going in the District Court in Prishtina. Slavisa Petkovic and Branislav Grbic are two former Ministers of Return and Communities. They are both accused of abusing official position or authority. After the procedure for the assembly of evidence was completed, the Court proceeded with the examination of defendants, and a decision in this case is expected in the beginning of 2013.

BIRN has also monitored the publicly known case involving the agreement between Post and Telecom of Kosovo, and the private company Devolli, on the Mobile Virtual Operator of Vala 900. In this case, the Special Prosecutor accuses the defendants Shkëlqim and Blerim Devolli, Ismet Bojku, Shyqyri Haxha-former CEO, and Rexhë Gjonbalaj-Chairman of the PTK Board. A decision on this case is also expected in 2013.

### **Conviction of defendants for corruption**

Cases of corruption where the Court found sufficient evidence against the suspects and found them guilty involve former Judges, Doctors, and others, who, while exercising official positions, committed violations that were also confirmed by the court.

In 2012 in two different and unrelated cases, The District Courts in Prishtina and Peja, found the former Judge of the Municipal Court in Klina guilty and sentenced him with

imprisonment of five years.

Kolë Puka was convicted for abusing official position and authority and fraud, after misappropriating, in two cases, over EUR 2 million from insurance companies in liquidation.

The Special Prosecution, which prosecuted Puka, is also investigating another case against the defendant Puka.

Paediatrician Zijadin Hasani was convicted from the Municipal Court in Gjilan towards the end of 2012 with 50 days of imprisonment, or 750 Euros for abusing his position in the Hospital of Gjilan. Hasani was giving his patients injections in return of a payment of 5 Euros which he collected for himself.

The Prosecution accused the Doctor for continuously asking patients to privately provide services in the ward, giving injections and collecting 5 Euros for each injection shot. This misconduct and abuse of official position happened at the Hospital of Gjilan, specifically in the Paediatric Ward, with the aim of obtaining illegal personal gain.

The paediatrician was sentenced with a fine of EUR 75 or 50 days imprisonment. This sentence was considered to be a rather soft one for an abuser of official position and it therefore gives the

<sup>9</sup>The first three defendants of the company "Devolli" are accused of committing the criminal offences of "fraud", "entering into harmful contracts" and "falsification of documents". Haxha and Gjonbalaj are charged with "entering into harmful contracts" and abusing official position, when signing the contract in 2008 between PTK and Dardafone company, on the operation of the latter as Mobile Virtual Network Operator. Using the PTK infrastructure, Dardafone would receive 78 percent of the profits, which is considered as a precedent for MVNOs. After the indictment was partially confirmed in October 2011, the hearing sessions commenced only after more than one year, and will continue in 2013, with other witnesses.

<sup>10</sup>In the Peja District, in 2012, another indictment was confirmed against former Judge Puka.

impression of encouraging the recurrence of the offence. Instead, it should have been a punitive and preventive sentencing for the future.

In another high profile case in 2011, former Chief Inspector of the Office of the Health Inspectorate in the Ministry of Health, Zef Komani was found guilty and sentenced to one year and eight months of imprisonment for corruption and abuse of official position.

In the time of the illegal activity, Komani was responsible for inspecting private healthcare clinics to check their compliance and abiding with the laws and regulations of the Ministry of Health. An owner in a private healthcare clinic had given Komani 2,500 € to avoid a fine of 12,000 Euros. After several months, Komani had called the owner again asking for an additional amount of 2,500 Euros to avoid a larger fine by the Ministry.

During the monitoring period, BIRN monitors have observed that the prosecution and trials of corruption cases have progressed compared to previous years.

BIRN monitoring has identified that the prosecution and trial of corruption cases has increased in the recent years by relevant institutions. It is concerning that until now, of all corruption charges, there are few cases where institutions have followed and enforced justice towards suspected senior officials. On the other hand, in these few corruption cases, there were occurrences where prosecutors have failed to prosecute

and confirm charges, thus damaging the reputation of public officials and creating the impression of a non-professional performance of the prosecution.

It is also concerning that people tasked to prosecute and punish corruption have also faced corruption charges, which has a negative impact on the performance of the judiciary, and creates the impression of legal uncertainty on the justice system among the public.

## **2. Lack of coordination in scheduling court hearings**

Coordination between the courts, prosecutors' offices, lawyer offices and other parties, and their participation in procedure represents a determinant factor for the conduct of court hearings without delays and procrastination that ultimately results in an increased backlog.

During 2012, a characteristic feature of Kosovo's judiciary was lack of coordination between judicial institutions and other involved parties in scheduling court hearings at Municipal and District courts and in the Supreme Court. In addition, numerous cases were identified in which judges, prosecutors, defence attorneys and other parties failed to respect the schedule set by courts, by being up to one hour late or even failing to appear at all. Lack of institutional coordination during judicial review was reported for a number of consecutive years.

<sup>11</sup> Komani has issued and threatened to issue further large fines against several private healthcare clinics, with the reasoning that they have not followed regulations. Clinics could avoid such fines if they paid Komani to keep the breaches silent in the Ministry.

<sup>12</sup> Balkans Investigative Research Network has reported on the lack of coordination during court proceedings for four years. See the latest court monitoring report March-December 2011 at: [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

The main reasons identified during the training are: scheduling of court hearings by the courts without prior consultations with other parties, failure of prosecutors to appear in court hearings, late arrival of judges, prosecutors and defence attorneys.

According to civil and criminal legislation, scheduling of court hearings is done by the court. In most cases the court does not manage to coordinate the hearing schedules with other parties in procedure, such as public prosecutors or defence parties.

Court hearing monitoring in district and municipal courts shows a considerable number of cases in which lack of coordination and failure of parties to appear in hearings caused delays or postponements of court hearings. Such delays also cause late commencement of other hearings that were to be attended by the same prosecutors, lawyers and other interested parties. Below is a number of illustrative examples that aim to explain how such problems reflect on the work of courts.

In criminal case P.P. No. 140-2/10 "Aggravated theft and burglary in co-perpetration", in the District Court in Prishtina, in which the presiding judge was Tonka Berishaj and the case prosecutor Haxhi Dërguti, the hearing started with a 50 minutes delay. The late commencement of the hearing was caused by the late arrival of prosecutor Dërguti, who was simultaneously appointed to attend two different hearings.

Late commencement of this hearing forced all trial parties and participants to wait for 50 minutes in court corridors, thus hindering court operations. The presiding judge concluded in the minutes the late commencement of the trial due to the late arrival of the public prosecutor, but failed to inform the Chief District Prosecutor on this matter, although this was the reason for the delayed commencement of the trial.

Other cases of improper coordination of prosecutors in trial scheduling were observed in the municipal courts of Peja and Kamenica, which are illustrated below:

The trial on case P. No. 453/11 at the Municipal Court in Peja, on "Election fraud", started one hour late, because the case prosecutor, Saide Gashi, was engaged participating in another trial. In this case there was no proper coordination between the presiding judge, President Sami Sharraxhiu, and the prosecutor Gashi.

In the trial on case P. No. 90/10 at the Municipal Court in Kamenica, on "Admission of stolen goods", presided by Judge Memin Sylja, the case prosecutor Arben Ismajli failed to appear in the courtroom at all, as he was attending a different trial.

In another trial conducted in this court, namely KA 3/12, "Aggravated theft", presided by Judge Zijadin Spahiu, case prosecutor Shefik Mehmeti did not appear as he was presiding an indictment to another judge of the same court. Hence, the trial was postponed.

<sup>13</sup> Law on Contested Procedure, Article 123, Article 319, Paragraph 1

<sup>14</sup> Hearing monitored on 15 February 2012

<sup>15</sup> Hearing monitored on 6 November 2012

<sup>16</sup> Hearing monitored on 17 May 2012

<sup>17</sup> Hearing monitored on 1 March 2012

The abovementioned factors caused trial procrastination or postponement, thus impacting court efficiency. On the other hand, BIRN has not seen any measures taken by the presiding judges/cases judges towards informing respective chief prosecutors on the inability of their prosecutors to attend relevant trials.

Another monitored trial shows how judges have initiated a trial, in which they were not supposed to be included being that they had treated the same case beforehand.

This was the case in the District Court of Prizren, namely in criminal case “Human trafficking and sexual abuse of persons under the age of 16”, number KA No. 40/12. The hearing was initially scheduled by Judge Rahima Elezi for 10:00. After the indictment confirmation hearing started, the judge had a recollection of two defendants (M.A and P.M), whom she had interviewed during preliminary procedures. Being part of the preliminary procedure, she was not allowed to confirm the indictment. In accordance with the criminal procedure, the judge was excused from the case and the court appointed a different judge in to try this case instead.

The case of judge Elezi, who was twice appointed to address the same case, reflects once again the lack of commitment and diligence in case division, which further neglects and procrastinates court proceedings and is a reflection of poor efficiency in the judiciary.

Our monitoring also identified cases when hearings started with a 35 minute delay due to the late arrival of lay-judges, who were at the same time attending to their duties at a different hearing.

<sup>18</sup> Hearing monitored on 26 March 2012

<sup>19</sup> Hearing monitored on 12 January 2012

<sup>20</sup> Hearing monitored on 8 June 2012

At the District Court in Prizren, in criminal case “Robbery in co-commission and illegal ownership, control, possession and use of weapons”, coded P.No. 306/11, the parties in procedure and case judge Vaton Dërguti had to wait for the lay-judges, who were performing their duties in a different trial, as they were “borrowed” by Judge Ajser Skenderi.

Although the court has a list of lay-judges who are used for trials conducted on relevant criminal offences that envisage the hire of lay-judges as trial panel members, in this concrete case the lack of appropriate coordination for these hearings caused its delayed commencement, which further influences on the delay of subsequent trials and causes undue procrastination and backlogs.

There were also cases when the same trial panel was scheduled to conduct two hearings at the same time. This caused severe problems for the trial panel, a procrastination of the case and forced the prisoner transport service to return the detainee to the detention center.

This was observed in the District Court in Prizren, where Judge Rahima Elezi was scheduled to conduct two hearings at the same time (for cases coded KA No. 77/12 and KA No. 94/12). Initially, defendant Rr. S. was brought to the court from the Pre-trial Detention Center in Prizren, as he was supposed to attend his trial, but due to the late arrival of his defence attorney from Prishtina, the judge ordered his return to pre-trial facilities and the transportation to the court of two other defendants (B.B and I.K)

In addition to cases when judges have scheduled two hearings at the same time for the same trial panel, there are also cases when the trial panel or judge fails to coordinate with the public prosecutor, by simultaneously scheduling for the latter the presentation of more than one case.

This happened in the Municipal Court in Dragash where monitoring of a court hearing demonstrated the insufficient coordination between judges Sabahate Kurteshi and Fahti Tershnjaku and prosecutor Elfete Purova. The two judges had scheduled hearings for criminal violations at the same time, although there is only one prosecutor available for the representation of cases in this court. Hence, the hearing on case P. No. 31/06 by Judge Fahri Tërshnjaku, started with a 20-minute delay, as the prosecutor was representing the state in another hearing.

Although the limited number of prosecutors is the common justification that prosecution organs provide for such cases, BIRN considers that this does not sufficiently justify inadequate coordination between judges and prosecutors. BIRN also considers that that in such events the hearings should not be scheduled at all.

In another hearing in the District Court in Peja, in the matter "Sale and transportation of narcotics", case number, P.No. 211/12, the hearing started with a delay of ten minutes because of the trial panel's late arrival, and incompleteness, because one of the lay-judges was not present. The presiding judge in this case was Sali Berisha, accompanied another professional member of the trial panel, Sami Sharraxhiu, and three lay-judges.

This case once again proves inappropriate coordination of the trial panel, and its inability to proceed with the case, which is further reflected in the procrastination of trials and court inefficiency.

In the roundtable on the BIRN findings for 2012 participants agreed that there is an insufficient coordination between judges and prosecutors and other parties, in scheduling hearing sessions; however, the KDJ Chairman, Enver Peci, stated that there is no procedural provision which obliges judges to consult with the prosecutor or others in scheduling hearing sessions.

According to the Chairman, the main reason of an inadequate coordination is the extensive backlog that exists in courts. On the other hand, the Chief Prosecutor of the Republic of Kosovo, Ismet Kabashi, justified the lack of a better coordination between judges and prosecutors with the insufficient number of prosecutors. According to him, if prosecutors could afford only to address representation of their cases, the judicial system would collapse. "If we had a larger number of prosecutors and a sufficient number of judges, there would be a better coordination" stated Chief Prosecutor Kabashi.

Although the process of judicial (re)appointments is concluded, and a number of prosecutor vacancies continued to be filled, the insufficient number of prosecutors is the reason given by prosecution for all late arrivals and failures to represent all cases in court.

