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Introduction

Balkan Investigative Reporting Network conducted court monitoring for the sixth year in a row, covering all levels of courts in Kosovo.

As of January 2013, all courts and prosecutorial offices work under a new organisational structure, under new criminal provisions and criminal procedures.

BIRN's monitoring continued to identify technical and procedural irregularities as well as ethical issues that occurred in spite of government efforts to improve Kosovo's rule of law and in contravention of recommendations produced by BIRN in our past five years of monitoring.

During 2013, BIRN paid special attention initially to the functioning of courts from the perspective of the new legal and organisational regulations. We identified problems related to the insufficient number of judges, prosecutors, professional associates and legal interns, which led to difficulties in composing trial panels. BIRN also raised alarm about the lack of a unified criminal code on Albanian and English languages, due to discrepancies between them.

As in previous years, BIRN monitoring also found many human rights violations during trial proceedings. These include incorrect conclusions in the minutes of trial proceedings or only partial conclusions, lack of reading the rights of witnesses and other parties during the court proceedings, and a lack of respect of the order in which the defendants are questioned, among other things.

The backlog of unresolved cases remains a major factor which makes the work of the judiciary more difficult. This report discusses this issue and also includes examples of minor offences that are overburdening the judiciary.

This report also deals with the engagement of lawyers by the courts. Our monitoring and research reveals that lawyers were not engaged proportionally as it was planned.

Lack of judicial transparency continues to be a serious issue for the courts. Some courts do not publish court hearing where they are required to, and some hearings are held in judges' offices.

Delays in court hearings have also been noted. We also noted cell phone use during trials, an absence of court uniforms and also a lack of audio-visual recordings during trials.

All in all, we found a number of technical irregularities during our regular monitoring, but slight improvements have been made each year.

This report will also provide an analysis of the so-called big trials in which verdicts were rendered in 2013, including "Kleçka", "Tolaj and Bukoshi" case, the Nazmi Mustafi case and more.

Methodology

As in previous years, BIRN directly monitored court hearings, the results of which are reflected through the cases illustrated below.

The monitoring went on in 26 municipalities across Kosovo, in all regular courts, which also included all of the new established departments and branches as per the new organisational levels.¹

The report is based on 820 questionnaires filled out in 2013, out of which 601 represent hearings that were held, while 219 hearings were not held as planned.

Nature of the case (2013)	Basic Court: General department	Basic Court: Major Crimes department	Basic Court: Economic Crimes department	Supreme Court	Not held	Total
Number of court hearings	389	205	5	2	219	820

Nature of the case (2013)	Criminal	Civil	Supreme Court	Minor Offences	Total
Number of court hearings	580	231	2	7	820

While during 2008 (March 2008 – March 2009) 513 court hearings were monitored, in 2009 (June 2009 – March 2010) 1,247 court hearings were monitored. In 2010, BIRN monitored 2,147 court hearings (April 2010 – February 2011) while in the next period, March 2011 to December 2011, 2,525 court hearings were monitored in total. Last year, 1,441 court hearings were monitored in 2012. For the period of 2013 covered in this report, BIRN has monitored 820 court hearings. All together, since the beginning of court monitoring, BIRN has monitored 8,694 court hearings.

Period of time	2008/09	2009/10	2010/11	2011	2012	2013	Total
Hearings	513	1,248	2,147	2,525	1,441	820	8,694

¹ All court levels, including the Supreme Court, Court of Appeals and the Basic courts of the respective municipalities but excluding the court in the north of Mitrovica and its designated branches.

1. Judiciary in 2013 – difficulties during reform

Since January 2013, Kosovo's judiciary has undergone changes related to the internal organisational of courts and prosecutorial offices as well as to the Criminal Code and the Criminal Procedure Code.

Previously, courts that functioned as court of minor offences, those at the municipal and district level have been elevated to the basic level but divided into special departments. Furthermore, a Court of Appeals has been established in order to process appeal cases. Such a court did not exist before. Meanwhile, the Supreme Court has been released of some responsibilities, including administrative ones.

The Kosovo Prosecution was similarly reorganized. The former Municipal Prosecution and District Prosecution have been assumed to basic level, while an Appeals Prosecution has been established alongside the Special Prosecution and the State Prosecution as other existing levels.

Even with the legal and organisational changes, BIRN's monitoring also in 2013 reveals that the judiciary continues to face many struggles, particularly those related to the legal and organisational changes themselves.

Despite the fact that the vetting process has been finished both for judges and prosecutors, the insufficient number of the latter parties remains an evident problem.

Other problems related to errors in translating legislation, which have proven very difficult in treating certain cases has been encountered. Other problems, including the major backlog of unresolved cases, difficulties in composing the trial panel, the lack of professional associates and legal interns who would ease the work of the court still remain.

Initially, problems were identified in the amended legislation, namely the new criminal provisions.

Discrepancies from the Albanian to English versions of the Criminal Code of the Republic of Kosovo made it close to impossible to deal with some cases.

More precisely, article 437, paragraph 1 of the Criminal Code of the Republic of Kosovo, which deals with a lack

of reporting or fake reporting of assets, in the Albanian version foresees a sentence with a fine AND with effective imprisonment up to 3 months, while the English version foresees sanctions with fines OR effective imprisonment of up to 3 months.²

This means that while the Albanian version foresees both types of sanctions (fines to be paid and imprisonment), the English version provides alternative sanctions (fine to be paid or imprisonment) that may be given if the defendant is proven guilty.

Such a problem makes it difficult for judges to adjudicate a case related to a criminal offence of such nature precisely because of the discrepancies.³ Judges that dealt with cases of this criminal offence have requested from the head of the Supreme Court to provide a legal opinion and explanations on the abovementioned discrepancies. However, after BIRN's investigation, the Supreme Court of Kosovo has not come out with such an opinion and has not helped resolve the problem.

BIRN organized a roundtable to discuss the findings of the court monitoring report for 2013 attended by judges and prosecutors. However, the Supreme Court did not respond positively to BIRN's invitation and hence no representatives of this Court took part.

At the round table, representatives of the judiciary agreed that BIRN's report was an accurate assessment of the current situation. At one roundtable, Zyhdi Haziri, head of the Basic Court in Gjilan, said that the Albanian version should be considered the official version.⁴

Another major problem is the insufficient number of judges, which is particularly noticed when taken into consideration the big number of cases being treated and the new ones coming, but also its noticed when members of the trial are requested for the departments of major crimes of the Basic Courts.

The lack of judges has made it necessary for most basic court to borrow judges from other departments, particularly from the general departments.

² Article 437, par. 1 of the Criminal Code of Kosovo; criminal offence:

Failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations.

³ Interview with judge Nexhmedin Sejdiu, judge in the Basic Court in Prishtina, January 2014.

⁴ Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.



The changed criminal provisions that came into force in January 2013 have contributed to this, because that they do not foresee engaging lay-judges, which before 2013 used to be a method of composing the trial panel.

Borrowing judges is among the difficulties in composing trial panels, and has also contributed to delays or cases of these judges not being dealt with at all as initially scheduled.

All the regions of the Basic Courts in Prishtinë, Pejë, Prizren, Gjiilan, Mitrovicë, Ferizaj and Gjakovë have the same problem with insufficient numbers of judges, leading to difficulties in composing a trial panel. This means that the negative affect on court cases is to drag them on and on, even delaying them indefinitely.

The participants of the roundtable (judges and prosecutors) agreed with BIRN's findings. The head of Prishtina's Basic Court, Hamdi Ibrahim said that there is a disparity between the huge number of cases and small number of judges, which makes the work of the courts very difficult.

On the other hand, the head of the Judicial Council, Enver Peci, said that they have opened a call to fill the necessary number of judges and according to him an increased number of judges will contribute to easing the work of the judiciary.⁵

The legal changes brought upon the judiciary made it possible for the Basic Courts in Gjakova and Ferizaj to judge criminal cases with sanctions of more than 5 years for the first time.⁶ The Basic Court of Gjakova is now the competent court for the municipalities of Malisheva and Rahovec as well, which were previously under the competence of Prizren. The Basic Court of Ferizaj is now responsible for Kaçanik, Shtërpçë etc., instead of being, along with Ferizaj, under the competence of the District Court of Prishtina.

Apart from new court cases, these two courts have also taken on cases, which were previously under the competences of Peja, Prizren and Prishtina. The Basic Court of Gjakova has taken on 400 cases from Peja and Prizren while the court of Ferizaj has taken on 915 cases from the region of Prishtina. However, even with the huge burden of cases being processed or delegated from other courts, the number of judges of Gjakova and Ferizaj remains the same.

The Basic Court of Gjakova continues to have 13 judges, which according to officials of the court is very low compared to its needs. They emphasize that an additional

number of 10 more judges would be sufficient to fulfil the needs of this court, a request that has been addressed to the KJC. Though they were promised to have a bigger number of judges that did not happen until now.⁷

Similarly, the Basic Court of Ferizaj, which has 16 judges⁸ has also requested a few times from the KJC to increase the number of judges. According to the officials of the court, an additional number of 9 judges would be sufficient in order to fulfill its needs but the institution administering the courts, the KJC, has not answered their request yet.⁹

During the roundtable, the head of the Basic Court of Ferizaj, Bashkim Hyseni, said that in February, he opened a call to hire 10 judges for this court and that if these positions were filled, it would be easier to cope with the case volume.¹⁰

The fact that these courts deal with a huge number of cases but with an insufficient number of judges puts the latter in a difficult position, leaving an over-burdened court and with a backlog of unresolved cases.

In the annual conference of the judiciary at the end of November 2013, among the main concerns raised by most courts was the problem of composing the trial panels due to shortages in the number of judges. The head of the KJC, Enver Peci, said this was among the chief problems.¹¹

The judges asked that in cases of major crimes that foresee sanctions from 1 (one) to 10 (ten) years be decided only by one judge.¹² This is due to the problems and difficulties in composing the trial panel. According to the judges requesting this, such a change would automatically reduce the number of cases that require a panel of three judges, but it would also reflect on the performance of the general department of the courts, due to its judges being able to actually work on their own issues and cases which would ultimately reflect on the overall performance and efficiency of the court.

All the regions of the Basic Courts in Prishtinë, Pejë, Prizren, Gjiilan, Mitrovicë, Ferizaj and Gjakovë have the same problem with insufficient numbers of judges, leading to difficulties in composing a trial panel. This means that the negative effect on court cases is to drag them on and on, even delaying them indefinitely.

5 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

6 January 2013.

7 Interview with the administrator of the Basic Court in Gjakova, January 2014.

8 22 judges including the branches in Kaçanik and Shtërpçë.