<sup>21</sup> Hearing monitored on 11 January 2012

<sup>22</sup> Tryezë për diskutimin e të gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

However, this is no justification for the lack of proper and normal operational coordination between judges, prosecutors and defence attorneys. Better coordination between judges and prosecutors in trial scheduling would lead to abolition of any trial postponement practices, which are caused due to the lack of such coordination.

### 3. Inadequate representation of the state by prosecutors

One of three main functions of the prosecution, along with investigation of crimes and initiation of court proceedings, is court representation. BIRN has vested its focus on monitoring the prosecution's conduct in the latter responsibility, which is relatively often poorly performed by the prosecutors.

After the completion of the first two phases, the prosecutors are expected to appear at the court in order to prove the activities which are suspected to have comprised a criminal offence.

The issue of proper representation of cases in court has been addressed for a number of years, however, no notable improvement in this regard is yet observed.

Among the monitored cases there were occurrences that the prosecutor not only came unprepared to defend its case, but rather came to the hearing without the indictment.

In the District Court in Prishtina, in the criminal case "Human trafficking and

provision of prostitution", case number P. No. 101/12, the case prosecutor, Idaim Ismajli, did not read the indictment in advance and failed to bring it to the hearing. The trial started with a 40-minute delay due to the late arrival of the prosecutor, who had to be invited through the chief prosecutor. He had to borrow the indictment from the father of the Chief District Prosecutor in Prishtina, defence attorney Nikë Lumezi.

The hearing session was presided by District Court Judge Tonka Berishaj, who not only provided the indictment to prosecutor Idaim Ismajli, but also allowed the hearing to proceed without its reading, thus acting in violation of relevant criminal procedure provisions.

Other cases when prosecutors appeared in court unprepared were identified in municipal courts in Vitia and Suhareka, as illustrated below.

In Municipal Court in Vitia, prosecutor Shqipdon Fazliu appeared in court without the accusation act. The indictment confirmation on "Light bodily injuries", number KA. No. 112/10, in front of judge Hajriz Lubishtani, started late because prosecutor Fazliu was representing another case in front of judge (and former President of Municipal Court in Vitia) Drane Simani.

Similarly, municipal prosecutor Arben Ramadani was not in possession of the accusation act when appearing in front of the Municipal Court in Suhareka. Prosecutor Ramadani borrowed the

<sup>23</sup>BIRN has reported for four consecutive years on inadequate court representation of prosecutors. See the last court monitoring report covering the period March-December 2011, [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

<sup>24</sup>Hearing monitored on 15 May 2012

<sup>25</sup>Hearing monitored on 28 February 2012



indictment from judge Avdyl Elshani, while the criminal proceeding numbered P. No. 305/06 pertained to "Theft".

Although the prosecution's justification in most cases is the insufficient number of prosecutors, the Municipal Prosecutors Offices in Prizren and Gjilan, which also cover Suhareka and Vitia municipalities, have a considerable number of prosecutors.

Whereas the MPO in Prizren employs 10 municipal prosecutors, the MPO in Gjilan accounts for 7 prosecutors, which in comparison to Peja (5 prosecutors) and Mitrovica (3 prosecutors) can be considered to be in a great advantage as far as the timely and professional representation in court is concerned.

In another trial in the District Court in Prishtina, on criminal case "Murder and battery", number P. No. 32/11, the district prosecutor Fikrije Fejzullahu-Krasniqi was not prepared for the closing statements. She asked from the presiding judge, Mejdi Dehari, to postpone the final statements for a different date.

Although the postponement was objected by the defence council, the trial panel decided to postpone the hearing for 19 September which causes further procrastination of proceedings.

According to Chief Prosecutor Ismet Kabashi in such cases the law also envisaged a request of the prosecutor to adjourn the trial, and the right of the prosecutor to ask for time for representation, particularly in serious cases where qualification can be

changed. "This case where the prosecutor was not willing to give the closing statement and the hearing was postponed, is not a major problem. Withdrawing from the indictment, or termination of investigations, etc., are done in coordination with the Chief Prosecutor, and this OK, and in this case there might have been changes, and as a result of changes further consultations with the Chief Prosecutor would be required" said Ismet Kabashi.

In the indictment confirmation hearing of case "Unauthorized purchase, possession, distribution and sale of narcotics and psycho-tropic substances", coded KA. No. 24/12, at District Court in Prizren, the case prosecutor Metush Biraj did not appear in the courtroom at all. Given the circumstances, Chief Prosecutor Sylë Hoxha immediately appointed Mehdi Sefa as the case prosecutor, who represented the state by reading the indictment that he had borrowed during the hearing. Although the prosecutor failed to appear in the courtroom, BIRN is not aware of any disciplinary measures to have been imposed by Chief Prosecutor Hoxha against the former. The only reaction of Chief Prosecutor Hoxha in this case was to appoint the substitute prosecutor. Vaton Durguti was the confirmation judge.

Similarly, at the District Court in Prizren, another case was monitored in which the case prosecutor Murteza Jahaj was observed to have been unprepared for trial. Although young in his profession, and presenting his first indictment ever, his unpreparedness causes undue

<sup>26</sup> Hearing monitored on 19 January 2012

<sup>27</sup> Hearing monitored on 3 September 2012

<sup>28</sup> Tryezë për diskutimin e të gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

<sup>29</sup> Hearing monitored on 14 February 2012



procrastination of proceedings and diminished efficiency of courts. The case was delegated by Chief Prosecutor Sylë Hoxha, conducted by judge Ajser Skenderi, and pertained to “Illegal ownership, control, possession and use of weapons” (KA No. 54/11).

According to the Criminal Procedure Code, the public prosecutor is a party in judicial proceedings, and is ex officio obliged to prosecute crimes envisaged in Kosovo's criminal legislation.

Currently the prosecutorial system in Kosovo accounts for 103 prosecutors at all levels. Although the prosecutor (re)appointment process was initiated 4 years ago in 2008, the prosecutorial system is still incomplete and continues to be bound by an insufficient number of prosecutors, which is further reflected in an inadequate representation of cases by prosecutors in courts.

Prosecution level	Current number of prosecutors	Approved prosecutor positions	Vacant prosecutor positions
State prosecutor	4	6	2
Special prosecutor	10	10	-
Appeals prosecutor	9	10	1
District prosecutor	36	46	10
Municipal prosecutor	53	74	21
<b>Total</b>	<b>103</b>	<b>146</b>	<b>34</b>

The table shows that at all prosecution levels there are thirty-four vacant positions, of which 10 are required for the district level, 21 for the municipal level (total 31 in basic prosecution), 1 of the currently vacant 10 positions at the appeals level will take the post from January 2013, while there are an additional 2 vacant positions at the state prosecutor's level, which would round-up the 146 prosecutor positions approved for the country's entire prosecutorial system.

Among the prosecutor offices that suffer most from the insufficient number of prosecutors are: MPO in Peja, which covers 4 municipalities with only 5 prosecutors

(Peja, Istog, Klina and Deçan); and MPO in Mitrovica, which covers 3 municipalities with only 3 prosecutors (Mitrovica, Vushtri, Skenderaj), etc.

Although there is a satisfactory number of municipal prosecutors hired in Prizren (10), Prishtina (17) and Gjilan (7), BIRN monitoring identified cases under their mandate in which prosecutors were absent, late or unprepared for court hearings.

The table below provides an overview of the current number of prosecutors at state, special, district, and municipal level in the Republic of Kosovo:

<sup>30</sup> Hearing monitored on 6 March 2012

<sup>31</sup> Criminal Procedure Code of Kosovo, Chapter IV

State prosecutor's office	4
District Prosecutor Prishtina	14
Municipal Prosecutor Prishtina	17
District Prosecutor Mitrovica	5
Municipal Prosecutor Mitrovica	3
District Prosecutor Peja	4
Municipal Prosecutor Peja	5
District Prosecutor Gjilan	5
Municipal Prosecutor Gjilan	7
District Prosecutor Prizren	8
Municipal Prosecutor Prizren	10
Municipal Prosecutor Gjakova	4
Municipal Prosecutor Ferizaj	7
Total	93

Special Prosecutors	10
Total	103

However, the insufficient number of prosecutors continues to impact on their representation in courts, and subsequently on the unsatisfactory court efficiency.

The Chief Prosecutor of the Republic of Kosovo, Ismet Kabashi, who continues to justify the performance of the prosecution with the lack of prosecutor, took Peja as an example, which has 4 prosecutors and covers 4 municipalities. If the prosecutor represents his case, he has to travel to all four municipalities covered by the Office. Hence, his proposal was to schedule in one day only indictments of, for example, Lirije Morina or Sahide Gashi. The Chief Prosecutor added that on December 22 prosecutors have been proposed, and are expected to be decreed by the President of

the Republic of Kosovo.

In relation to situations where prosecutors attend trials without indictments and they are therefore unprepared for the trial, the Chief Prosecutor claims that this is a weakness which will be addressed, similarly to other weaknesses; however, he added, that their performance is evaluated by court decisions. "I have no information from courts or judges that a prosecutor hasn't arrived on time, or appear unprepared".

The President of the Republic of Kosovo, Atifete Jahjaga, on December 28, 2012, appointed 22 prosecutors nominated by the Kosovo Prosecutorial Council, who filled the vacancies in

<sup>32</sup> Tryezë për diskutimin e të gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

<sup>33</sup> Prokuroria Publike e Qarkut (PPQ) në Pejë 1 prokuror, PPQ në Mitrovicë 1 prokuror, PPK (komunale) në Prishtinë 4 prokuror, PPK në Prizren 1 prokuror, PPK në Ferizaj 2 prokuror, PPK në Gjilan 3 prokuror, PPK në Pejë 4 prokuror, PPK në Gjakovë 3 prokuror dhe PPK në Mitrovicë 3 prokuror.

district and municipal prosecutions; however, 2 position in the State Prosecutor's Office are yet to be filled.

The decree of prosecutors on December 28, has largely helped municipal prosecutions in Peja, Mitrovica, Gjilan, Gjakova, etc., which were unable to timely and efficiently represent their cases in relevant municipalities and thus affecting the efficiency and quality of representation in courts.

Related to the lack of preparation of prosecutors in hearings, Municipal Prosecutor in Gjakova, Ali Selimaj, said that prosecutors are not yet up to the task of working in prosecution. This is because of the inherited cases from their colleagues, and since 2010 he hasn't represented any of his cases in court, because he still addresses cases of former colleagues.

Ali Selimaj stated that it may happen that the prosecutor is not prepared because he represents several hearings a day, and all case files must be read prior to the hearing, which is physically impossible.

The Chief Municipal Prosecutor in Gjakova, Rabije Jakupi, spoke of cases where a prosecutor has represented 30 cases, with numerous hearings scheduled in many judges. Therefore, the prosecutor was tasked with representing all such cases.

BIRN monitoring also identified numerous cases in which prosecutors represent the state unprepared, which may be a consequence of the insufficient number of prosecutors. However, this state of affairs heavily influences the quality, procrastination, postponement of proceedings, as well as the increasing backlog in the judiciary.

Similar to its monitoring in previous years, BIRN has addressed the problem of unpreparedness of prosecutors in the representation of indictments and has provided the respective bodies with concrete recommendations in this respect.

However, BIRN recommendations were not taken into consideration by the respective bodies, namely by the trial panels/case judges who were asked to inform the chief prosecutors on absence or unpreparedness of prosecutors, or by the Chief Prosecutor who is supposed to undertake the necessary disciplinary measures against prosecutors that are not up to their tasks.

#### 4. Procedural violations during hearings

Court procedure conduct rules, stipulated in the laws applicable in Kosovo, are not always respected by Kosovo courts. Monitoring identified cases when courts, prosecutors and parties in

<sup>34</sup> Nga vitit 2013 pruroritë themelore

<sup>35</sup> Tryezë për diskutimin e të gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

<sup>36</sup> Balkans Investigative Reporting Network has reported for 4 consecutive years the unpreparedness of prosecutors in court hearings. See the last 'Court Monitoring Annual Report, March – December 2011', at: [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_B20455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_B20455.pdf)

procedure do not respect all procedural provisions. Failure to respect the procedural aspect of court hearings has been reported for a number of years.

Most frequently, violations were identified by the trial panel, or case judge, and include: commencement of hearings in absence of parties in procedure; commencement, conduct or conclusion of hearings without the full composition of the trial panel; failure to inform parties on their rights pursuant to the applicable criminal provisions, failure to read the rights and statement of oath for witnesses and other procedural violations.

In a hearing conducted by European Union Rule of Law Mission (EULEX) on “Aggravated murder and attempted murder”, the trial panel presided by Tore Tomasson committed a procedural violation, by having commenced the hearing without consideration of the presence of all parties in the hearing. Legal conditions for its commencement were not met, since the hearing commenced with five defendants, while the sixth defendant was absent. The latter (S.A.) arrived in the hearing 50 minutes later. The presiding judge forgot to ask him of his personal information, which he had earlier requested from the other defendants, thus committing yet another procedural violation. Other members of the trial panel in this criminal case (P. No.