9 Interview with the head and the administrator of the Basic Court in Ferizaj, January 2014.

10 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

11 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

12 The Annual Conference of the Judiciary, November 2013.



The Court of Appeals was made functional for the first time ever in June 2013, and is now the only competent body to adjudicate the complaints of all of basic courts across Kosovo. According to court officials, there are often 20 on-going cases at the same time.

According to them, the number of 34 judges¹³ is not enough to fulfil all the needs of this court, and has resulted in, delays or confusion on the part of judges to decide on many cases, which they discussed at BIRN's annual conference of the judiciary in November 2013.¹⁴

Court representatives asked that the Court of Appeals deal with cases by order of years but also take a verdict on the cases rather than sending them back for retrials or partial re-trials in basic courts. The judges complained that the Court of Appeals always sends the cases back to the same court that tried them initially, but according to them the Court may in fact take a verdict on the case without a new trial.

At the round table, Xhevdet Abazi from the Court of Appeals stated that these issues are well-defined by the legal basis governing them and it is normal to have struggles in the beginning because its a whole new court.¹⁵

BIRN has concluded that the delays in processing the cases and the hesitation of the Court of Appeals to rule violates the principle of free and reasonably timely trial. This is also reflected in the slow processing of cases, the backlog that forms and over-burdening of the basic courts.

BIRN recommends that the Court of Appeals deal with cases according to the order in which they were brought to the Court. It also recommends that the court issue a ruling on cases that the Law allows within the scope of its competencies. This way, the cases will not drag for a long time and further increase the backlog of unresolved cases.

Another problem identified in 2013 was the lack of a sufficient number of the judicial personnel such as professional associates. BIRN's monitoring identified the lack of professional associates in the majority of courts. Courts addressed requests for increased personnel to the Judicial Council.

According to the data gathered by BIRN in the Basic Courts and their respective branches in the municipalities that it monitors, some courts do not have any professional associates at all in their branches. The municipalities of Lipjan, Graçanicë, Shtërpçë, Dragash and Drenas have only one.

As per the statistics of the KJC, the number of professional associates is 69.

The following table shows the number of professional associates spread out on different regions:

PRIZREN REGION	
BASIC COURT, PRIZREN	09 PA
BRANCH IN SUHAREKË	01 PA
BRANCH IN RAHOVEC	01 PA
BRANCH IN MALISHEVË	01 PA
GJILANI REGION	
BASIC COURT, GJILAN	05 PA
BRANCH IN VITI	01 PA
BRANCH IN KAMENICË	01 PA
BRANCH IN NOVOBËRDË	01 PA
FERIZAJ REGION	
BASIC COURT, FERIZAJ	03 PA
BRANCH IN KAÇANIK	01 PA
MITROVICA REGION	
BASIC COURT, MITROVICË	05 PA
BRANCH IN VUSHTRRI	02 PA
BRANCH IN SKENDERAJ	01 PA
PRISHTINA REGION	
SUPREME COURT	04 PA
COURT OF APPEALS	11 PA
BASIC COURT	06 PA
BRANCH IN PODUJEVË	01 PA

¹³ http://KJC-ks.org/repository/docs/RAPORTI-VJETOR-2013_Final_620127.pdf.

¹⁴ Region of Mitrovica, Peja.

¹⁵ Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.



BRANCH IN LIPJAN	/
BRANCH IN DRENAS	/
BRANCH IN GRAČANICË	/
PEJA REGION	
BASIC COURT, PEJË	07 PA
BRANCH IN DEÇAN	01 PA
BRANCH IN ISTOG	01 PA
BRANCH IN KLINË	02 PA
BASIC COURT, GJAKOVË	04 PA
TOTAL	69 PA

According to this data, the Basic Court of Prizren is best positioned, with an initial number of 7 professional associates, which then increased to 9 after a request addressed to KJC was approved and put in place.

Prishtina's region, including the Basic Court in Prishtina and its branches in Podujevë, Lipjan, Graçanicë, Drenas and the special courts in Prishtina,¹⁶ have an overall number of 22 professional associates. However, Prishtina's region currently has 172,284 cases¹⁷ and 132 judges.¹⁸ The number of judges is insufficient to process the cases in court.

As illustrated in the table above, the other basic courts and their regional branches are positioned even worse in terms of the lack of professional associates.¹⁹

Some of the courts asked to increase the number of professional associates, but according to BIRN data, the requests made by the heads of the courts or the persons in charge of their branches remain unimplemented. Consequently, the courts continue to struggle.

The head of the KJC, Enver Peci, stated that there is a lack of professional associates. He said that potential candidates for this position must have the necessary professional experience, in addition to having passed the bar exam (jurisprudence).²⁰

Representatives of the other regions raise this issue too.²¹

Professional associates could help judges resolve their cases and undertake administrative functions. This would streamline the work of the judges because they would not have to deal with administrative issues.²²

Hence, BIRN recommends that the KJC take into account the requests of the judges to hire more professional associates in the basic courts and their branches, especially those lacking professional associates.

Currently, Kosovo's judicial system has 324 judges and only 69 professional associates. Bearing in mind the caseload of each court and the difficulties faced when dealing with them on the one hand and the role of professional associates in easing this burden for the court in the other hand, the KJC should hire one professional associate for each judge or at least one to work with every two judges.

Based on the current level of salary of professional associates, about EUR 390 monthly, and the need to hire 255 of them, KJC would have to allocate a budget of EUR 99,450 on monthly basis or EUR 1,193,400 annually for each judge to have one associate.

In the second scenario, if KJC were unable to secure the required budget, then it could hire one professional associate per two judges. KJC would need to hire 93 professional associates, which would bring the monthly amount to EUR 36,000 or EUR 435,240 annually.

BIRN believes that if KJC would be willing to grant such a request, it would be able to do so.

16 Supreme Court of Kosovo, the Complaints Panel of the Property Agency of Kosovo in the Supreme Court, Special Chamber of the Supreme Court and the Court of Appeals.

17 http://www.KJC-ks.org/repository/docs/RAPORTI-VJETOR-2013_Final_620127.pdf

18 Including the special courts in Prishtina such as: Supreme Court of Kosovo, the Complaints Panel of the Property Agency of Kosovo in the Supreme Court, Special Chamber of the Supreme Court and the Court of Appeals.

19 Branches of the courts located in Suharekë, Malishevë, Kamenicë, Kaçanik, Skenderaj, Istog, Deçan, Novobërdë, Podujevë and Viti, have only professional associate each.

20 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

21 Speeches of judges from the regions of Prishtina, Prizren, Peja, Gjiilan, Mitrovica, Ferizaj and Gjakova.

22 Such administrative issues would be the compilation of court verdicts and other necessary documents for the court proceeding, preparation of court summons and other procedural actions that would enable the court to orderly hold trial.

2. Procedural violations

Challenges in implementing the legal and organisational changes aside, Kosovo's judiciary also faced many violations of the criminal procedures provisions during trials. Kosovo's Criminal Code and Criminal Procedure Code, after the changes made entered into force on January 2013.²³

While the Criminal Procedure Code clearly stipulates how the courts must respect different procedures during trial proceedings depending on the cases,²⁴ BIRN monitors found out that procedures are not always respected as foreseen by criminal procedure provisions.

Among many procedural violations observed during 2013, BIRN has identified the following group of violations:

- Lack of respecting of the opening remarks of the trial;
- Lack of respect of the order in which the defendants and witnesses are questioned;
- Lack of drawing conclusions in the minutes of the trial or in the other hand wrong conclusions pointed in the minutes during the trial proceedings;
- Lack of information of witnesses and defendants on their rights and obligations;
- Not reading the oath for witnesses,

The criminal procedure provisions stipulate the opening remarks of the parties in the court procedure, more precisely according to article 328 of the Criminal Procedure Code, which also stipulate the order in which witnesses and defendants are examined.²⁵

In a court proceeding held in the Basic Court of Prizren on February 21st 2013, after the defendant pled not guilty, the judge did not pass the opening remarks to the prosecutor of the case or to other parties as stipulated in article 328.²⁶ This criminal matter P. Nr. 11/13 dealt with the criminal offence of "abusing of official function" of article 339, paragraph 1 and also linked to par. 2, and its 1st and 2nd points.

The criminal procedure provision was violated by the presiding judge, who denied this right to the parties and did not provide space for the prosecutor to declare the

content of the indictment and its supporting evidence for the parties and the public, but it also reflected the inability of the defendants to declare themselves on the concrete indictment.

Another trial held on the Basic Court of Prishtina on March 19th 2013 was a continuation of the main hearing, in which the examination of the defendants M. B and A. H went on by the prosecution, which in fact showed that the judge did not respect criminal code provisions which stipulate that the defence should examine defendants first.²⁷ Criminal case number P. Nr. 2008/10 dealt with the criminal offence of "Light Bodily Injury".

In another criminal case in the Basic Court of Prizren on March 4th 2013, the presiding judge didn't provide for the correct order of witness examination. During this hearing, after the witness E. Xh., was invited to give his statement, he was continuously interrupted by the presiding judge asking questions. The defence protested due to the presiding judge not being who was actually examining the witness and because the presiding judge was orienting the testimony of the witness through leading questions.

On this specific case, according to the Criminal Procedure Code, the order of examination of the witness was that of the prosecutor of the case,²⁸ which was also concluded on the trial minutes. The case P. Nr. 124/12 is a criminal offence known as "Kidnapping of a person", as per article 159 of the CPC.

There was another case in the same Prizren court with the same judge interfered in "adding up the answers" of the witness. On the trial related to the criminal matter P. Nr. 124/12 – "Kidnapping of a person",²⁹ held on March 26, 2013 the lawyer objected the presiding judge by stating: "Your honour, put it on the minutes that you are committing a violation, because you are leading the witness". The lawyer further requested to have access to the audio-visual copies of the hearing, because there were omissions in the minutes. That was also concluded in the minutes by the presiding judge.

23 <http://www.kuvendikosoves.org/common/docs/ligjet/Kodi%20penal.pdf>
<http://www.kuvendikosoves.org/common/docs/ligjet/Kodi%20i%20procedures%20penale.pdf>

24 Criminal Procedure Code of Kosova;
<http://www.kuvendikosoves.org/common/docs/ligjet/Kodi%20i%20procedures%20penale.pdf>

25 Article 346 and 333 of the Criminal Procedure Code of Kosova.

26 Article 328 of the Criminal Procedure Code of Kosova, point 1: If the defendant does not plead guilty at the beginning of the trial, the single trial judge or the presiding trial judge shall call on the state prosecutor, the injured party and the defence counsel to summarize the evidence that supports their case or claim. The state prosecutor shall speak first, then the injured party and the defence counsel.