592/1) were Bexhet Muçiqi and Laura Liguori while the prosecution was represented by Maurizio Salustro and Emma Rizzato.

Another case of such procedural violations during court hearing was monitored in the District Court in Peja. In the criminal case on “Unauthorized purchase, possession, distribution and sale of narcotics and psychotropic substances” (P. No. 211/12), the appointed trial panel was incomplete, as it was missing one of the lay-judges in its composition. The hearing was conducted by an incomplete trial panel and in the absence of persons that are legally required to be present during the hearings. Oblivious to the absence of a lay-judge, the trial panel commenced the hearing and issued a sentencing decision against the defendants, who had admitted their guilt during this trial. Presiding judge in this case was Sali Berisha, whereas the other members of the trial panel included professional judge Sami Sharraxhiu and three lay-judges.

In such circumstances, the trial panel was in violation of Article 332, paragraph 1, and Article 403, paragraph 1, items 1 and 3 of the Criminal Procedure Code of Kosovo, as the trial was conducted by a trial panel that is not in full composition and in absence of persons legally required to be part of the hearing.

<sup>37</sup> Balkans Investigative Reporting Network has reported for 4 consecutive years the unpreparedness of prosecutors in court hearings. See the last 'Court Monitoring Annual Report, March – December 2011', at: [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

<sup>38</sup> Hearing monitored on 3 February 2012

<sup>39</sup> Criminal Procedure Code of Kosovo, Article 354, paragraph 1

<sup>40</sup> Ibid.

<sup>41</sup> Criminal Procedure Code of Kosovo, Article 403, paragraph 1, items 1 and 3

<sup>42</sup> **Article 332** (1) The presiding judge, members of the trial panel, the recording clerk and the replacements of judges and lay judges (Article 323 of the present Code) shall be continuously present at the main trial. **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; 2) A judge or a lay judge who should be excluded from participation in the main trial participated therein (Article 40 paragraphs 1 and 2 of the present Code); 3) The main trial was conducted in the absence of persons whose presence at the main trial is required by law or the accused, defence counsel, the subsidiary prosecutor or the private prosecutor was, notwithstanding

In another criminal case hearing conducted in this court by the same presiding judge, Sali Berisha, in which the defendant was accused of “Illegal ownership, control, possession or use of weapons”, one of the lay-judges left the office in which the trial was being conducted after its commencement, holding his mobile phone in his hands. He came back after a few minutes, as soon as he finished his phone call, thus acting in violation with the criminal procedure code, which obliges the trial panel to remain in the courtroom throughout the hearing. The presiding judge, Sali Berisha, continued the hearing in absence of the lay-judge, which is considered a violation of Article 332, paragraph 1, and Article 403, paragraph 1, item 1 of CPCK.

Another issue of concern observed during the monitoring, which is also considered a procedural violation, is the failure to read witnesses' rights and obligations, which according to criminal procedural provisions is the judge's obligation.

In the case P. No. 398/11, on “Unauthorized purchase, possession, distribution and sale of narcotics and psychotropic substances, in co-mission” and “Illegal ownership, control, possession or use of weapons”, conducted at the District Court in Prishtina, the presiding judge failed to read the rights and obligations to witness A. Similarly, rights and obligations were not read to witness B either. The trial panel comprised Mejdi Dehari (presiding judge), Hajrije Shala and three lay-judges, while prosecution was represented by Haxhi Dërguti.

In another hearing held at the Municipal Court in Dragash and conducted by judge Fahri Tërshnjaku, on “Light bodily injuries” (P. No. 182/11), the judge failed to inform witnesses R.V and F.H of their rights, contrary to his legal obligation to do so.

In May, proceedings on criminal case P. No. 225/10 related to a number of criminal offences were conducted at the District Court in Prizren and presided by Ajser Skenderi. The hearing started 30 minutes later than envisaged due to the late arrival of the trial panel. During the hearing the court heard a number of witnesses, but presiding judge Skenderi failed to read the rights and obligations to any of them, which is in violation of criminal procedure law.

The presiding judge/case judge is obliged to inform the witness of all rights related to the testimony, cases in which he/she is relieved of the obligation to answer or provide a testimony (when related by blood or other family relation with the defendant), as well as on his/her obligation to speak the truth, not to withhold anything and warned that false testimony constitutes a criminal offence.

In a hearing conducted at the Municipal Court in Theranda a number of violations of criminal procedure provisions were observed. In the criminal case “Endangerment of public traffic” (P. No. 111/09), Xh. B was heard as a witness, but presiding judge Robert Tunaj failed to inform him of his rights. Prosecution was represented by Arben Ramadani.

his or her request, denied the right to use his or her own language in the main trial and to follow the course of the main trial in his or her language (Article 15 of the present Code);

<sup>43</sup> Hearing monitored on 12 mars 2012

<sup>44</sup> Hearing monitored on 22 mars 2012

<sup>45</sup> Criminal Procedure Code of Kosovo, Article 164, paragraph 2

<sup>46</sup> Criminal Procedure Code of Kosovo, Article 162 and 164

<sup>47</sup> Hearing monitored on 1 March 2012

BIRN monitoring also revealed a considerable number of cases when presiding judges/case judges failed to read the defendants their rights upon commencement of judicial review, which they are obliged to do as per the Criminal Procedure Code of Kosovo, Article 356, paragraphs 1 and 2.

BIRN monitoring identified the following cases that illustrate this phenomenon.

In two criminal cases (numbered P. No. 578/11 and P. No. 501/10) conducted at the Municipal Court in Suhareka by judge Robert Tunaj, first pertaining to threat and damage of immovable property and second to misuse and admission of stolen goods, the judge failed to read the defendants rights after having obtained their personal information, contrary to his obligation, as stipulated in the Criminal Procedure Code of Kosovo.

At the District Court in Prishtina, in criminal case "Aggravated theft resembling burglary and burglary" (P. No. 140-2/10) the trial had to start over, since one of the trial panel members (a lay-judge) had called in sick and was unable to attend the trial. The hearing commenced with a 50-minute delay caused by the late appearance of prosecutor Haxhi Dërguti, who was attending another hearing and was subject to certain legal and procedural violations. The presiding judges opened the hearing and stated formally the data for defendants, merely by asking them if there were any changes from the previous

state. The indictment was not read at all, regardless of the presence of a new member in the trial panel. It was stated for the minutes that the indictment was read, thus violating the law. The trial panel comprised of presiding judge Tonka Berishaj, member Mejreme Memaj and three lay-judges.

Procedural violations were also noted in another case at the District Court in Prishtina pertaining to "Unauthorized production and processing of narcotics and illegal ownership, control, possession or use of weapons" (P. No. 209/12). The court failed to read the rights to one of three defendants, J.A., who did not admit guilt for the criminal offences he was charged with. While J.A. was heard, the other two defendants, F.B. and B.C., were not removed from the courtroom, which comprises a procedural violation. The case was conducted by Judge Hava Haliti.

Defendant's rights were also not read in the District Court in Gjilan, in the hearing in the criminal matter K.A.No. 239/11, held and presided by Judge Avdullah Ahmeti.

In the District Court in Prishtina, in the case publicly known as Medicus, case number P.No.309/10/P. No.340/10, Arkadiusz Sedek, Presiding Judge, asked the Lawyer of Yosuf Sonmez, fugitive suspect in the Medicus case, to leave the courtroom. The Turkish lawyer was seated in the public seating section. The Presiding Judge has ordered the lawyer to immediately

<sup>48</sup> Hearings were monitored in May 2012

<sup>49</sup> Article 356 of CPC, paragraph 1: The presiding judge shall invite the accused to follow closely the course of the main trial and shall instruct him or her that he or she may state his or her case, address questions to the co-accused, witnesses and expert witnesses, and make comments on and give explanations of their testimony.

<sup>50</sup> Hearing monitored on 15 February 2012

<sup>51</sup> Criminal Procedure Code of Kosovo, Article 357, item 1

<sup>52</sup> Hearing monitored on 16 May 2012

<sup>53</sup> Hearing session monitored on 24 May 2012

leave the courtroom, reasoning that he could gather relevant information for Somnez's defence. This action of the Presiding Judge's was in breach of Article 328, which guarantees public participation of all adult persons in open hearings.

Delays in commencement and procedural violations were found in the District Court in Prizren, in the criminal matter P. No. 142/12, with Judge Rahima Elezi Presiding. Defendants in this case were on trial for criminal offences of Unauthorised Purchase, Possession, Distribution and Sale of Dangerous Narcotic Drugs and Psychotropic Substances. Prosecutor Genc Nixha called a witness and the Presiding Judge failed to inform him on his rights, as required by law. Although called by Prosecutor Nixha, the first questions to the witness were asked by the Presiding Judge, rather than the Prosecutor, while the criminal procedures stipulate that the prosecutor cross-examine witnesses. Lack of preparation for the case was noticed on prosecutor's part when it came to the witness examination, which would help to identify the circumstances of the offence. As a result, the Presiding Judge was forced to proceed with the examination of the witness.

In the District Court in Peja, in the criminal matter of Aggravated Murder, P. No. 137/11, the Hearing commenced with a delay caused by the delay of the trial panel. As a result, parties were forced to wait for 40 minutes in the courtroom and corridor. The trial panel was comprised of Lumturiqe Muhaxheri, Presiding, Nikollë Komoni, Member, and

three Lay Judges. This hearing was commenced from the beginning, though prosecutor Ali Ukaj had not read the indictment, as according to him it was known to the parties. The minutes stipulated that the indictment was read, which was a clear violation of criminal procedure.

The defendant in the case was suffering from mental disorder, and he was forced to leave the courtroom during trial for health issues. The trial panel didn't adjourn the hearing while the defendant was outside of the courtroom, which is in contradiction with Kosovo's criminal procedure. The hearing was only adjourned once, when the Presiding Judge concluded for the record that the defendant has left without her permission and that the hearing will not be carried on in his absence.

Another violation of criminal procedure provisions was observed in the monitoring of the hearing for the confirmation of indictment in the criminal matter with case number K.A. No. 135/11. The Judge Violetë Husaj-Rugova allowed two defendants to leave the courtroom for several minutes, while the confirmation of indictment session continued. There were 17 defendants in this hearing and they could return in the courtroom as they pleased, indicating that the Confirmation Judge had no control over the courtroom. Lawyers too, as soon as they finished with their statements, left the courtroom. This can be considered an essential violation of criminal procedure rules.

<sup>54</sup> Article 328 (1) The main trial shall be held in open court. (2) The main trial may be attended by adult persons. (3) Persons attending the main trial may not carry arms or dangerous instruments, except the guards of the accused who may be armed.

<sup>55</sup> Hearing session monitored on 18 July 2012

<sup>56</sup> Criminal Procedure Code of Kosovo, article 164, paragraph 2

<sup>57</sup> Hearing monitored on 5 and 6 mars 2012

<sup>58</sup> Criminal Procedure Code of Kosovo, article 357, paragraph 1

<sup>59</sup> Hearing was held on 22 mars 2012

<sup>60</sup> Criminal Procedure Code of Kosovo, Article 403, paragraph 1



In February 2010, BIRN also monitored the following inheritance cases: T.No. 4/12; T. No. 28.12; T. No. 18/12; T. No. 27/12; T. No. 18/12; T. No. 22/12; T. No. 20/12; T. No. 19/12; T. No. 73/11; T. No. 74/11. All these cases were filed with emergency by residents of Arllat Village in Drenas. Each hearing was held with procedural violations as neither party was informed on Article 135 of the Law on Inheritance in Kosovo, according to which, heirs must be informed on the Irrevocable nature of the statement on inheritance.

The Chief Prosecutor, Ismet Kabashi, in the roundtable organized by BIRN addressing findings for 2012, stated that in cases where the trial panel was not in its full composition, the case prosecutor should not have proceeded with the representation. The same was stated by the President of the Municipal Court in Ferizaj, Bashkim Hyseni.

On the other hand, the KJC Chairman Peci stated that the composition of the trial panel is concerning. The commencement and procession of hearing sessions in such a manner remains a serious cause of concern. "The hearing commences, and the record states that the trial panel is in full, although it wasn't; this should not be allowed to happen", said Peci.

The Chairman again asked his colleagues not to be neglectful of such matters. In terms of other substantial issues in the report, he hoped that judges will pay particular attention to the details of instructing parties in procedure. Finally, he said that there is

progress overall, and that findings of BIRN reports were taken into consideration by KJC.

For these procedural violations BIRN has previously issued recommendations directed to relevant institutions; however, in addition to four cases mentioned by Chairman Peci which are under procedure, BIRN hasn't observed other measures undertaken by KJC and Presidents of Courts against perpetrators of such violations.

Commencement, organization and conclusion of hearing sessions in the absence of the full composition of the trial panel is a procedural violation which should not be allowed by the Presiding Judge. The Presiding Judge is also obliged to ensure that the court hearing goes well and smoothly, and that the rights of defendants, damaged parties and witnesses are respected. However, in certain cases they are not up to the task whereby they fail to deliver in compliance with the procedural regulations.

This all affects the quality of the trial and poses further difficulties to the work of courts in holding court hearings.

## 5. Interpretation in hearing sessions

Applicable legislation stipulates that litigating parties have the right to use their language. This year too cases have been identified where there were difficulties in hearings due to interpreting issues. The main challenges were observed in hearings held by EULEX, where lawyers complained about inaccurate and unclear interpretation

<sup>61</sup> gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

<sup>62</sup> BIRN has reported for four years on the inadequate representation of prosecutors. See the last annual courts' monitoring report March-December 2011, [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)



In the monitored hearing in the District Court in Prishtina, in the criminal matter “War Crimes against the Civilian Population and Prisoners of War” case number P. No. 425/11, the interpretation was poor as the English version often did not correspond with the Albanian version and the meaning of what was being said was lost in translation. In one case, lawyer Haxhi Millaku had asked the panel to verify the minutes as errors occurred making the statements change in substance. The trial panel was in the composition of Jonathan Carol, Dean Pineles and Shqipe Qerimi.

In another session of the same case, there were numerous problems with interpretation. During this hearing and the one on the previous day, the EULEX interpreter was not interpreting accurately and comprehensibly. Most frequent incomprehensible terms used were: indipendent, evidenca, ekzibiti, akceptoj, stipulohet, kontradiktural, kontradiktohen, frustracionesh, inshurancë, prosekutorial, ekzaminar, skrutinojnë, kolaboron, buklet, korespodoj, oponente, substancive, kohersiv etc. Neither the defendants nor the public were able to understand such terms.

The monitoring in the criminal matter: “War Crimes against the Civilian Population” with case number P.No.673/12, held in the Supreme Court, the EULEX interpreter in the Albanian-English language pair provided inaccurate interpretation and sometimes left many words without translation. She was continuously corrected by Lawyer

Miodrag Brkljac.

In many hearings held in the “Medicus” case, the EULEX Special Prosecutor, Jonathan Ratel, complained on interpretation. In some cases he considered that the meaning of statements made from witnesses and other participants in the trial was being lost.

This created delays in trial forcing the prosecutor and lawyers to spend more time in examining witnesses and other summoned parties in court until a comprehensible conclusion was reached for the parties in procedure.

The New Criminal Procedure Code which entered into force in January 2013 envisages that apart from certified interpreters, interpreting can be done by graduates of respective languages, those with minimum four years of experience in translation and interpretation, or others with sufficient knowledge of the language to be used in trials.

The second paragraph of this article, stipulates the Ministry of Justice is empowered to issue regulations on the certification of translator.

<sup>63</sup> In its interpretation assessment, BIRN used as basis the complaints by parties in procedure, and subjective assessment of monitors who are fluent in English.

<sup>64</sup> Hearing session monitored on 07 February 2012

<sup>65</sup> Hearing session monitored on 07 mars 2012

<sup>66</sup> Hearing session monitored on 09 November 2012

<sup>67</sup> Monitoring of the criminal matter, case number P. nr 309/10 and P. nr 340/10, also known as the MEDICUS case.

<sup>68</sup> Article 215, paragraph 1. New Criminal Procedure Code of the Republic of Kosovo

<sup>69</sup> Article 215, paragraph 2. New Criminal Procedure Code of the Republic of Kosovo

However, the procedural code does not foresee a timeline for the MoJ to draft and approve regulations. Therefore, BIRN recommends that the certification process is done quickly and in accordance to the EU standards.

BIRN has raised interpretation issues in almost all monitoring years. BIRN has been continuously highlighting that the issues associated with interpretation have a negative reflection in the performance of courts and violate a fundamental human right, the right to trial in your language. In addition, this issue affects the quality of the trial leading to interruptions and delays of hearing sessions.

## 6. Minutes of trials

Minutes are one of the key documents which indicate the course of the trial and procedural actions in hearings. However, our monitoring has shown that this is not a common practice as minutes are used also to write actions which have not occurred in reality. BIRN has reported on the unreal content of minutes continuously.

In a case monitored in the Municipal Court in Suharekë in the presence of Judge Avdyll Elshani and Prosecutor Arben Ramadani, the minutes concluded that Public Prosecutor Ramadani was present. In reality, the Prosecutor was not present in the hearing, as he was in another trial with Judge Robert Tunaj. This case was on the criminal offence "Aggravated theft", with case number

P.No.111/10.

In another trial in the District Court in Prizren, the main hearing proceeded with the reading of the case files/ The minutes concluded that the Malisheva Emergency Service report, the Prishtina UCK report, the forensic report of Dr. Tefik Gashi and the anaesthesiologist's report of the UCK were all read. In fact, these reports were not read. Instead, only the photo-documentation was confirmed and read with a power point presentation as well as the ballistics/crime lab expertise. The Judge of the case was Fillim Skorro, and Prosecutor Mehdi Sefa, and the case number was P. No. 283/11. Hence, the doctor present in the hearing could not understand what the forensic reports, expertises and other documents actually contained.

In a hearing monitored in Municipal Court in Kaçanik, the minutes included actions which did not occur in reality. During the testimony of witness Muhamet Qallaku, the minutes did not include the words and testimony of the witness, but rather a reformulation of the legal representative of KFA (Kosovo Forestry Agency), who continuously interfered and instructed the witness on what to say. This case was on the criminal offence "Abuse of Official Position or Authority", case number P.No.32/11.

<sup>70</sup> BIRN has reported almost every year on interpreting issues in hearing sessions. See the last annual courts' monitoring report March-December 2011

<sup>71</sup> BIRN has reported for four years on the minutes of trials. See the last annual courts' monitoring report March-December 2011, [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

<sup>72</sup> Hearing session monitored on 08 October 2012,

<sup>73</sup> Hearing session monitored on 12 January 2012

<sup>74</sup> Hearing session monitored on 02 October 2012

The Judge in the case, Ramadan Gudaci, was obliged to ensure that the witness's testimony is ascertained in the minutes, and ensure that the legal representative of KFA does not influence and instruct the testimony of the witness.

According to the KJC Chair, failure to state on the record is a negligence of judges. Namely, judges only ascertain the reading of evidences, but do not read them in hearings, which should not be the case. A chance must be given to all parties to question and challenge evidences, - said chairman Enver Peci.

The Chief Prosecutor Ismet Kabashi also agrees that evidences must be read. "Evidences must be read so that parties understand them; in principle, the parties have the evidences and know what they are, but the public doesn't, and this may affect them, but it doesn't affect justice, as the parties have them" said the Chief Prosecutor. Ismet Kabashi also stated that the best thing would be to record all sessions, as this will be relevant for the second instance.

In addition, the President of the Municipal Court in Kamenica, Zijadin Spahiu, in the roundtable addressing BIRN findings on the judiciary for 2012, stated that statements must be as authentic and accurate as possible, in both procedures, civil and criminal. Hence, a failure to include a saying may be relevant and may impact the entire process, stated Spahiu.

"I think it is better to have one fair judicial process, than ten unfair ones. We are obliged to keep the procedure in order even in these circumstances", said the President of the

Municipal Court of Kamenica, Zijadin Spahiu.

Similar to last year BIRN has identified that contrary to the locals, EULEX Judges always include the entire course of the hearing, statements and actions undertaken in the minutes.

BIRN has identified that hearing sessions which are tried by EULEX judges tend to be more thorough and professional compared to those tried by local judges, due to the attitudes of the judges and therefore ensuring that all procedural provisions are followed, from reading of rights to litigating parties, composition of the trial panel, to including all actions in minutes, as they happen in the hearing.

However, representatives of local prosecutions and courts disagree with comparisons between locals and EULEX officials. According to the Chief Prosecutor Kabashi, "If our judges would have the conveniences of EULEX judges, such as having one case for six months, then surely locals would include everything in the records."

Chairman Peci agreed with the aforementioned statement and added that E U L E X j u d g e s m a k e c o m p l e t e ascertainment of parties and everything that is said in the procedure, but have fewer cases. "In my opinion, the Judge has the right to make a summary of what the witness said, and extract the essence of the evidence; this is not a violation" according to Peci

<sup>75</sup>

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Ibid.

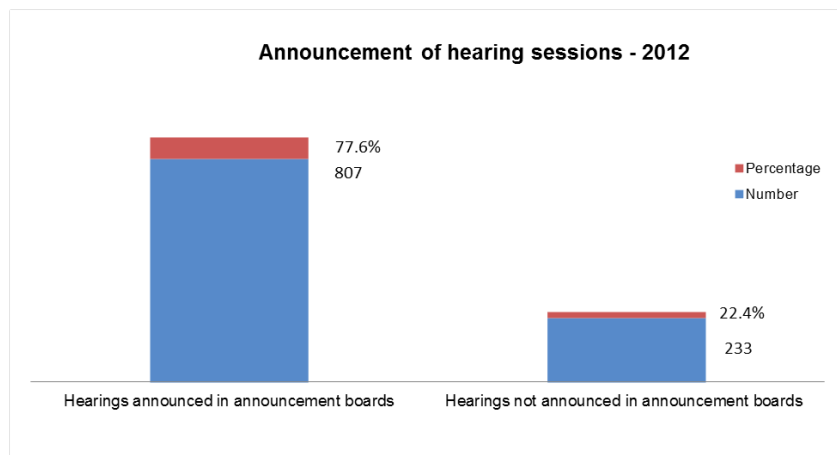
CPCK provisions stipulate that main hearings are public with the exception of certain cases as defined with the law. Despite this requirement, BIRN has identified numerous cases where the public was deprived of this right, such as the case of the failure to read the indictment or the charges in the hearing, which is a procedural violation.

Although recommended in the previous years, BIRN is yet to see that measures are taken against those who have acted in breach of procedural provisions, namely for failing to include all undertaken actions in the minutes.

## 7. Announcement of hearing sessions

The judicial system in Kosovo still provides no online access to the trial schedule in Kosovo courts. Hence, the only way for the public to be informed is from the announcement boards, placed in all courts.

Our court monitoring indicates that 77.6 per cent (807) of hearings in 2012 were announced, either in the announcement boards or official websites (hearings addressed by EULEX and Supreme Court).



**Table 1: Announcement of hearing sessions**  
Announcement of hearings was monitored for several years, and initially, in 2010, it was

reported that 50 percent of hearings were not announced in announcement boards.

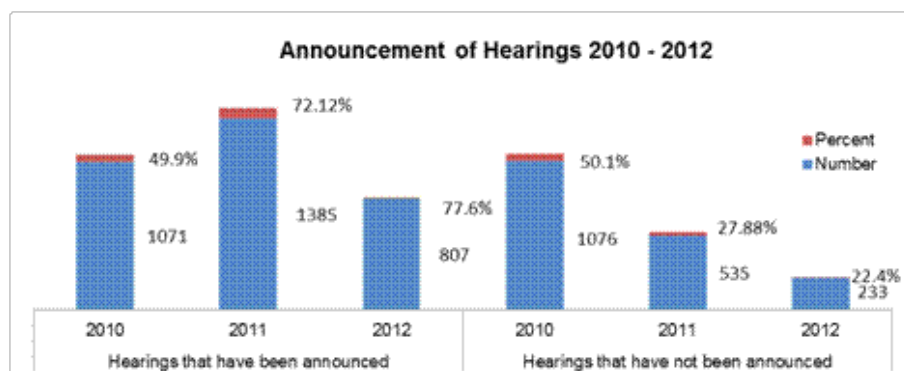
<sup>79</sup> With the exception of EULEX and the Kosovo Supreme Court, which publish their trials' schedule in their official websites

<sup>80</sup> BIRN has reported for four years on the lack of announcements of hearing sessions. See the last annual courts' monitoring report March-December 2011 [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

However from 2010 up until 2012, there was a considerable improvement in the publication of the schedule of hearings on announcement boards, with 80 percent of hearings published. The following table

shows a positive development in courts compared to 2010.

Table 2: Announcement of hearing sessions 2010 - 2012



In 2010, only half of hearing sessions were published on the announcement board. One year later, this percentage rocketed to 70 percent, introducing obvious improvements in the transparency of courts, which increased to 80 percent in 2012.

In the round table addressing annual findings on the judiciary, organized by BIRN, the KJC Chairman, Enver Peci, stated that the percentage of announcements should be higher. Peci noted that “the percentage of announcements should not have been around 80 % but rather over 95 %.” “Although we have placed monitors to announce hearings, we are not satisfied with the results”, stated Peci, adding that the court can do more on this issue.