27 Article 346, par. 2 of the Criminal Procedure Code of Kosova.

28 Article 333 of the Kodit of Criminal Procedure Code of Kosova.

29 Article 159 of the Criminal Procedure Code of Kosova.



The authenticity of witness testimony relies on the relevance of such testimony, and in cases when the witness is assisted or additions are made to the testimony that might cause difficulties in resolving the case.

The presiding judge must ensure the originality of testimonies and not push the witness into untruthful statements. Such violations by the judges complicate the later hearings of the trial.

BIRN monitoring has also identified cases when the presiding judge hasn't engaged an interpreter as is stipulated by the law. In one instance, the presiding judge took the role of the interpreter on his own in contravention of procedural provisions.³⁰ In the criminal matter P.Nr. 11/13, "abuse of official position" of article 339 par. 1 and 2, point 2 and 1 of the CCK, held on June 21st 2013, the expert of geodesy was of non-Albanian ethnicity and his testimony was given in Bosnian language, but without an interpreter. In this specific case, the presiding judge, in violation with the Criminal Procedure Code, took the role of the interpreter upon himself.³¹

Kosovo Criminal Procedure Code stipulates the engagement of an independent interpreter and in no case it is allowed for the judge to take on the role of the interpreter.

In such cases, the judge should have ensured proper interpretation before the commencement of the hearing in accordance with all legal provisions.

Other procedural violations were identified in stating the necessary data on the minutes of the hearing or wrongful stating of the data during the trial.

In the Basic Court of Prishtina in January 2013 for the civil contest matter "Alimony" C. Nr. 586/12, the judge of the case did not state the absence of the complainant in the minutes of the hearing and the fact that the indictment was considered withdrawn as per provisions of contesting procedure.³² Even though the procedural rules stipulate it so, the compilation of the minutes of the meeting and the conclusions had not happened at all during the trial until the very end of the process when a BIRN court monitor was present.

Other civil contests that were not clearly stated in the minutes of the hearings as per provisions of the civil procedure are the following:

The hearing held on January 10, 2013, in the civil contested matter "Return of property", C. Nr. 391/08, even though the hearing was foreseen to commence at 13:15, it started at 13:45 while in the minutes of the hearing it was stated as having started at 13:15. In another civil contest case, "Debt", C. Nr. 742/10, of the same judge, the hearing started 30 minutes late, more precisely at 09:30, while in the minutes it was stated as commenced at 09:00. This case was held on January 21st 2013 in the Basic Court of Prishtina. The same judge had other hearing set for later on, another case of civil contest "Debt" C. Nr. 1602/10, the hearing that started at 09:45 was noted as having started at 09:30, which is a violation of procedural provisions of the Law on Contested Procedure.³³

The authenticity of witness testimony relies on the relevance of such testimony, and in cases when the witness is assisted or additions are made to the testimony that might cause difficulties in resolving the case

³⁰ Article 14 of the Criminal Procedure Code of Kosovo.

³¹ Article 14 of the Criminal Procedure Code of Kosovo, point 2: Any person participating in criminal proceedings who does not speak the language of the proceedings shall have the right to speak his or her own language and the right to be informed through interpretation, free of charge, of the evidence, the facts and the proceedings. Interpretation shall be provided by an independent interpreter.

³² The hearing was not held because the Complainant was absent hence the suit was considered as withdrawn. The Judge did not keep record at all and hence violated Article 134 point 1.

³³ Article 135.1 of the LCP: The entry in the record shall include: the name of the court, the place where the action is being undertaken, the day and the hour when the action began and ended, the object of dispute, the names and surnames of the parties and other persons present, and the names of legal representatives or authorized representatives.



Incorrect conclusions in the minutes of the hearings which contain untruthful facts and in cases of referrals in such minutes, there is a possibility of covering up of violations and of irregularities that happened during the court proceeding.

BIRN has also identified procedural violations regarding the rights of defendants, which are regulated according to the Criminal Procedure Code of Kosovo.³⁴

On the court hearing held on March 5th 2013, the judge of the case did not comply with criminal procedure provisions dealing with informing of the defendant of his rights. The Criminal Procedure Code, in article 246, stipulates the obligation of the judge of the case or the presiding judge to inform the defendant about his rights such as: the right to counsel, the right to remain silent and not to incriminate him or herself among others.³⁵ The criminal matter in questions was "Heavy Bodily Injury" with case number P.Nr. 2033/09.

The lack of information of the defendant of his/her rights is in violation of his or her right to a fair trial, which is guaranteed by Kosovo's Constitution and criminal procedure provisions.

Another violation occurred in the Basic Court of Prishtina on March 5th 2013.

The single trial judge of the criminal matter "Removing or damaging official stamps or marks," did not inform the defendant of the case number P.Nr. 249/08 of his rights as per criminal procedure provisions, hence violating them.³⁶

Among the procedural acts that are the least complied with is the lack of reading of the oath of witnesses, which is not respected in most court hearings by local judges. The single trial judge/presiding judge is responsible for reading the oath, of witnesses or experts who provide their expertise when criminal procedures require so. This is stipulated according to article 340 of the Criminal Procedure Code of Kosovo.³⁷

European Union Rule of Law Mission – EULEX, consistently reads the oath at court hearings judged. In almost all EULEX trials monitored by BIRN, witnesses had their oaths read to them and they swore in front of the court that they would state only the truth.

At a BIRN roundtable, the head of KJC said that when it comes to the order of examination of witnesses, it is not important who has proposed them, the prosecutor always examines first. But, Laura Pula from the State Prosecution said that the compliance with the order of examination is obligatory and added that it is the fault of judges when this provision is not respected.³⁸

Other representatives in the roundtable also declared that the new provisions of the Criminal Procedure Code are different from the previous one and must be complied with.

According to Hamdi Ibrahim, head of the Basic Court of Prishtina, judges and other parties, especially lawyers, should be trained on the new provisions and must respect these changes.³⁹

As far as reading the oath is concerned, head of KJC, Enver Peci stated that this is optional and the Criminal Procedure Code provides it as optional.⁴⁰

However, in reading the declaration, the witnesses are informed of the importance of their testimony and are also warned of the sanctions they face if they provide false testimonies. This is a right that is usually being denied by the judges.

Through reading of the declaration of oath, the witnesses also declaratively swear to testify only the truth, and acknowledge that he or she may be held criminally responsible for not complying.

BIRN has not seen concrete measures undertaken by relevant judicial institutions for the cases it has reported each year, even with plenty of recommendations having been provided. Single trial judges/presiding judges are obliged to ensure the smooth functioning of court proceedings, with full respect of the rights of the defendants, injured parties and witnesses and the provision of adequate translation, as well as the accuracy of notes in the minutes of trial.

34 Article 246, par. 1 of the Criminal Procedure Code of Kosovo.

35 Article 246 par. 1 of the Criminal Procedure Code of Kosovo: At the beginning of the initial hearing the single trial judge or presiding trial judge shall instruct the defendant of the rights not to plead his or her case or to answer any questions and, if he or she pleads his or her case, not to incriminate himself or herself or his or her close relative, nor to confess guilt; to defend himself or herself in person or through legal assistance by a defence counsel of his or her own choice; to object to the indictment; and to challenge the admissibility of evidence presented in the indictment.

36 Article 246 par. 1 of the Criminal Procedure Code of Kosovo.

37 Article 340 of the Criminal Procedure Code of Kosovo.

38 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

39 Ibid.

40 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

3. Minor offences in traffic

Kosovo courts continuously face backlogs of unresolved cases, which among other issues is a result of the insufficient number of judges and support staff.

According to KJC data, Kosovo courts have 466,255 unresolved cases. Out of them 221,617 are minor offence matters, which means that about 50% of the cases are traffic offences, initiated in court by the Traffic Police.

One quarter of Kosovo's judges, or 64 total are engaged in dealing with these 221,000 minor offence cases. A judge would have to resolve 532.6 cases on a monthly basis in order to start decreasing the backlog. Currently, each judge resolves 418.8 cases on average per month. This brings us to the conclusion that the resources of the judiciary leave no hope that the backlog will start decreasing. Together, the 64 judges have 7,283 cases that remain unresolved each month, or 87,000 annually. In order to tackle the backlog, the judiciary would have to hire at least 18 more judges to adjudicate minor offences that would resolve a monthly average of 418 cases.

Bearing in mind that the KJC has a small number of judges and a huge number of cases to deal with, there is an immediate need to create more efficient methods that would enable the decrease of the backlog of unresolved cases.

Having analysed the data and taking into consideration different legal systems that have eased the procedures of issuing minor offence fines, BIRN will offer a few solutions that would help in creating a model that will decrease the number of minor offence cases in traffic. This would consequently contribute to enabling judges to work in other fields and an adequate decision of KJC would facilitate the process of the execution of these cases.

The recommendation that came out of this analysis suggests the creation of a whole new system of issuing of sanctions, complaints and execution of fines in traffic.

In order to put this into practice, certain legal changes and inter-institutional coordination is needed which do not require major financial or human investments.

3.1 Factual situation in traffic offences

With the new Law on Courts that entered into force in January 2013, minor offence courts that functioned as separate bodies until 2012 were incorporated into the basic courts system. According to KJC data, these cases compose about 1/3 of cases that await resolution by basic courts in Kosovo. KJC data published in the end of 2013 have identified 221,000 cases of different minor offences.

These data show that the majority of minor offence cases (about 150,000) are related to traffic, or better said, 150,000 fines issued by Kosovo Police await resolution by the courts.

The Law on Road Traffic Safety, the basis for issuing sanctions, has stipulated major limitations on when Kosovo Police are allowed to issue traffic fines. As a result, for most traffic offense, the police must initiate court cases.

The most concerning element is that in the instance when the Police issues tickets in the value of fines, that cannot be executed by the Police must instead go through the court for execution.

As a result, the courts have a big number of cases that go over the statutory limitation in execution or that need a very long time for execution. The situation in the field shows that in order for a traffic ticket of EUR 25 to become fully effective, the procedure may take a few years and cost the state more than the fine itself. This is so because in order for the case to be processed in court it needs the following people to deal with it: a judge, court technical team, mail employees and in the end the Police. For all these services, the court gets a fixed fee of 5 euros, while the daily payment for the engagement of a judge is 27 euro.⁴¹

As far as time and resources of the court are concerned, a similar difficult situation is also related to offences which are initiated by the police that the Court has to hold a hearing to decide whether to punish the offender or not. The practice shows that a single judge cannot resolve more than 13 cases of this nature on daily basis. In these cases, citizens most of the time when the court resolves their minor offence cases based on papers initiated by

41 The wage of a minor offence judge is 800 euros or 26.6 euros per day.



the Police do not file complaints. In the Court of Appeals in Prishtina only 418 complaints have been filed against more than 70,000 verdicts that were issued by judges for offences in the Basic Court.

The creation of a new system in which policemen would be the first organ to decide on a fine rather than the court would create possibilities for tens of judges who are involved in these minor offence cases to deal with other cases because most offenders do not use the right to appeal.

3.2 Fines from the police and not the court

BIRN concludes that this system should undergo substantial reform would release the court from the burden of backlogged cases.

This unloading of the court from the minor offence cases would be achieved if policemen after being legally authorised through legal changes would be able to issue sanctions for minor offences themselves. As a check to a potential new system, the offender would be able to file complaints within 8 days.

This would mean that for any non-criminal traffic offence, the policemen would issue the sanctions according to the new legal provisions.

The offender in this case would be warned by the policemen, but also be instructed in writing on the issued ticket that if he/she has any objections, it is possible to file complaints against the issued tickets.

The offender would also be informed that if he/she doesn't file any complaint, the sanction would be effective and registered in the Ministry of Internal Affairs database. In such cases, the payment of the fine would have to be conditioned by a set of actions as listed below that would release the system of execution of sanctions for traffic offences.

BIRN recommends that apart from the change that would enable the policemen to issue the sanction, a system of registration of sanctions should be created. The system would have to be created by Kosovo Police and the Ministry of Internal Affairs and would contain all fines issued by the Police, against which no complaints were filed by citizens. However, if complaints were made and after the court's eventual verdict, the data of the sanction would be marked in the system.

The system of registering the sanctions would create possibilities for the responsible institutions to have a clear overview of how many fines remain unpaid.

BIRN recommends that the system be created in such a way that citizens are deprived of certain rights if they do not pay their traffic fines.

Conditions would be the following:

Inability to register or alienation of vehicles

Citizens with unpaid fines are not allowed to register their vehicles until the moment they pay the fine. On the day the citizen would apply to continue the registration of the vehicle, the Ministry of Internal Affairs would have to check the database to see whether the driver has any unpaid fines and if he/she does then the driver will be warned to make the payment and bring evidence of such payment and only then be allowed to register the vehicle. In case the citizen wants to sell a car, then he/she would not be able to transfer ownership to another person unless they paid their fine. - Inability to cancel registration of a vehicle and no issuing of authorisations to drive other vehicles

The owner of a vehicle that has unpaid tickets would not be able to cancel registration of his/her car without paying the fines.

The citizen that has unpaid fines would also not be able to get authorisation to drive other vehicles. If the citizen would go to the Notary to obtain an authorisation to drive a vehicle that is not his/her property, then the notaries would be obliged to request from the citizen a form issued by the MiA that he/she has no unpaid fines. The owner of the citizen providing the authorisation would request such form also. The system would be built in such a form that in the moment when the notary would check the data of the citizen, it would require prior signature of a declaration that it provides the notary access to the data of the citizen.

Inability of citizens to cross the border without prior payment of fines

Vehicles with foreign plates will not be allowed to cross Kosovo border and leave Kosovo territory without paying fines issued by Kosovo Police. Border Police would ensure that all border point will stop vehicles with foreign plates who have unpaid fines.



3.3 Negative points

In the database of offenders, MiA would also register negative point for offenders. After a certain number of negative points, an offender could be rendered him/her unable to drive vehicles, at which point the MiA would inform the Police that if they encounter such citizen

driving, they should forbid him/her from further driving. This database would also contain other prohibitions of driving vehicles, which would be issues through other court procedures. Apart from these, BIRN recommends that the abovementioned measures have a lifetime of 3 or 4 years, which would mean to also change the deadlines for statutory limitation of minor offence cases from 2 (as it is now) to four years.

BIRN also recommends that if after a period of 3 years the offenders refuse to pay the fines, MiA request the Court to substitute the conviction from

a monetary fine to effective imprisonment in the value of the unpaid fine.

BIRN also recommends that if after a period of 3 years the offenders refuse to pay the fines, MiA request the Court to substitute the conviction from a monetary fine to effective imprisonment in the value of the unpaid fine.

In this case, Kosovo Police would be responsible to register the offenders in the system while the officials in the centre of vehicle registration would be responsible for deleting the convictions from the system.

BIRN recommends Kosovo Police assign specific officials access to register traffic tickets while a special importance would be paid to registering tickets issued to vehicles with foreign plates.

To avoid situations when vehicles with foreign plates leave Kosovo without paying the tickets, BIRN recommends creating a specific database of registering of foreign offenders, which would be accessible in the border points of the country as well.

The Border Police would then be able to check them and conclude whether the person crossing the border has a ticket issued to them and if so, have they paid it or not. In case such persons are encountered, their vehicles would not be allowed to cross at the other side of the border without paying the ticket.

On the other hand, officials from the Ministry of Internal Affairs, namely the Vehicle Registration Centre, would make sure to check the data registered by policemen on the time citizens come this institution.

In the scope of these offices, MiA would create a special department to deal with the deletion of sanctions of those who paid the fines from the database. The payment of fines would be done through bank transactions while to prove the payment two options could be used.

The citizens could take a payment letter to the MiA to prove that the payment was completed.

A second option would be through the bank system, in which the bank could electronically notify MiA after payment.

3.4 Registration of offenders

The Ministry of Internal Affairs, in close cooperation with Kosovo Police, would have to create a database where all issued fines by the police would be registered. The database would be accessible to both institutions with divided competences in registering and deleting the data.



3.5 Filing complaints

Within eight days from the moment the penalty was issued, the party has the right to file a complaint in court in order to express the dissatisfaction with the sentence issued by police officers. The written complaint would have to be filed within this deadline and with it the fixed court fee would have to be paid for the complaint, which should be of an amount close to the issued penalty. If the complaint turns out to be valid, then Kosovo Police would be obliged to pay the citizen the tax for the complaint.

At the moment of the issuance of the complaint, the Court will provide the party with a document that proves the complaint has been received. Within eight days from the moment the penalty was issued, the party has to show up at the Police station to inform them that h/she has filed a complaint against that decision. This way, Kosovo Police will be informed that a complaint has been exercised against the decision of the police officers in court and the responsible officer for registration of offenders in the database will not register the ticket in the system yet. If the party does not comply with this, then the issued penalty will be registered in the system and if the Court decision says otherwise, only then will it be deleted from the MiA data.

3.6 The summons system

Having in mind the fact that Kosovo has a lack of correct addressed and many court hearings are postponed because of non-delivery of summons, BIRN recommends that competent institutions create a system that would see the delivery of summons for the hearing at the moment the parties file their complaints.

Based on this system, the officer who receives the complaint, would be obliged to put the case to work according to a pre-determined schedule of court hearings of minor offence judges and to schedule the day and time when the hearing for the case will be conducted. After this process is done, the court official will hand the summons personally to the party that has filed the complaint. This way, the party will also be warned that if h/she will not be present on the day of the hearing, his/her complaint will be considered as withdrawn.

3.7 The benefits of the system

Bearing in mind that 64 judges deal with more than 200.000 minor offence cases, removing this burden from the judiciary would create room for judges to treat other cases left unresolved in their tables.

Furthermore, the fact that the new system would also decrease the number of penalties automatically going to courts, it is calculated that complaint cases will be completed in fastened deadlines.

The system also provides a good basis for better collection of proceeds for the court because it recommends the court tax to be increased but to also increase the fixed fee.

While at BIRN's roundtable, everyone agreed with BIRN's proposal for this matter, because according to them as well, this would make the work of the judiciary a lot easier. Head of KJC, Enver Peci said that this is a great analysis that should serve the Ministry of Justice to draft the law. He further added that offenders would know this way that first they have to deal with the Police and later on with the Court and the fact that they now ask to be taken to court which is a way of running from their responsibility.⁴²

To avoid situations when vehicles with foreign plates leave Kosovo without paying the tickets, BIRN recommends creating a specific database of registering of foreign offenders, which would be accessible in the border points of the country as well.

42 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.



4. Ex-officio favoured Lawyers

On the Courts of Kosovo every day there are trials of criminal cases related with different crimes. The defendants cannot always afford to pay for a lawyer and an effective defence as it is defined on the Code of the Criminal Procedure of Kosovo, the Constitution of Kosovo,⁴³ and the European Convention on Human Rights.⁴⁴ The Code, the Constitution and the Convention, provide for the right to defence, paid for by the state budget, in cases when defendants cannot afford to pay for it themselves.

In our five years of monitoring the courts BIRN has noticed different kinds of lawyers appointed ex-officio. In reports BIRN has mentioned cases where the lawyer not only didn't prepare the case that he had to defend but also didn't even know the name of the defendant he was supposed to represent. There are cases where the lawyers don't accept defendants and those are never invited again.

BIRN also reported on lawyers who are frequently appointed ex-officio and those who are rarely invited even though they are willing to offer their services.

During the research done in all courts of Kosovo that BIRN monitors, we found out that in many cases the trend of choosing the same lawyers appointed ex-officio, leaves out the list of lawyers of the Kosovo Bar Association, even though this list has the names of tutelary lawyers for each day, week and month.

The Judicial Council of Kosovo, who pays for these lawyers, appointed ex-officio for the year 2012 spent 460,000 euros to pay these lawyers.

BIRN through a FOIA request and based on the agreement that it has with the Judicial Council of Kosovo, found the list of the lawyers that were paid from the secretariat of KJC for the defence offered according to the official position.

Regions	Payments for 2012
Pristine region	EUR 169,621.96
Prizren region	EUR 65,264.39
Peja region	EUR 80,673.97
Gjilani region	EUR 72,167.10
Mitrovica region	EUR 72,279.28
Total	EUR 460,006.70

In the five biggest districts of Kosovo it's obvious that some lawyers are being paid the maximum allowed 500 euro in almost each month of 2012.

Also, in 2013 is the same trend of the lawyers that benefit from being appointed ex-officio in the courts to represent the parties on criminal cases.

According the official report of the Secretariat of KJC provided by BIRN, it's clear that for the year 2013 from January to November were spent 365,007.02 euros from the budget of Kosovo to pay the lawyers appointed ex-officio.

⁴³ Article 30 par. 1 point 5 of the Constitution of Kosovo.

⁴⁴ Article 6 par. 3 point C of the Convention.



Regions	Payments for 2013 (January - November)
Prishtina region	EUR 107,429.84
Prizren region	EUR 56,655.05
Peja region	EUR 28,981.84
Gjilan region	EUR 63,478.32
Ferizaj region	EUR 24,293.48
Gjakova region	EUR 24,313.03
Mitrovica region	EUR 59,855.46
Total	EUR 365,007.02

For two continuous years, leaving out the month of December, the state of Kosovo spent a total of 825,031.72 euro on defence lawyers.

After checking the payment lists done by KJC for the years 2012 and 2013, BIRN spotted names of lawyers that were paid more than 11,000 euros along the two years. Mitrovica District is leading in payments and appointment of ex-officio lawyers. Also in this district you can see that the same lawyers have taken 500 euro per month, engaged each month.