Courts which regularly post their trials on the announcement boards are Municipal

Courts in Prizren and Lipjan, with all trials announced, followed by Ferizaj, Vushtrri, and Viti with above 90 percent. Municipal and District Courts in Peja still have a narrower transparency in terms of announcing trials. The percentage of cases announced in the Municipal Court is only 38% whereas this figure for the District Court is circa 60%.

### 8. Venues of hearing sessions

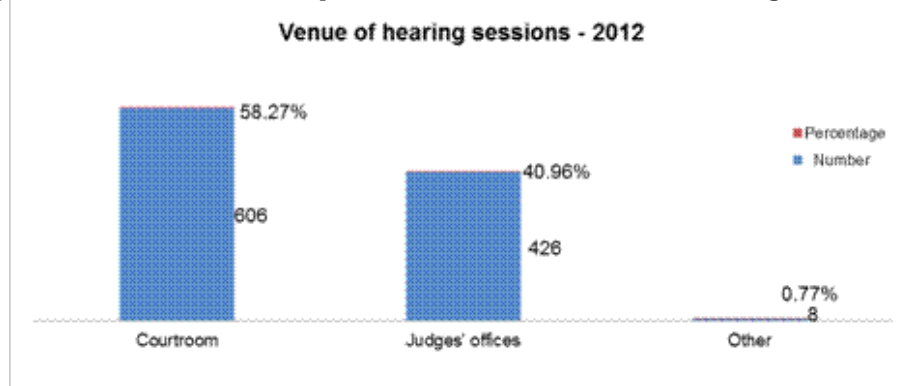
Hearing sessions should be held in courtrooms or trial rooms which allow seating for judges, prosecutors, lawyers and other parties. They should also offer seating for interested members of the public, including the media and must provide appropriate working conditions.

What happens in practice is that courts are held in judges' offices. Failure to hold hearing sessions in courtrooms was reported since 2010.

Only in 2012 around 40 percent (426) of monitored hearing sessions were held in judges' offices and around 60 percent in

courtrooms. Compared to 2009, when only 30 percent of hearings were in courtrooms, it evident that there is significant progress in this direction. However, the court's transparency will not be full if this practice is not eradicated.

Table 3: Venues for Hearings Sessions



Courts continuing to hold trials in offices are Municipal Courts in Dragash, Lipjan and Shtërpce. All trials monitored in these municipalities are held in offices. This damaging practice was also noticed in the Municipal Court in Gjakova averaging about 82 percent, Vitia with 90 percent, Kaçanik with 80 percent and Gjilan with 74 percent of cases held in judges' offices.

According to BIRN monitoring, there are courtrooms in Municipal Courts in Dragash, Gjilan and Vitia, but the majority of trials are held in offices of judges. While the courtroom in Dragash is not used for hearings, but rather for other services of the court, the one in Gjilan is not used to the judges' practice.

Numerous cases were observed where hearings were held in judges' offices. In the Municipal Court in Gjakovë, in the criminal matter "Aggravated theft", with the case number P. No. 545/05, the session was held in the office of Judge Blerta Doli, who was also the Presiding Judge. During the course of the session the courtrooms were vacant, which also led to complaints by the correction service officers.

Courtrooms were also vacant when another hearing was held in this court in the criminal matter "Attack against an Official Person", with case number P. No. 530/06. The hearing was held in

<sup>82</sup> BIRN has reported for four years on the lack of announcements of hearing sessions in the announcement board. See the last annual courts' monitoring report March-December 2011", [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

<sup>83</sup> Hearing session monitored on 05 September 2012

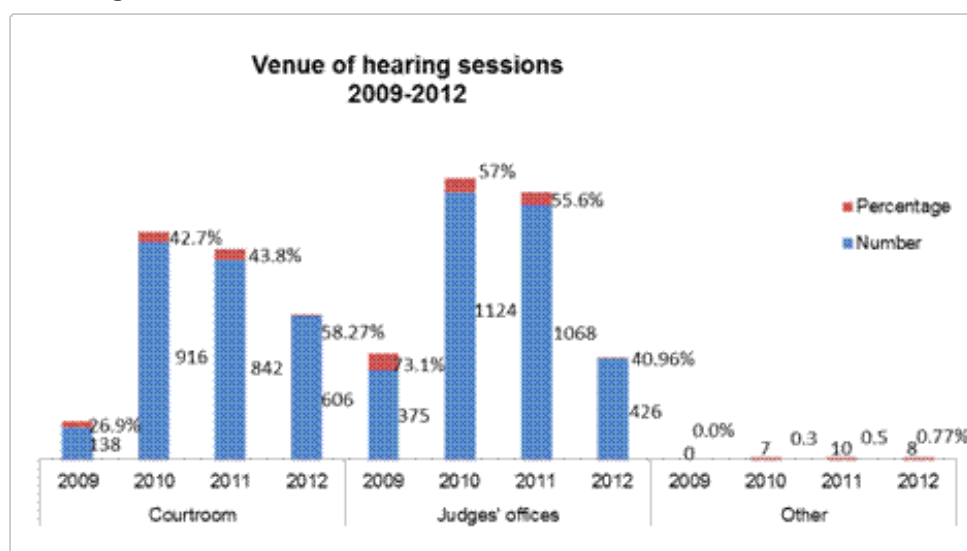
the office of Judge Hilmi Hoxha, where the working conditions were rather difficult due to the crowd assembled in a small office. The crowd consisted of the trial panel, the prosecutor, two correction officers, two damaged parties and one BIRN monitor.

Our monitoring has also observed that in the Municipal Court in Kaçanik, around 80 percent of hearings were held in judges' offices, although courtrooms are fully functional. For example, in the trial on the criminal matter "Forest Theft" case number P. No. 236/10, the hearing was held in the office of Judge Shabi Idrizi.

Positive examples include the Municipal Court in Ferizaj with around 91 percent of hearings held in courtrooms, District Court in Prishtina with 92 percent and District Court in Peja with circa. 87 percent of trials held in courtrooms.

The table below shows the positive trend of hearings held in courtrooms, rather than in offices.

Table 4: Venue where hearings were held 2009 - 2012



According to the table, which shows monitoring efforts in years, the number of

hearings held in courtrooms has increased thus representing an overall improvement.

<sup>83</sup>BIRN ka raportuar për katër vite me rradhë për mungesën e lajmërimit të seancave gjyqësore në tabelën e shpalljeve. Shih raportin e fundit vjetor të monitorimit mars-dhjetor 2011", [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

<sup>84</sup>Seanca është monitoruar më 05 shtator 2012

In 2009, only 26.9 percent of trials were held in courtrooms. This percentage increased to 42.47 percent in the following year. The positive trend also continued in 2011, with 43.8 percent and in 2012 with 58.27 percent.

Acting President of the Municipal Court in Prishtina stated that it may happen that hearings are held in offices, although the courtroom was vacant. According to Saliuka this happens because judges believe that the courtroom is taken. However, the Acting President also complained on the lack of courtrooms as the two rooms in the Municipal Court of Prishtina in most cases are occupied by EULEX and recently the District Court in Prishtina.

The President of the Municipal Court in Gjilan, Ramiz Azizi, stated that there are eleven judges in his court and there is only one courtroom. This situation was reported to complicate and make impossible the holding of all trials in the courtroom. "Therefore, only trials with a larger number of parties involved are held in courtrooms" said President Azizi.

The KJC Chairman, Enver Peci, who agreed with the concrete findings of the report on hearings held in offices when courtrooms are vacant, said that participation of interested parties in public hearings cannot be prohibited. "When they are held in offices, Judges say to the interested persons that there is no room available inside the office" said Chairman Peci.

According to him, KJC is aware of the need

for new buildings or courtrooms. "We are not satisfied with the solution of USAID with model courts as an intervention was done only inside rather than increasing the space or making annexations to the court" said Enver Peci. According to him, Gjilan will have a new Court in ten years and new constructions will commence in Ferizaj in 2013. "If we had EUR 2 million to invest every year, new buildings would be built in all centres. These funds would enable new buildings and new spaces" said Chairman Peci.

Meanwhile, the President of the Municipal Court in Ferizaj, Bashkim Hyseni, stated that it would be better if there was a better coordination by judges ensuring a maximal usage of existing courtrooms.

### **9. Schedule of hearing sessions is not respected**

Although scheduled earlier, hearing sessions do not always commence on time. As noted in the chapter on the lack of coordination within the judiciary on the schedule of hearings, trial panels or judges, prosecutors, lawyers and parties are all causing delays in hearings. Failure to respect the commencement schedules of the trials has been reported since 2009.

Compared to 2009, when only around 30 percent of hearings commenced on time, judges, prosecutors, lawyers and other parties have shown their readiness to help increase the number the punctuality in hearings in an effort to improve the overall performance.

<sup>85</sup> Seanca është monitoruar më 04 tetor 2012.

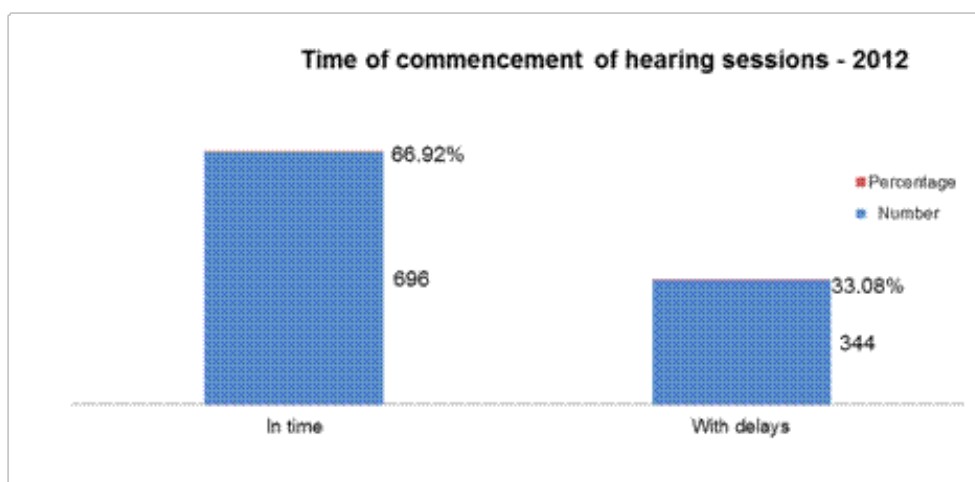
<sup>86</sup> Seanca është monitoruar më 9 tetor 2012

<sup>87</sup> Përkundër faktit se 90% e rasteve të monitoruara janë mbajtur në sallën e gjykatës, monitoruesi i BIRN ka parë që shumë seanca të tjera gjyqësore për vepra më të lehta mbahen në zyrat e gjykatësve. Po ashtu monitoruesi ka parë që gjykatësit paraparak zakonisht seancat e tyre për caktimin e masave të sigurisë dhe konfiimit të aktakuzave, ku ka më pak të pandehur, i mbajnë në zyrat e tyre.



In 2012, 33.33 percent of hearings commenced with delays and 66.67 percent commenced on time as schedules by the court.

Table 5: Time of the commencement of hearings



The following table shows that delays of parties in procedure are the main reason for delayed commencements of hearings.

<sup>88</sup> - gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

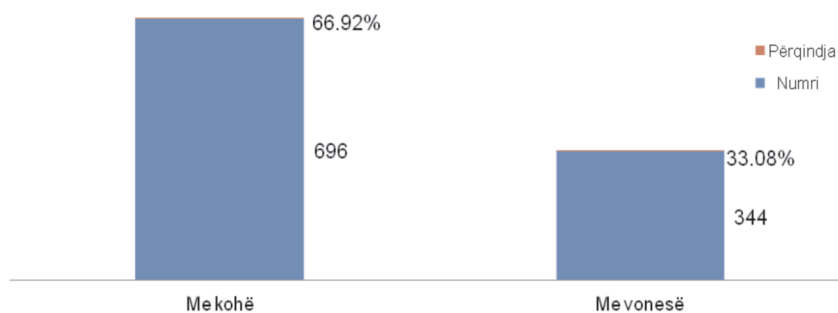
<sup>89</sup> Ibid.

<sup>90</sup> - gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

<sup>91</sup> Ibid.

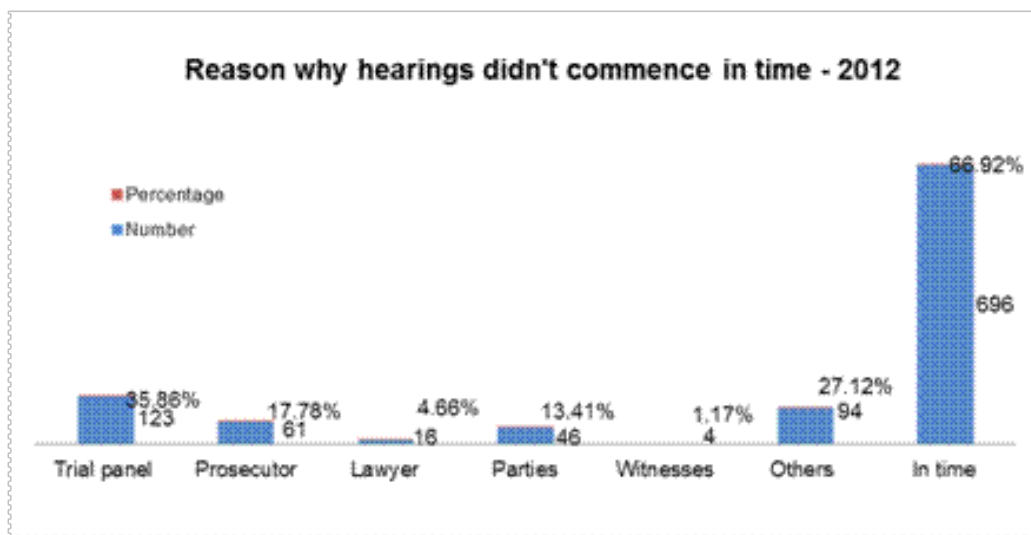
The following table shows that delays of parties in procedure are the main reason for delayed commencements of hearings.

Koha e fillimit të seancës - 2012



<sup>92</sup>Rrjeti Ballkanik i Gazetarisë Hulumtuese ka raportuar për katër vite me rradhë mos respektimin e orarit të seancave gjyqësore. Shih raportin e fundit vjetor të monitorimit mars-dhjetor 2011, [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

Table 6: Reasons for delays in commencement of hearings



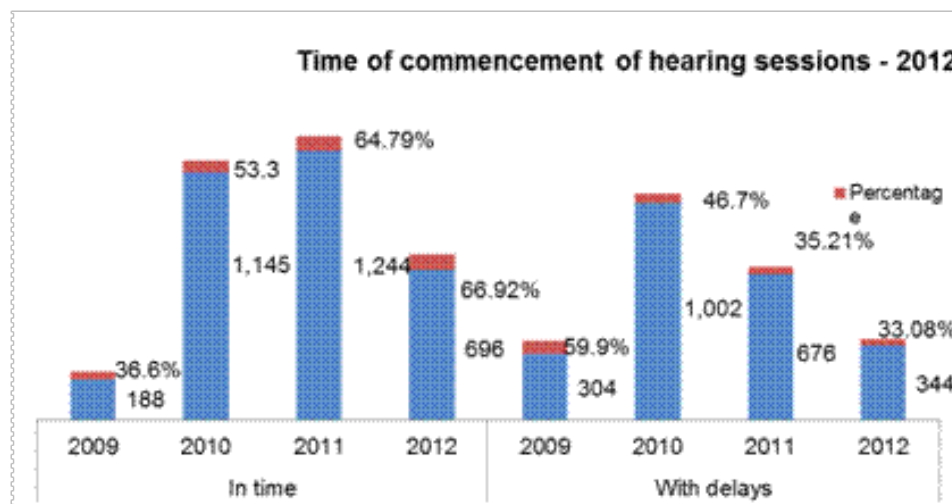
The table shows that the late arrival of the trial panel in the courtroom or office, depending where the session is held, is the main cause of delay. In 35.86 percent of the cases, the trial panel or the judge arrive late. Compared to the previous year, the timely commencement of hearings due to delays of the trial panel has increased in 2012. In 2011, the trial panel or judges were late in 25 percent of monitored hearings.

Compared to 2010, when this percentage was only 14, it can be concluded that there is a positive trends relating to the enhancement of punctuation.

In addition to the trial panel, other reasons for late commencement are late arrivals of the public prosecutor, in 17 percent of cases, delays of the involved parties, in around 13 percent, as well as issues with the delivery of summonses and delays in transportation of defendants.

In 2009, when BIRN started its courts' monitoring project, more than half of trials, 59.9%, commenced after delays.

Table 7: Time of commencement of sessions 2009 – 2012



The following cases illustrate monitored hearings which have started late due to delays of the trial panel or the judge.

In the Municipal Court in Ferizaj, the hearing scheduled to commence at 10:00 started with a delay of 25 minutes due to the late arrival of the trial panel. Sahit Krasniqi was Presiding and he was being assisted by the lay judges Asllan Zariqi and Islam Sfarqa. This was a criminal case of “Aggravated Theft” case number P. No. 1347/11. Such tardiness forced other participants to wait for the trial and led to delays in the process with consequences in the late commencement in other subsequent trials scheduled to take place on the same day.

In the trial held in the District Court in Prishtina, the hearing sessions scheduled to commence at 13:00 did not start on time.

Parties and witness Shefqet Berisha were forced to wait until the local member of the panel Judge Tonka Berishaj arrived. During this time she was in a Court Meeting. After Judge Berishaj arrived, the panel took a Decision to inform the parties that the session will be adjourned. The reason for the adjournment was the lack of regular summons for the damaged party, the Government of Kosovo. Victor Pardal was Presiding Judge with members Tonka Berishaj and Tore Thomasson. This was the criminal case, “Abuse of Official Position or Authority” with the case number P. No. 638/11.

In addition to forcing parties to wait for almost one hour for the trial, adjournments have an impact on the case backlog and overall delays to court proceedings.

<sup>95</sup> Seanca është monitruar më 21 shkurt 2012

<sup>96</sup> Seanca është monitruar më 27 shkurt 2012

<sup>97</sup> Seanca është monitruar më 30 maj 2012

<sup>98</sup> Seanca është monitruar më 04 shtator 2012

<sup>99</sup> Seanca është monitruar më 06 shtator 2012

<sup>100</sup> Seanca është monitruar më 30 janar 2012

<sup>101</sup> Seanca është monitruar më 12 prill 2012

Another similar case was in a trial in the District Court in Prishtina. The hearing session in the criminal matter “Misappropriation in Office” commenced with delay of 50 minutes, because the Presiding Judge, Hajrie Shala, was also involved in the review of another criminal matter. The case number was P. No. 551/10.

In the trial held in the Municipal Court in Gjilan, the hearing in the civil matter “Payment of Personal Incomes” commenced with a delay of 20 minutes because of the tardiness of judge Burim Emerllahu. The case number was C. No. 638/2007.

The Judge was also late in the trial held in the Municipal Court in Gjakova. The hearing in the civil matter “Indemnification” started with a delay of 20 minutes, because of the late arrival of Judge Adem Ademaj, who justified his tardiness with his attendance at a wedding. The case number was C. No. 206/08.

In another monitored hearing in the District Court in Peja, the hearing in the criminal matter “Abusing Official Position”, case number KA. No. 228/11 commenced with a delay of 25 minutes due to the tardiness of the Confirmation Judge Vladimir Mikulla.

A delays was also reported at a trial in the Municipal Court in Deçan where the hearing on the criminal matter “Aggravated Theft” commenced with a delay of 40 minutes due

to the late arrival of Judge Sylë Lokaj, who was busy in another trial. The case number was P. No. 81/12.

However, it is not only judges who are late in hearings, causing delays and adjournments of trials. Examples of prosecutors arriving late in hearings are presented below.

The hearing session at a trial held in the Municipal Court in Ferizaj, started with a delay of 45 minutes due to the tardiness of prosecutor Agim Kuka. The original scheduled time for the commencement of the hearing session was 10:30. The Judge of this criminal case was Agim Maliqi, and the offence was “Counterfeit Money”, case number P. No. 293/10.

In the District Court in Prishtina, the hearing in the criminal matter “Aggravated Murder and Attempted Murder”, commenced with a delay of ten minutes due to the late arrival of Special Prosecutor Maurizio Salustro, due to his obligations in the prosecution. The Presiding Judge was Tore Thommason and the Members were Bexhet Muçiçi and Laura Liguori. The case number was P. No. 592/11.

Another trial held in the Municipal Court in Suhareka, in the criminal matter “Theft”, case number P. No. 548/10, started with a delay of 25 minutes, due to the lateness of the case prosecutor, Mehreme Hoxha.

<sup>102</sup> Seanca është monitruar më 14 maj 2012

<sup>103</sup> Seanca është monitruar më 27 mars 2012

<sup>104</sup> Seanca është monitruar më 29 tetor 2012

<sup>105</sup> Seanca është monitruar më 28 qershor 2012

<sup>106</sup> Seanca është monitruar më 27 mars 2012

<sup>107</sup> Seanca është monitruar më 27 shkurt 2012

In the District Court in Prizren, the hearing in the criminal matter “Grievous Bodily Harm”, including criminal offences “Robbery” and “Light Bodily Harm” commenced with a delay of 25 minutes because of the late arrival of prosecutor Genc Nixha, who, at the time, was also involved in another hearing in the court, for which he had informed the trial panel. Case number was P. No. 40/12, with Judge Vatoni Dërguti.

BIRN monitoring has also identified other cases of delays in court proceedings such as those caused by the lateness of lawyers, defendants, police and the transportation of defendants, which are illustrated below.

In the trial held in the Municipal Court in Suhareka, the hearing in the civil matter “Lawsuit on the transfer of real estate”, commenced with a delay of 30 minutes due to the lateness of Lawyer Durak Fondaj. The case number was C. No. 196/11 and the Judge of the case was Shaban Zëqiraj.

The trial held in the District Court in Prizren, in the criminal matter number P. No. 39/12, the hearing commenced with a delay of one hour and ten minutes, due to the late arrival of defendants' transportation unit from the detention centre in Peja. During this period, Prosecutor Ervehe Gashi stayed in the court's corridor waiting for the trial to commence, while parties wandered in the corridors and others stayed in the courtroom. Presiding Judge was Vatoni Dërguti.

At the hearing held in the Municipal Court in Ferizaj, the hearing in the criminal matter “Aggravated Theft”, scheduled to commence at 13:15, started with a one hour delay caused by the failure to bring the defendants to court in a timely manner. The case number was KA. No. 54/10.

Another monitoring at the District Court in Prishtina on the criminal matter “Aggravated Murder and Attempted Murder”, with case number P. No. 592/11, shows that the session started with a 40 minute delay due to the late arrival of defendants, namely the police's defendants transportation unit. Presiding Judge was Tore Thommason with Members Bexhet Muçiqi and Laura Liguori.

Delays in the commencement of the trial caused other participants to wait for 40 minutes and also affected the timely commencement of other subsequent hearings scheduled for the same day.

According Enver Peci, Chairman of KJC, delays of up to 20 minutes can be tolerated, whereas the President of the Municipal Court in Klina, Jashar Gashi considered that reasons for late commencement of court hearings occur mostly because judges are busy with other prior hearings. “It's not the judge's fault that a hearing session lasts longer” said Jashar Gashi, who also added that planning and scheduling hearings cannot take into account an estimated time for

<sup>102</sup> Seanca është monitruar më 14 maj 2012

<sup>103</sup> Seanca është monitruar më 27 mars 2012

<sup>104</sup> Seanca është monitruar më 29 tetor 2012

<sup>105</sup> Seanca është monitruar më 28 qershor 2012

<sup>106</sup> Seanca është monitruar më 27 mars 2012

<sup>107</sup> Seanca është monitruar më 27 shkurt 2012

the hearing to finish and used this argument to rationalise the late commencement of subsequent hearings.

Delays in punctual commencement of hearings remains a key issue related to judicial procedures.

Such delays continue to cause difficulties in the course of other trials, which are postponed due to delays contributing to the overall backlog in courts and contribute to further complications in court procedures.

#### **9. Use of electronic equipment in courts**

Six District Courts in Kosovo – Prishtina, Gjilan, Prizren, Peja, Mitrovica and the Commercial District Court have courtrooms with audio-visual recording equipment for hearing sessions.

A recorded hearing session would result in a better adherence to procedural actions in public trials, safer storage of statements of parties, witnesses, judges. Their recording would encourage judges to ensure that all legal procedures are followed and that prosecutors arrive better prepared to the hearings.

The lack of use of audio and video recordings in hearings has been reported for four years.