Prishtina is also not in a very good position. Some ex-officio lawyers appointed have been paid almost 10 thousand euro from the budget of Kosovo. Same situation is in the district of Prizren, while Peja, Gjilani, Gjakova and Ferizaj made payments for a period of two years that do not pass 8000.

In all districts the trend of engaging the same lawyers ex-officio for huge sums is evident. For some lawyers the sum of 500 euro never changes during the year, creating the perception that they work full-time for the court.

Lawyer Agim Lushta from Mitrovica, according to the data provided from KJC, benefited more than others in these two years. Lushta has been paid 11,339 euros over 23 months. He received 500 euro each month of the year except October and November 2013. Fatmire Braha, also a lawyer from Mitrovica, during these 23 months received only 14 euro less than Lushta.

Brahim Sopa from Prizren is third on the list of ex-officio lawyers. Sopa was paid 11,196 euro for his engagement over 23 months.

The three most paid ex-officio appointed lawyers in Kosovo didn't have even a month of break during the period of 23 months, compared to other lawyers who even got paid up to 10 thousand euro, during July or August were off and were not paid or paid less than 500 euro.

For the district of Pristina according to the payment list the ones that have been appointed most are Drita Hoxha, Adem Ademi, Zymreta Munishi-Zeka, Fatlum Podvorica, Ali Beka and Fetije Uka-Islami.⁴⁵

In the district of Mitrovica other than Agim Lushta and Fatmir Braha, Bedri Miftari, Sheremet Ademi, Vehbi Beqiri and Nexhat Beqiri are frequently appointed ex-officio.⁴⁶

In Prizren other than Brahim Sopa, Avni Berish, Hajrip Krasniqi and Hana Canaj are regularly paid. The first two receive around 11,000 euro, while the lawyer Canaj got 9,800 euro.

In Peja, over two years Lumturije Hoxha benefited more than 7 thousand euro, while Ragip Radoniqi and Xhelal Radoniqi have received around 6 thousand euro each.

In Gjilan Lumniye Azemi is paid more than 6 thousand euro for the ex officio representation while Nasuf Nasufi and Ramiz Sulejmani less than 6 thousand euro each.

In Gjakova Avdi Rizanvolli and Qemail Juniku benefited less than their colleagues from other districts. Both of them were paid around 4 thousand euro in 23 months. While in Ferizaj Rafiz Shehu and Beqir Haxhimusa were paid one with 3 thousand and the other 2 thousand euro.

Executive director of the KBA, Ylli Zeka, told BIRN that the appointment of the same lawyers in most cases in the judicial, prosecution and police brings the doubt that they are appointed according to personal preferences. He also added the Prosecution Council came up with a verdict, obliging the prosecutors not to appoint ex-officio lawyers by themselves but through regional offices, a verdict that was not taken in consideration, Zeka says.

He also added that the KJC never took such a decision regarding the lawyers' ex-officio appointed.⁴⁷

The head of KJC, Enver Peci, on the council meeting said that some of the lawyers are being favoured and he bases this on the data's on the payment lists. In the same meeting KJC decided that the ex-officio appointed lawyer should be selected by OAK. Regarding this the head promised to inform all the courts.⁴⁸

The head of KJC added that there are lawyers that even when they were on the preliminary procedure; they don't want to continue defending the subject on the judicial procedure. According to Peci an ideal way of resolving this does not exist.

45 Lawyer Drita Hoxha benefited 10 thousand and 81 euros, while her son Asdren Hoxha also benefited 8 mijë euro through being ex-officio assigned in court.

46 Benefits of whom surpass 10 thousand euros each within 2 years.

47 Televised programme about the ex-officio engagement of lawyers broadcast on March 2nd 2014; <http://drejtesianekosove.com/sq/Emisione/Angazhimi-i-avokateve-sipas-detyres-zyrtare-1074>

48 Ibid.



Shkëlzen Maliqi from the Prosecution Council of Kosovo says that KPC made official the agreement with the KBA regarding the lawyers appointed ex-officio. Maliqi said to BIRN that KBA has appointed an administrator to deal with appointing these lawyers according to the KBA.⁴⁹

On the other side, lawyer Osman Havolli says that the invitation to take part in the court session is made very quickly to them. In urgent cases as he calls them; the lawyers are taken from the halls and appointed ex-officio.

He again adds that the lawyer doesn't even know what is going on and to him is being explained briefly and doesn't know if the lawyer can do his job on voluminous subjects. At the end he says that the rights of the client in these cases are being violated.⁵⁰

Hamdi Ibrahim, head of the Basic Court in Pristina, told a BIRN roundtable that the police, according, their position are the source of informing the lawyers. He presumes the root of the problem is during the involvement on official duty.⁵¹

The Prosecution Council is responsible for choosing the lawyer according the official duty on the first phase of investigation in the police and prosecution. Council representative Laura Pula from State Prosecution, said that the agreement made with KBA, is being implemented very well, and there is a coordinator in charge who is responsible to choose lawyers according the official position.⁵²

Zyhdi Haziri – Head of the Basic Court of Gjilan and Ymer Hoxha, head of the Basic Court of Prizren said that the lawyers engaged ex-officio are not the best lawyers and according to him they are more focused on payments than on a qualitative defence, for that they are weak on the process of representing the rights of their clients that are on trial.⁵³

Ylli Zekaj (from KBA), declared that there are lawyers privileged by the judges and this is something that should not exist. According to him, now a database has been created to decide which lawyer will get a certain case ex-officio, hence registering the requests from the court, prosecution and police. He added that through the administrators of KBA, they are trying in all regions to decide which lawyers the court will engage.⁵⁴

Hamdi Ibrahim added that for the court the important thing is that the lawyer should be present and is the responsibility of the KBA to prepare all mechanisms.

BIRN found out that many lawyers engaged ex-officio take the indictment just before the court session starts and sometimes they don't even know the names of the defendants or whom they are defending.

BIRN recommends that KBA, KJC, KPC and KP should take provisions that all together coordinate the selection of lawyers and take the rights of defendants into account.

49 Televised programme about the ex-officio engagement of lawyers broadcast on March 2nd 2014; <http://drejtesianekosove.com/sq/Emisione/Angazhimi-i-avokateve-sipas-detyres-zyrtare-1074>

50 Ibid.

51 Ibid.

52 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

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54 Ibid.

5. Announcement of hearing sessions

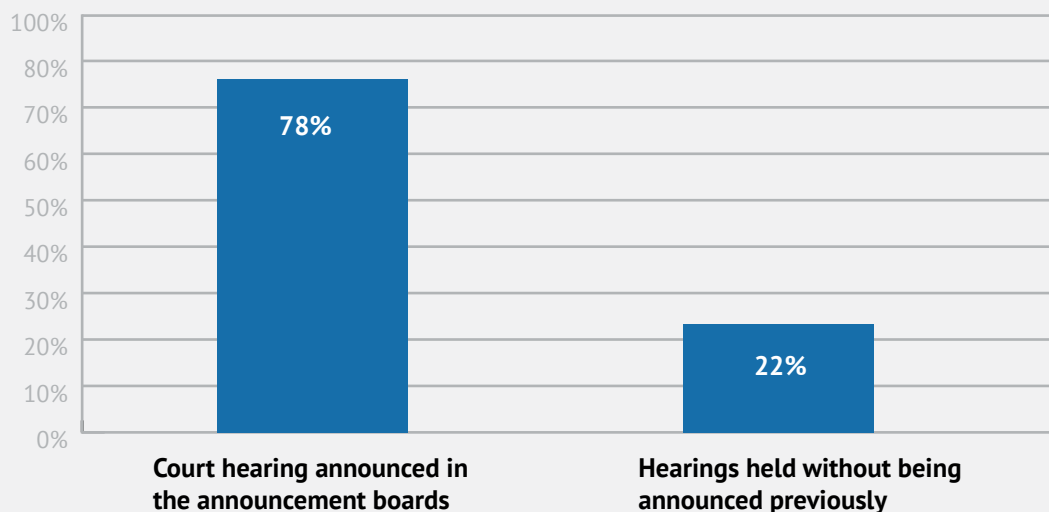
Announcement of court hearings continues to be made on announcement boards and the Internet. Until last year, only EULEX hearings were announced through EULEX's official website.

BIRN monitoring this year has seen a more transparent judiciary when it comes to announcing court hearings. The Court of Appeals during 2013 also started to announce the hearings online.

In the following table, 601 monitored court hearings are reflected that were held as planned, and those held without being announced:

BIRN monitoring this year has seen a more transparent judiciary when it comes to announcing court hearings. The Court of Appeals during 2013 also started to announce the hearings online.

Table 1 Announcement of court hearings



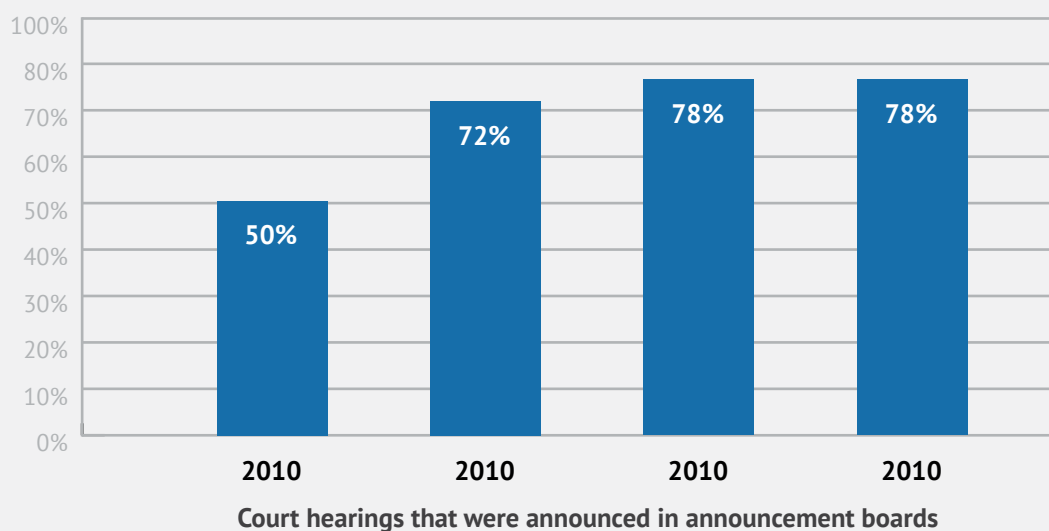


In the last 12 months of monitoring, BIRN found that 78% of the hearings were previously announced while another 22% were not announced before being held.

There has been a significant improvement compared to previous years as far as transparency is concerned. However, our monitoring reveals that more than one fifth of court hearings happen without being previously announced on the announcement board or through the Internet.

The following table reflect on the announced court hearings in a comparison of 2010 to 2013 period:

Table 2 Announcement of court hearings 2010 - 2013



In 2010, court hearings were announced only 50% of the time. In 2011 it increased to 72% and in 2012 and 2013 to 78%.

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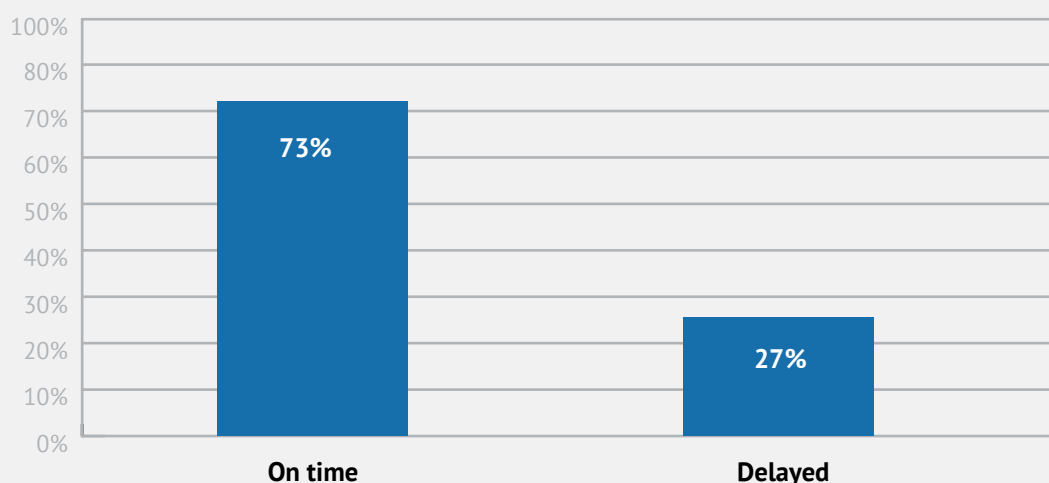
BIRN continues to recommend that the courts and their respective branches, as well as the KJC, take measures that will ensure that court hearings are made public for the public and announced either on the announcement board and/or official web pages on the Internet that would consequently contribute to increased transparency.

6. Schedule of hearing sessions

The delays in commencing the court hearings as schedules were identified by BIRN monitors in 2013 as well. This happens for various reasons, including delays from the trial panel/judges, prosecutors, or lawyers.

The following table shows the court hearings that commenced in a timely manner and those that commenced late during 2013.

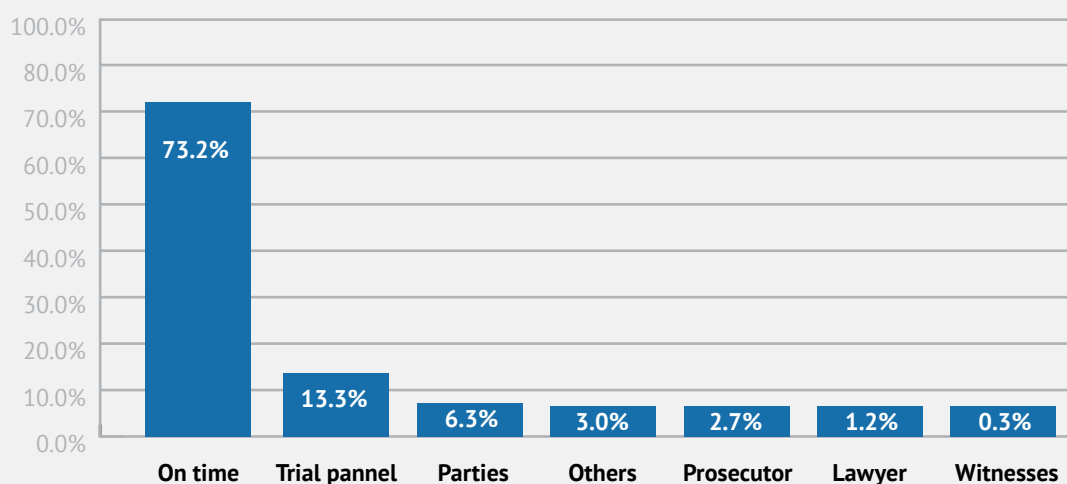
Table 3 Time of commencement of hearings 2013



According to the monitoring data, about 27% of the hearings commenced with delays while 73% have commenced on time.

The following table is a reflection of percentages showing the reasons of delays in starting the hearings:

Table 4 Reasons of delays in commencing of court hearings

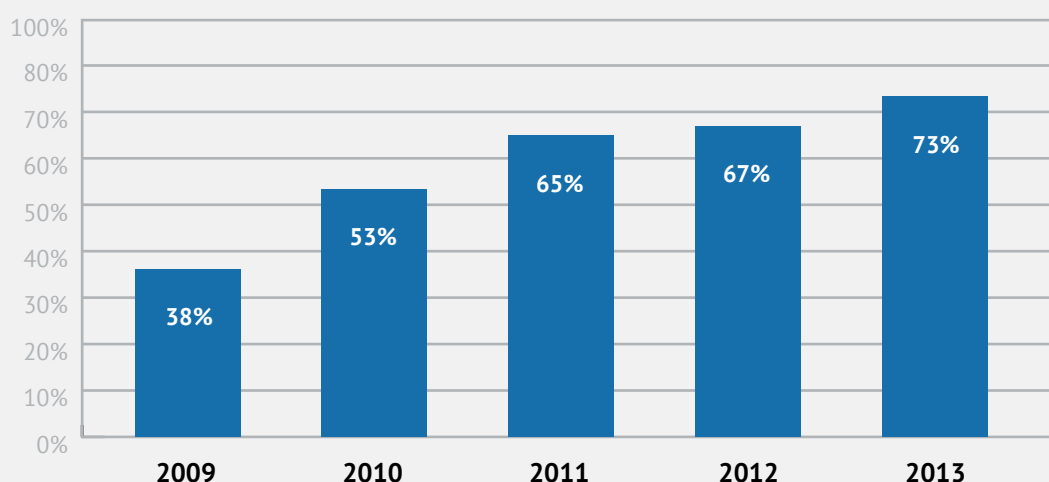




According to the table above, 73.2% of hearings have started on time while out of the hearings that started late, 13.3% of cases saw the judge/trial panel being late while in 6.3% of cases the reason was the delay of other parties, with prosecutors being late in 2.7% of cases. Other cases of delays include transportation issues or other problems. BIRN's long-term monitoring shows that year by year there is positive progress on the timely commencement of court hearings.

The table below shows the proportion of hearings that commenced on time to those that were late for the period of 2009-2013.

Table 5 Time of commencement of hearings 2009 - 2013



In 2009, only 38.12% of monitored court hearings commenced on time. In 2013 this percentage goes up to 73.21%. Compared to last year, there is an increase of 8% of trials starting on timely manner, as depicted in the table above.

Some of the major cases that commenced late are illustrated below, and the reason for that was usually the delay of the single trial judge/trial panel, prosecutor, lawyer, defendants, witnesses etc.

In a trial held in the Basic Court of Prizren on April 3, 2013, the trial panel was 40 minutes late and did not provide any justification for such a delay to the parties present.⁵⁵

Another main trial hearing held also in the Basic Court of Prizren on January 29th 2013, on the criminal case P.Nr. 249/12, "War crimes against civil population," the case prosecutor was more than 15 minutes late. He told the court "you waited for me today because I also waited for you yesterday."

The Prosecutor referred to the hearing held a day before on January 28th 2013, when the lawyer of one of the defendants in the criminal case P. Nr. 249/12, was 15 minutes later, which had caused the reaction of the parties present in the hearing and the matter was also "war crimes against civil population".

A hearing on February 2013 in the Basic Court of Prizren started late because of the Prosecutor from the Basic Prosecution in Prizren. The Prosecutor said that he had notified the trial panel for the delay came in the court only after 30 minutes, thus obliging other parties present to wait for him in order to commence the hearing. It was for the criminal case, P. Nr. 124/12, dealing with the criminal offence "Kidnaping of a person" according to article 159 of the Criminal Code.

Another similar case saw the defendant of case P. Nr. 29/11 being late for a hearing held on June 21st in the Basic Court of Prizren. In the court hearing, against municipal officials of the municipality of Prishtina charged with the criminal offence "abuse of official duty" the main defendant was more than 15 minutes late. His justification was that he couldn't come on time because the weather was too hot.

⁵⁵ On the case P. Nr. 251/2011, the defendant N. K, was charged with 4 counts of criminal offences: Aggravated murder, aggravated attempted murder, light bodily injury and illegal possession, unauthorised use of weapons as per the Criminal Code of Kosovo.



At a hearing held on January 17th 2013 in the Basic Court of Prishtina – branch in Lipjan, in the trial for the criminal offence P.Nr. 377/12 related to “light bodily injury” started 45 minutes late⁵⁶ due to the delay of the case Prosecutor.

In another hearing held on March 21st 2013 also in the Basic Court in Prishtina – the branch in Drenas, the hearing started 35 minutes late due to the absence of the Prosecutor.⁵⁷ The criminal offence numbered P.Nr. 145/10 was related to “endangering public traffic”.

Due to the delay of the defendants, another criminal offence P. Nr. 432/12 related to “Mistreatment and abandonment of children” started 20 minutes late in the branch of the Basic Courts branch in Drenas held on March 15 2013.

On the trial related to case P.Nr. 734/11 held on September 3d 2013 in Prizren Basic Courts branch in Suhareka, the judge commenced the hearing 45 minutes late due to the witness being late, who was a witness of the Police station in Prizren. Despite the delay, the judge did not take any measure against the witness.⁵⁸

Another trial held on April 24th 2013 in the Basic Court of Prishtina/Major Crimes department for the case P. Nr. 2023/05 related to “obstructing an official person to perform their duties” the hearing was scheduled to start at 13:00 but it started 30 minutes late due to the rejection of the defendant to come in front of the judge with a wet shirt, which happened on the way from Dubrava to Prishtina due to a health condition of the defendant.

In the Basic Court in Peja/Major Crimes Department in the case P. Nr. 241/13 of the criminal offence “attempted murder”, the hearing commenced 20 minutes late due to the Correctional Services bringing the defendant from detention late.⁵⁹ The hearing was held on November 12 2013.

On another hearing held on November 15th in the Basic Court in Peja/Department of Major Crimes, the hearing commenced 20 minutes late due to the trial panel not arriving on time.⁶⁰ The trial panel justified this with the fact that one of them was busy attending another trial at the same time and hence could not make it on time for the hearing on the criminal matter P.Nr. 462/12.