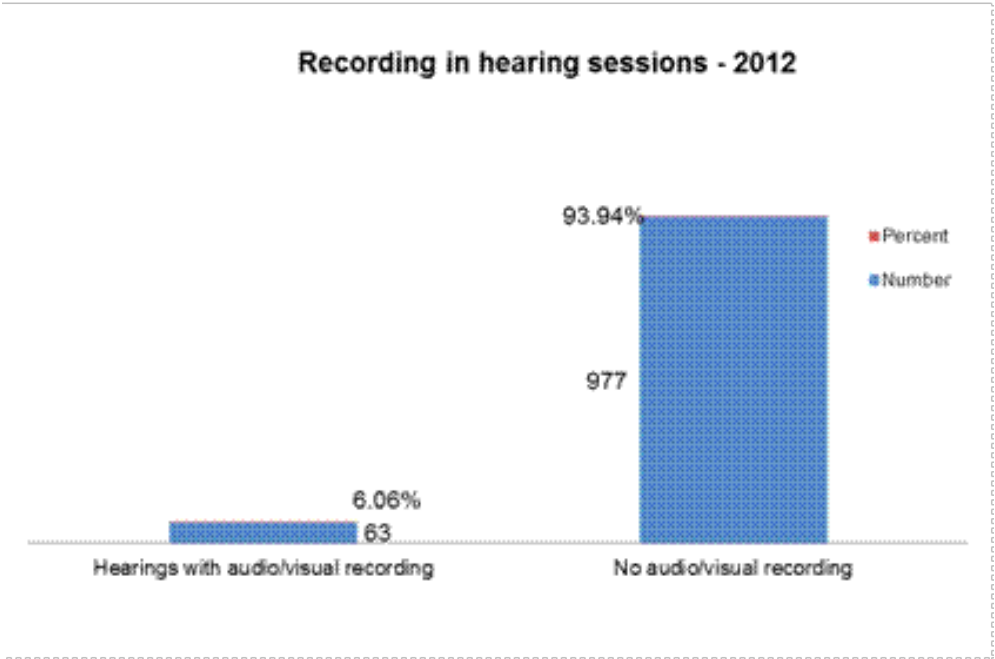
From 2009 until 2012, electronic recording equipments for hearing sessions were used in 7 percent of cases. In 2012, only about 63 hearings were recorded whereas 93% remain unrecorded.

<sup>108</sup> gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

<sup>109</sup> Në përjashtim të Gjykatës së Qarkut në Mitrovicë, e cila që nga viti 2008, për shkak të situatës politike, vazhdon të mbajë gjykimet e saja në objektin e gjykatës komunale në Vushtrri.

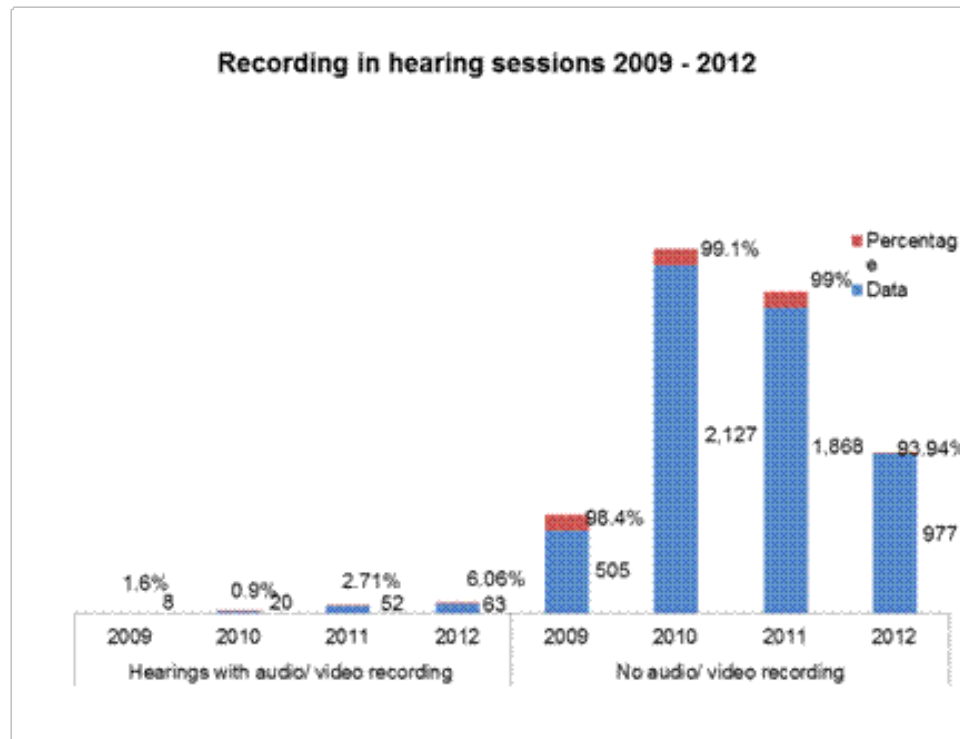
<sup>110</sup> Rrjeti Ballkanik i Gazetarisë Hulumtuese ka raportuar për katër vite me rradhë mungesën përdorimit të paisjeve elektronike në gjykata. Shih raportin e fundit vjetor të monitorimit mars-dhjetor 2011, [http://www.jetanekosove.com/repository/docs/raporti\\_i\\_monitorimit\\_te\\_gjykatave\\_alb\\_820455.pdf](http://www.jetanekosove.com/repository/docs/raporti_i_monitorimit_te_gjykatave_alb_820455.pdf)

Table 8: Recording of Hearing Sessions



The following table shows the number of hearing sessions with audio-video recording, from the beginning of BIRN court monitoring.



**Table 9: Recording of hearing sessions 2009 - 2012**

In the BIRN-organized roundtable on the findings of the court monitoring report in 2012, Chief Prosecutor Ismet Kabashi stated that the best possible development would be to record all hearings, as according to him, this would assist the second instance in determining all relevant procedural actions. The significance of authenticity and correct determination of procedural actions was

also mentioned by the President of the Municipal Court in Kamenica, Zijadin Spahiu, Municipal Court in Ferizaj, Bashkim Hyseni, and other roundtable participants. Zijadin Spahiu added that failure to include any statement given during the court hearing may have an impact on the entire process.

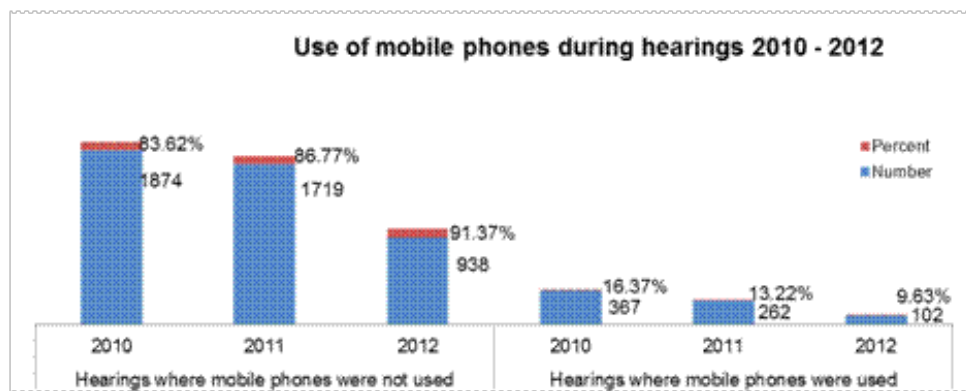
<sup>111</sup>. gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë.

## 10. Use of mobile phones in hearings

Presiding Judges and case judges are obliged to ensure orderly court proceedings, which also include the prohibition of use of mobile phones in hearings. Usage of phones in hearings was monitored from 2008 and a positive trend has been observed.

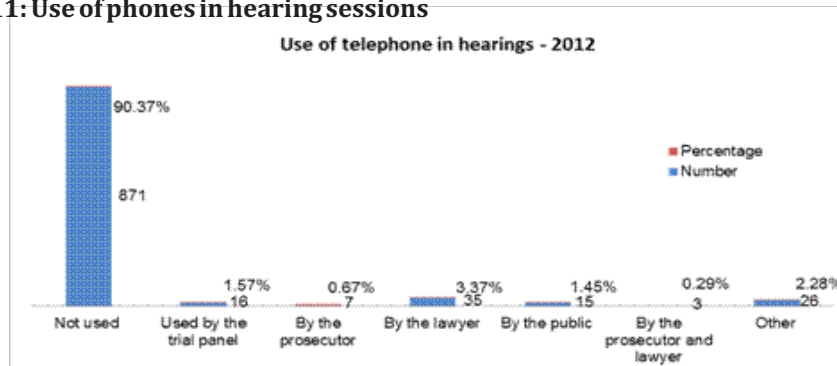
The following table shows the number and percentage of monitored cases where mobile phones were used, cases where they were not used and cases where phones were used by all parties, from 2009 until 2012.

Table 10: Use of phones in hearing sessions 2010 - 2012



While phones were used in 2010 in around 17 percent of monitored cases, in 2012 this figure declined to 9 percent. But who uses phones the most during the

hearings? The following is an illustration of cases indicating most frequent users of phones during the hearing sessions.

**Table 11: Use of phones in hearing sessions**

As it can be seen from the table, in 90 percent of monitored cases phones were not used at all. However, in instances where phones were used they were most frequently used by lawyers, with 3 percent (35 hearing sessions). The trial panel or case judges have also used phones in two percent of monitored cases, both prosecutors and lawyers in 0.29 percent and other parties in two percent of the monitored cases.

Last year, the trial panel or case judges have used phones in 2.29 percent of monitored hearing sessions. This year, phones were used in only 1.57 percent of monitored cases, thus indicating an improvement.

Ali Selimaj, Prosecutor of the Municipal Prosecutor's Office in Gjakova said that the use of telephones and the wearing of robes are considered matters of general and internal behaviour. Hence, their use or failure to use are issues related to mentality that cannot be changed. "There are cases when the defendants receive phone calls during the interrogation", - Selimaj added. Therefore, according to him, KJC and KPC

should initially provide judges and prosecutors with adequate working conditions and only then take measures related to use of telephones, the wearing of robes and the restriction of smoking in offices and corridors or anywhere else indoors.

Moreover, some of the participants also requested better conditions from the President of Republic of Kosovo. The President of Municipal Court in Viti, Skender Shefkiu, initially expressed his concerns on the fact that, according to him, it was never propagated that the judiciary successfully closed hundreds and thousands of cases. "Judges function between four fires bearing in mind the conditions they have worked and continue to work in," Shefkiu says. He also claims that the President and the rest should first of all consider the working state and facilities of judges and judiciary staff, since, according to him, judges have no will to go to work due to the overloading with work that they face, which is a major source of stress for them.

<sup>112</sup>S. gjeturave të monitorimit 2012. BIRN. 17 dhjetor 2012. Prishtinë..

Also, they have to use their weekends to address the backlog and unexecuted cases, Skender Shefkiu adds. "There is room for improvement, but a number of judges would gladly be transferred to other posts if they became available".

Meanwhile, KJC Chairman Enver Peci, said he was happy with judiciary's development and advancement year after year. Last year's report was worse than this year's report, he said, and logistical problems, backlog, etc. leave room for improvement. The Chairman also promises to vest all efforts on further improving their operations.

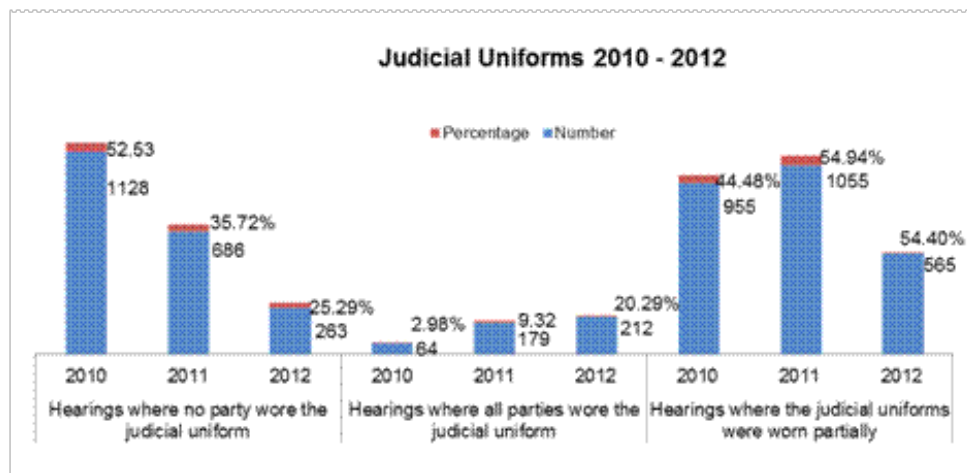
#### 11. Judicial Uniforms

Use of uniforms by Judges, trial panel members, prosecutors and lawyers is not only a procedural requirement, but it also has an impact on creating a positive image of professionalism in courts.

Presiding Judges or case judges must ensure that in the beginning of the hearing session all parties respect the circular issued by the Supreme Court two years ago, on the Code of Uniforms for Judges, Prosecutors and Lawyers, which is also regulated in the ethics' provisions. Failure to abide by the Administrative Direction (Circular on the Uniforms) is considered a violation of the Code of Ethics and Professional Conduct for Judges and Prosecutors.