Another court hearing, which saw the trial panel being late, was held on November 5th in the Basic Court of Peja/ Department of Major Crimes, for which the trial panel was 30 minutes late, and they didn't even bother to justify the delay for the case P. Nr. 88/13 on the criminal offence “Heavy bodily injury and illegal possession of weapons”.

The Basic Court of Prishtina on the hearing for the case P. Nr. 56/13 for the criminal offence, kidnaping, illegal possession of weapon and theft” the judge ordered a delay of 30 minutes.

Another hearing held on March 5th 2013 also in the Basic Court in Prishtina commenced 30 minutes late due to the delay of the case judge for the case P. Nr. 2033/09 related to the criminal offence “heavy bodily injury” of the article 154, paragraph 1, point 3 of the Criminal Code of Kosova.

In another trial held on January 10th 2013 in the civil contest “return of property”, C. Nr. 391/08, the hearing commenced 30 minutes late as a result of the delay of the judge who contested the minutes of the hearing. The judge stated that the hearing commenced at 13:15, even though the hearing had started at 13:45. This was a violation of article 135, point 1 of the Contested Procedure Law.⁶¹

Sometimes there were delays because the previous hearing lasted longer the next session in line started late.

In the Basic Court of Prishtina, the civil contest case “Authentication of ownership” C. Nr. 548/07 held on January 24th 2013, the hearing started late due to the previous hearing lasting longer.⁶²

Another hearing held on January 8th 2013 in the same court for a civil contest as well related to “cancelling of a decision” C. Nr. 1558/12. The hearing commenced 15 minutes late due to the previous case lasting longer.

Many trials have commenced late due to the delays of Prosecutors, and below are illustrated some such cases.

At one hearing of the case P. Nr. 3309/11 for the criminal offence “Theft” according to article 252 of the CCK, held on March 12 2013 in the Basic Court of Prishtina, the hearing commenced 30 minutes late because of the Prosecutor being late.

56 It was scheduled to commence at 10:00 but it commenced at 10:45.

57 Even though it was scheduled to commence at 9:00, it started at 09:45.

58 According to the witness, the reason of the delay was that the witness had not received a summon and hence did not know the hearing was scheduled.

59 The court hearing scheduled to commence at 10:00, commenced after 10:20.

60 The court hearing scheduled to commence at 10:00 started after 10:20.

61 Article 135.1 of the Law on Contested Procedure: The entry in the record shall include: the name of the court, the place where the action is being undertaken, the day and the hour when the action began and ended, the object of dispute, the names and surnames of the parties and other persons present, and the names of legal representatives or authorized representatives.

62 The court hearing commenced at 11:00 even though in the announcement board it was scheduled to start at 10:30. The hearing was held in the office of the other judge F.S. because the case judges office did not have the necessary room for all parties.



Hamdi Ibrahim -Hamdi Ibrahim, head of the Basic Court in Prishtina, said that such 15-20 minute delays are present always and the report should not focus on them because they do not pose any serious violation. Ibrahim added that there is a huge disproportion of the number of cases with the small number of judges to deal with them.

Laura Pula from the State Prosecution said that prosecutors always complain about delays whether they are only 15 minutes or more. She added that the lack of coordination of the trial panel to decide on holding a hearing or not, is creating confusion and difficulties for the prosecutor who receives numerous invitations.

The head of the Basic Court in Peja, Elmaze Syka, said that the cases when prosecutors are late happen due to the small number of prosecutors and that many judge schedule 5-6 hearings a day and they all want to have the prosecutor present at their hearing. According to her there are many cases when the hearing are held with breaks in between as well. On the other hand, Pula said that 22 more Prosecutors are undergoing a vetting process and it will be easier after the number of prosecutors is increased.

Another case in the same court that happened on March 3rd 2013 for the criminal offence "Removal or damaging officials stamps or signs" numbered P.Nr. 249/08 as per article 322, paragraph 1 of the CCK. The hearing was announced in the announcement board to commence at 13:30 but it started 45 minutes late due to the Prosecutor being late because he was attending another court hearing.

The following cases reflect the court hearings that commenced late due to the delays of lawyers: In the Basic Court in Prishtina on the hearing of the case P. Nr. 4262/12 related to the criminal offence "heavy theft" according to article 253, paragraph 1 with point 1 and "Receiving stolen goods" according to articles 272 of the CCK that was held on March 6th 2013 commenced 30 minutes late due to the judge and lawyer M.N. being late.

During the monitoring of court hearings, BIRN identified other cases of delays in court hearings, which had not started as scheduled due to the delays of witnesses or defendants.

In the Basic Court in Prishtina on the hearing for the case P. Nr. 2268/08 related to the criminal offence "theft" according to article 252 paragraph 1 of the CCK, the witness was late and that caused delays in commencing the hearing.

In the Basic Court in Prishtina on the hearing for case P. Nr. 2268/08 held on January 31st 2013 for the criminal offence "theft" according to article 252, paragraph 1 of the CCK, the hearing commenced 1 hour and 20 minutes late as a result of the absence of the defendant.

At a BIRN roundtable, Hamdi Ibrahim, head of the Basic Court in Prishtina, said that such 15-20 minute delays are present always and the report should not focus on them because they do not pose any serious violation. Ibrahim added that there is a huge disproportion of the number of cases with the small number of judges to deal with them.⁶³

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The timely commencement of hearings reflects the orderly functioning of the courts. It contributes to eliminating the backlog of unresolved cases.

63 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

64 Ibid.

65 Ibid.



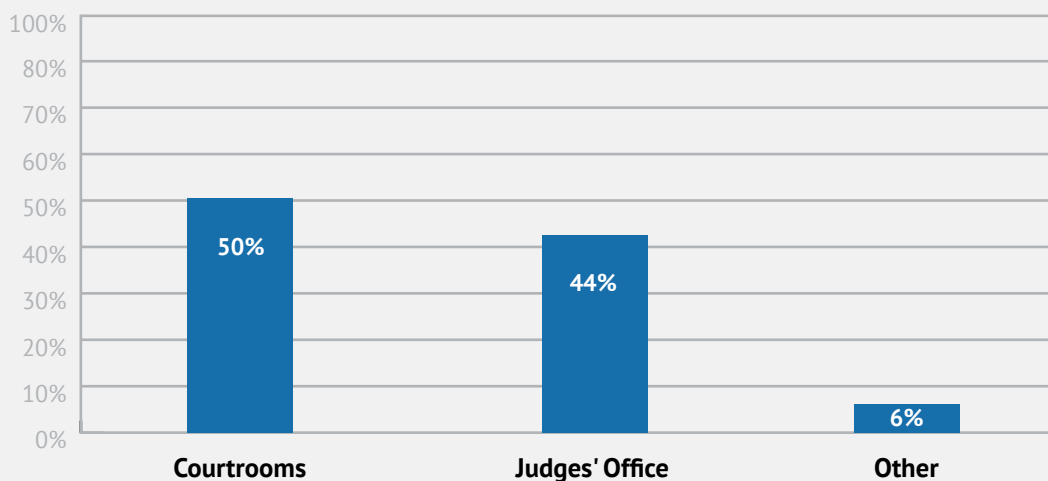
7. Venues of hearing sessions

Public and closed court hearings should be held in courtrooms of the respective court with the exception of hearings that happen on the scene.

BIRN monitoring for this year as well revealed that 44% of hearing sessions continue to be held in the offices of judges.

The table that follows depicts percentages of hearings that were held in the office of judges, in courtrooms and those in other environments.

Table 6 Venue of court hearings 2013



This shows that 50% of hearings were held in courtrooms, 44% were held in offices of judges and 6% or 34 court hearings were held in other places. BIRN has observed many cases of hearings held in judges' offices even when a courtroom was available.

In the Basic Court in Prishtina – branch in Drenas, in the hearing held on February 2013 for the civil contest case C. Nr. 284/12 of "Obstruction of possession", the judge of the case held the hearing in his office even though the courtroom was available at the time.

In another case held on February 2013 in the Basic Court in Prishtina – branch in Lipjan, the hearing was held in the office of the judge. For this case C. Nr. 249/08 that also dealt with "Obstruction of Possession", the parties, their representatives and many other interested people who were not in a small number, all had to stay for the hearing in the small office of the judge, even though the courtroom was not in use at the moment. Another session of the criminal matter "forest theft" for the case P.Nr. 607/02, held on December 10th 2013 in Viti, a branch of the Basic Court of Gjilan, the hearing was also held in the office of the judge even though the courtroom was free at the moment.⁶⁶

In another hearing held on the same day for the case P.Nr. 519/2012 of the criminal offence "Light bodily injury" the hearing was also held in the office of the judge while the courtroom was free.⁶⁷

In the same court in Viti, in the civil contest C. Nr. 217/2013 dealing with "authentication of property", the judge held the hearing in his office while the courtroom was not being used.⁶⁸

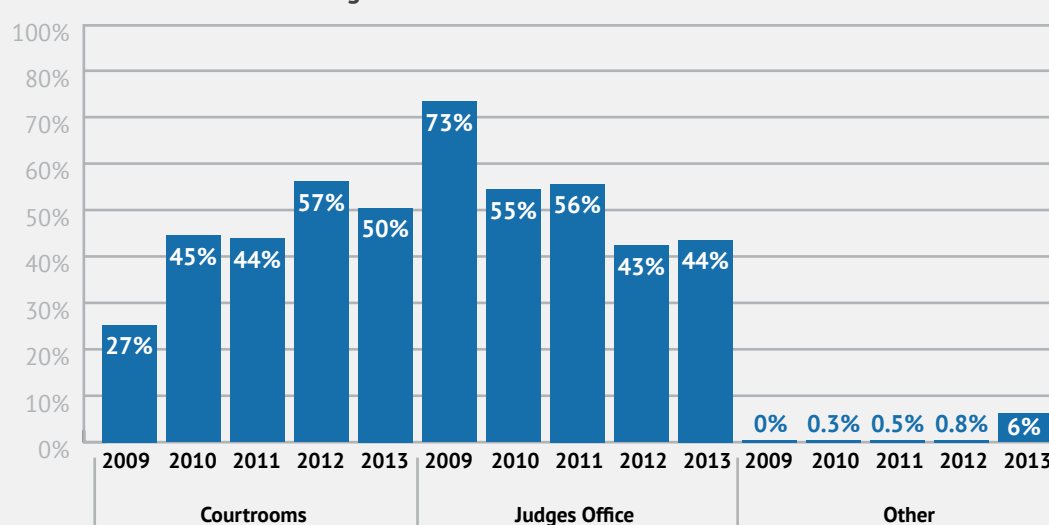
Another contested case that dealt with inheritance. A hearing for T. Nr. 141/12 held on February 13th 2013 in the branch of the Basic Court of Prishtina, in Drenas, was also held in the office of the judge while the courtroom was free, even though that the case dealt with 5 heirs.