Since 2010, when in more than 50 percent of hearing sessions uniforms were not used by either party, the situation has improved now with around 35%.

See table below.

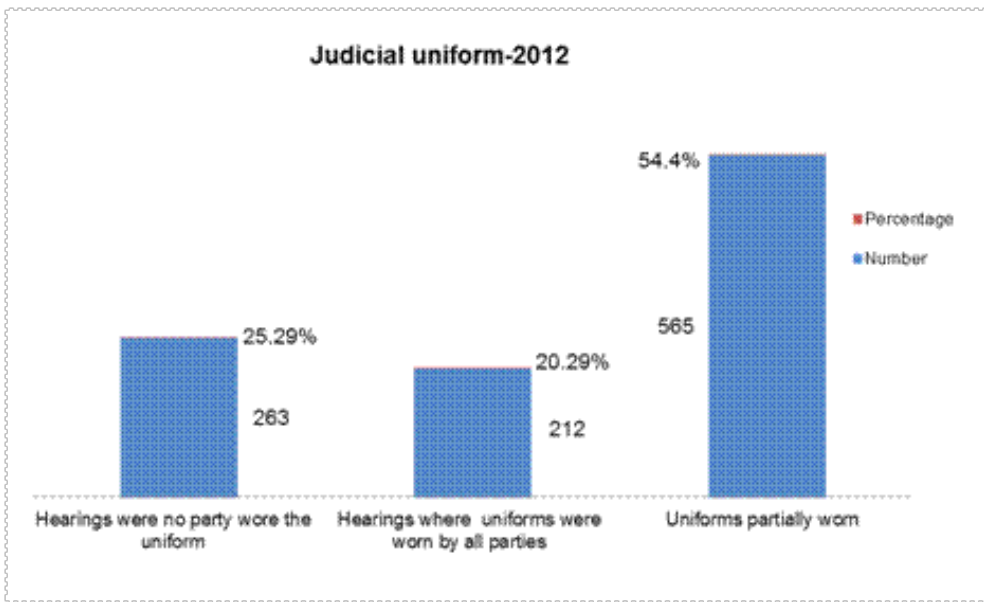


The table shows an improvement in respecting the code of uniform, where in 2012 in over 20 percent of cases robes were worn by all parties; in 54.4 percent of monitored trials, robes were worn by at least one of the parties in procedure, in comparison with 34 percent use of robes in 2010.

The table below indicates the number and percentage of hearings monitored in 2012, where uniforms were not used at all, used by all parties, or used partially only by judges, prosecutors or lawyers.

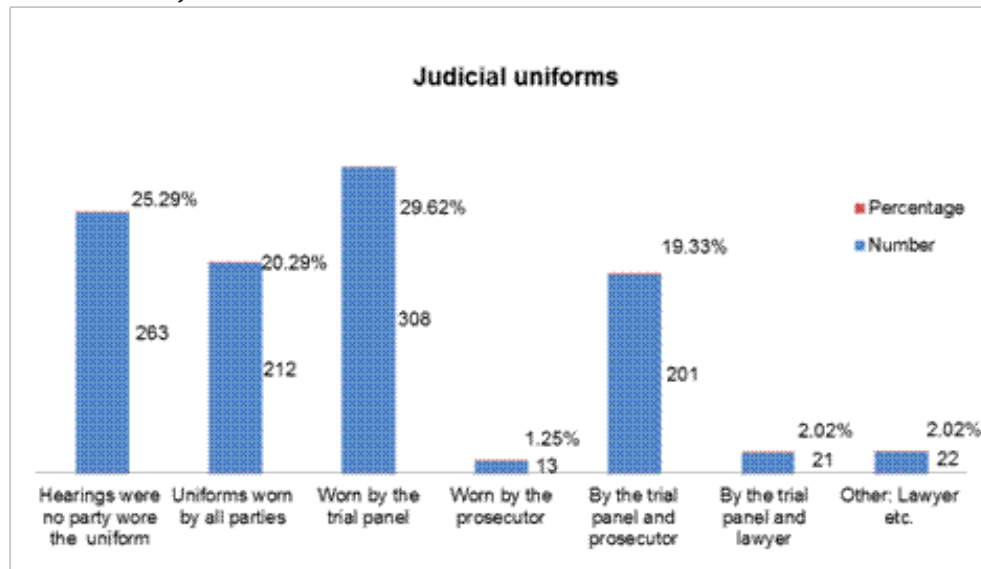
<sup>117</sup>Ibid.  
<sup>118</sup>..

Table 13: Use of judicial uniform



Uniforms are used increasingly more by judges, prosecutors and lawyers compared to the previous years. The table below shows the use of uniforms from 2010 until 2012 including the number of case where

hearings were compliant with the procedures. It also gives an indication of the percentage.

**Table 14: Use of judicial uniform**

BIRN monitoring has identified that in only 20 percent of cases monitored uniforms were used by all parties. In other cases uniforms were either not used at all (25 percent), were used by the trial panel (30 percent), trial panel members and prosecutor (20 percent).

In the roundtable for discussion of BIRN's findings on court monitoring in 2012, participating judges and prosecutors stated that there is a lack of robes and asked the KJC and KPC to provide sufficient quantities of uniforms for all.

President of the Municipal Court in Gjakova, Afijete Sada – Glllogjani, said that they only possess four robes, although the Municipal Court in Gjakova employs eight judges. The President also added that they submitted their request to KJC; however, they received no response yet. "We have to lend the robes to each other in order to ensure we're

always wearing one," said President Sada-Glllogjani.

The lack of sufficient robes was also noted by the President of the Municipal Court in Kamenica, Zijadin Spahiu.

On the other hand, KJC Chairman Enver Peci, admits that there is a lack of official robes. Among other, Peci adds that the insufficiency of robes is being addressed and that he believes that in 2013, all courts will be equipped with a sufficient number of official robes.

Although the use of uniforms by judges, prosecutors and lawyers has improved in years, the failure to wear uniforms is still present in the hearings. Use of uniforms would give the entire judicial process a more formal and official quality, and other parties and participants in the procedure would show higher considerations and respect for the judicial process and courts themselves.

Presiding judges/case judges should ensure that prior to the commencement of hearings prosecutors and lawyers follow the instructions on the use of the uniform. BIRN continues to consider that the wearing of uniforms by all judges, prosecutors and attorneys attending court hearings is necessary.

#### RECOMENDATIONS:

##### Recommendations to the Assembly of Kosovo:

BIRN has highlighted a number of last year's recommendations to the Assembly of Kosovo which were not addressed meanwhile:

- The parliamentary committee on legislation and judiciary should more rigorously monitor the implementation of legislation on the judiciary;
- The parliamentary committee on legislation and judiciary should facilitate active access of the civil society in the compilation and adoption of legislation on the judiciary;

##### Recommendations to the Government of Kosovo:

Unaddressed recommendations from last year:

- The Government of Kosovo should guarantee transparency in the compilation of legislation on the judiciary;
- The Government of Kosovo should provide sufficient budget allocations to cover all KJC requirements;
- The Government of Kosovo should ensure sufficient means to provide for the witness protection program;
- The Government of Kosovo should allocate sufficient means for the construction of adequate court facilities of contemporary proportions;
- The Government of Kosovo should process the law on judges' retirement pensions.

##### Recommendations to the Kosovo Judicial Council:

BIRN monitoring continuously addressed the problems of the judiciary for the previous 4-5 years and was able to note small improvements from year to year, especially on technical issues, as presented below:

	2011	2012
Notification of court trials in the bulletin board	72.12%	77.76%
Wear of uniforms (by all parties – judge, prosecutor, defense attorney)	9%	20.29%
Use of courtrooms	43.85%	58.27%
Non-use of mobile phones during trials	89.62%	90.37%



Based on the findings of the 2010 and 2011 court monitoring reports, and the recommendations of the 2012 court monitoring report, the Kosovo Judicial council failed to:

- Ensure greater transparency in providing more detailed information on the activities of the judiciary;
- Evaluate the performance of couriers and undertake disciplinary measures against negligent couriers;
- Undertake the necessary measures to ensure that mobile phones are not used in court facilities;
- Ensure respect of the robe code in hearings;
- Ensure that hearings are held in courtrooms, whenever possible;
- Ensure a functional hearing notification system in all courts;
- Undertake necessary measures against judges that violate parties' procedural rights;
- Ensure the opening of an official web-page for the announcement of times and places of hearings and publication of judgments;
- Ensure that presiding judges inform the chief prosecutor on absence of public prosecutors in hearings they are to attend ex officio;
- Ensure the activation of audio and video recording systems during hearings;
- Ensure that case judges exercise sufficient scrutiny to ensure that summonses include all required information and that are sealed, as required by law;
- Ensure that presiding judges and administrators inform the relevant disciplinary committees in cases when the courier fail to regularly deliver summonses;
- Ensure that presiding judges do not use mobile phones during court hearings;
- Ensure that presiding judges provide for due process and judicial review, by not allowing use of mobile phones during court hearings by other parties in procedure;
- KJC, respectively its Secretariat, should request from model court administrators to ensure the implementation of model court

programs;

-Through the panel, judges should determine a common sanctioning policy for recurring cases;

-Judges should apply adequate sanctioning policies for perpetrators, in proportion with the crimes committed;

-Judges should coordinate better with prosecutors when scheduling court hearings;

-Through a circular, KJC should suspend the practice of awarding new numbers to cases resolved through punitive orders, upon their appeal;

-Judges are obliged to conclude in the minutes the entire hearing proceeding;

-KJC and USAID should continue the execution case registration and reduction program.

-Better engagement and coordination with the Kosovo Police and municipalities should be sought, in order to resolve the problem regarding street and settlement naming in Kosovo municipalities;

-KJC should increase the number of court couriers at the request of respective courts;;  
 -KJC should seek accountability by PTK regarding expenditures made in relation to the servicing of court summons by postmen;  
 -KJC should implement projects related to the expansion of court facilities for judges and court personnel in view of the increased number of judges.  
 -KJC should intervene as soon as possible in order to provide special facilities for protected witnesses;  
 -KJC should undertake adequate disciplinary measures against judges and other court staff in relation to the prescription of cases;  
 -KJC or more specifically its Department for Statistics should possess all relevant statistics on prescribed cases, adequately disaggregated individually and by court;  
 -KJC should sanction as soon as possible legal rules regarding inter-court notifications on persons that are subject to procedures;  
 -All Kosovo courts should respect their obligation pertaining to the notification of competent courts on persons that are subject to court procedures;  
 -KJC should unify the interpretation of Administrative Instruction 2008/2, which will lead to the unique interpretation of relevant provisions on fees by all courts;  
 -KJC should provide adequate interpretation during court hearings for parties in procedure, as required.

Below we list some of the BIRN recommendations that KJC was able to address last year:

- Completion of the number of judge and prosecutor vacancies in courts of all levels;
- Ensure facilities for new basic courts and new departments;
- Initiation of prosecution of offenders of court procedures during trials;
- KJC provided LCD projectors used for the announcement of judgments, for all courts.

### **Recommendations to the Kosovo Prosecutorial Council:**

Below we list the some of the BIRN recommendations from last year, which were not addressed by KPC:

- Prosecutors should ensure better coordination with judges in scheduling of court hearings;
- Prosecutors should be better prepared to present their indictments;
- KPC should take measures against prosecutors that present their indictments without being in possession of the accusation act, which they occasionally lend from judges;
- KPC should ensure greater transparency of prosecutors and their readiness to be more communicative with media and citizens, while not endangering judicial proceedings;

Addressed recommendations:

- KPC should complete the vacant prosecutor posts in prosecutor offices of all levels;

### **Recommendation to the Kosovo Police:**

- To inform the court on failure to implement orders and provide explanation regarding the reasons for such failures;

- To undertake all necessary measures against police officers that do not implement court orders or neglect their responsibilities towards courts.

**ACKNOWLEDGMENTS**

BIRN wishes to express its sincere gratitude to the following participants of the roundtable for their time, responses and transparency in discussing problems of the judiciary and findings of the court monitoring process:

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

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Avdi Dinaj, Supreme Court of Kosovo;

Ali Rexha, Kosovo Special Prosecutor;

Aishe Qorri Berisha, Spokeswoman, Kosovo Judicial Council, KJC;

Liridonë Kozmaqi, Spokeswoman, State Prosecutor;

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Skender Shefkiu, Municipal Court in Viti;

Zijadin Spahiu, Municipal Court in Kamenica;

Daut Behrami, Municipal Court in Glllogovc;

Jashar Gashi, Municipal Court in Klina;

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Afijete Sada – Glllogjani, Municipal Court in Gjakova;

Rabije Jakupi, Municipal Prosecutor's Office in Gjiilan;

Enver Sokoli, Municipal Prosecutor's Office Prizren;

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