Another civil contest case dealing with "giving of immovability", C. Nr. 254/11 the hearing was held in the office of the judge even with the courtroom not being used by anyone at the moment. Apart from the parties and their lawyers, present at the office were another 2 witnesses as well, which made the condition of the well functioning of the hearing itself a lot more difficult.

BIRN has also monitored hearings that were held in offices of judges because the courtrooms did not fulfil the necessary conditions, such as in the branch in Decan of the Basic Court in Peja. In the monitored hearings of November 6th and 14th 2013, the cases P. Nr. 42/2012 and C. Nr. 395/09, due to the lack of conditions such as computers, heating etc., had to be held in the office of the judges.⁶⁹

Compared to last year the statistics comparing the venue of court hearings has not changed for the better. On the contrary, instances of hearings held in judges' offices have increased. This may be seen below:

Table 7 Venue of court hearings 2009-2013



⁶⁶ The hearing commenced at 11:00.

⁶⁷ The hearing commenced at 11:35 even though it was scheduled to commence at 09:30 but it happened due to the fact that the Prosecutor was attending another trial.

⁶⁸ The hearing had started at 13:00 and it had ended at 14:20.

⁶⁹ Cases: "light bodily injury" as per article 153, par. 1, point 1 and "damaging of wealth" according to article 266, par. 1 related to 23 of the CCK and the Property Contest.

The table shows that in 2009 when BIRN started monitoring the courts, 73.1% of hearings were held in offices, but improved from year to year. However the number has increased from last 42.93% of cases last year to 43.93%.

The representatives of the judiciary agreed with BIRN findings on the roundtable that was held, but they stated that judges hold the hearings in the courtroom whenever that is doable and conditions for it exist.⁷⁰

Holding hearings in the offices of the judges continues even when courtrooms are available. BIRN continues to recommend every year to change this practice and decrease the number of this venue serving as a court hearing.

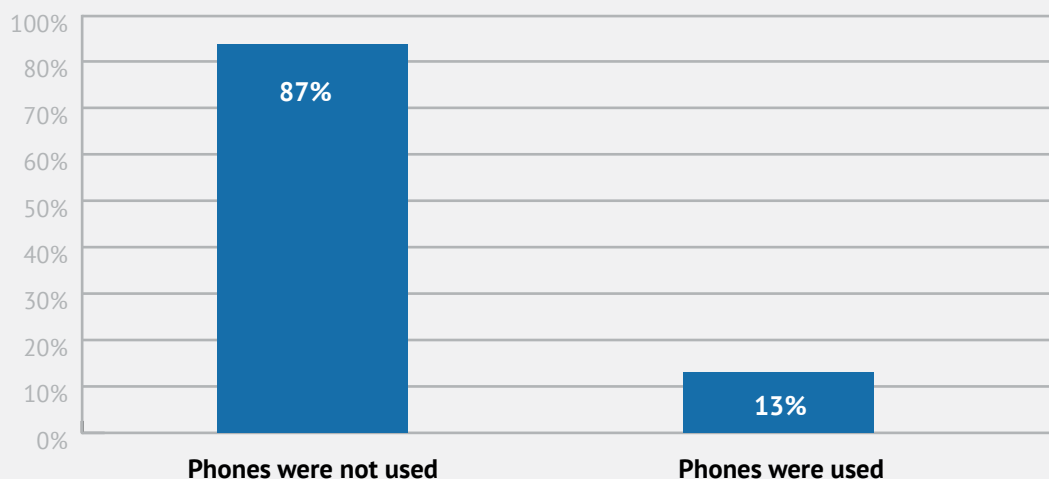
These statistics continue to be very concerning especially when bearing in mind that courtrooms provide better conditions than offices. Moreover, they ensure that there is room for the participation of the public in the hearing.

8. Use of mobile phones in hearings

BIRN continued to monitor the usage of mobile phones in hearings due to the fact that presiding judges and case judges are obliged to ensure orderly court proceedings, which also includes the prohibition of the use of mobile phones in hearings.

On the following table it may be observed that out of all the monitored hearings, mobile phones were used only in 13% of monitored hearings while in 87% no one was allowed to use mobile phones.

Table 8 Use of mobile phones on court hearings during 2013

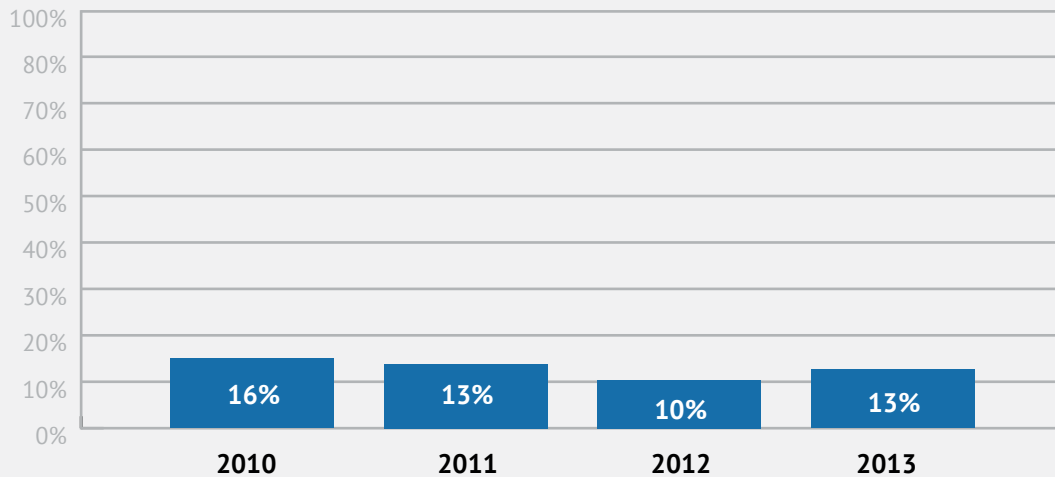


70 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.



Usage of mobile phones in court hearings has been monitored since 2008/2009 and after comparing the data, it is noted that since 2010 there is less usage of phones during court proceedings.

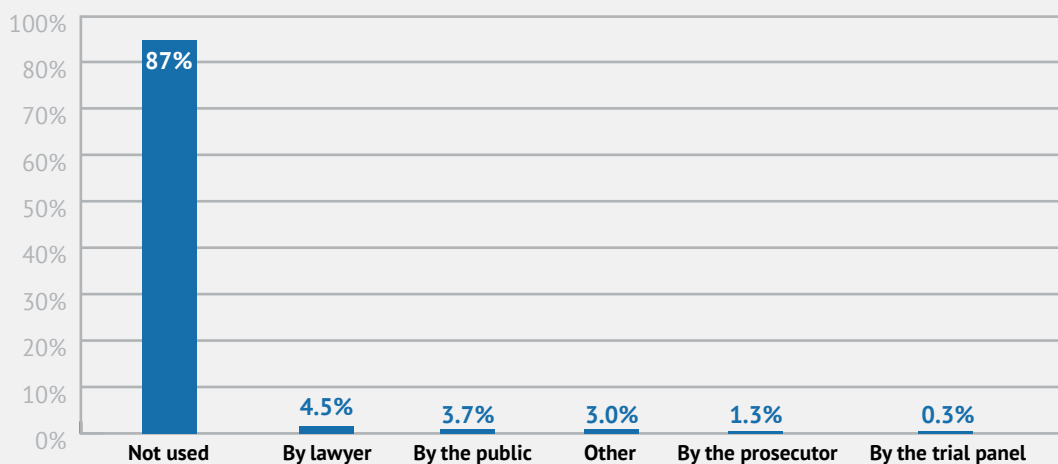
Table 9 Use of mobile phones during hearings 2010 - 2013



From the above table it is clear that while in 2010 mobile phones were used in more than 16% of monitored hearings, in 2012 about 9% and now in 2013 we have observed a slight increase that has gone up to 12.63%.

The following table shows who has used mobile phones mostly:

Table 10 Use of mobile phones during hearings 2013



The table presented above shows that the public and lawyers are the most frequent users of mobile phones during court proceedings. While lawyers have used mobile phones in 27 court hearings (4.5%), the public present at the hearing has used mobile phones in 22 cases (3.7%).



Compared to last year, judges have used mobile phones the least but there is an increase of lawyers using mobile phones.

The following are some illustrative cases that show usage of mobile phones during 2013.

In the case known as *Medicus*⁷¹ on the hearing held on April 2014, the lawyer of the defendant S.H. was fined with 100 euros for misconduct in the court, after he used his mobile phone during the hearing, even though the presiding judge has warned him not to do so during the hearing a few times.

But in another case held in the Basic Court in Prishtina on February 2nd 2013, the judge did not take any measures against a police officer present in the hearing went out of the courtroom a few times in order to talk on the phone and distracting all those present in the courtroom. This behaviour affected the functioning of the hearing for the case P. Nr. 124/12 related to criminal "kidnapping of a person".⁷²

In another hearing held on March 14th 2013 in the Basic Court of Prishtina for the case P.Nr. 1629/08 for the criminal offence "theft",⁷³ the prosecutor continuously used a mobile phone.

Another case when the lawyer used the phone was during the hearing held on February 5th 2013 in the Basic Court in Prishtina. Even though the lawyer used the phone during the hearing many times, the judge didn't warn him, nor did he take any measures against him according to procedural provisions.⁷⁴ In the same hearing, mobile phone was used by a witness as well.

It may be concluded that case judges or presiding judges did not ensure orderly functioning of the hearing, which is among their main responsibilities.

Some of the judges, prosecutors and other officials present in the BIRN roundtable, declared that BIRN should not focus in such technical details but rather more substantial ones as the judiciary has many other major problems.

However, the head of the Basic Court in Prizren, Ymer Hoxha said that the usage of mobile phones during the hearings by judges themselves is a major violation due to the fact that the phone calls may be related to the case in procedure. He added that judges who have behaved in such a way should be called to responsibility.⁷⁵

BIRN recommends judges to take the necessary measures for orderly functioning of the courts but it also recommends the KJC to take measures against judges who use mobile phones during the hearings themselves.

71 Criminal matters: "Organised crime, human trafficking, Krim i organizuar, trafikim me njerëz, illegal exercising of medical activity and abuse of official duty and authorisation, all in co-perpretation" according Article 274 par 1 and 3, Article 139 par 1, Article 221 par 1 and Article 339 par 3 all these related Article 23 të KCP-së; Pnr: 309/10; Pnr: 340/10.

72 Article 159 of the Criminal Code.

73 Article 252, paragrafi 1 of the Criminal Code.

74 Criminal matter "Theft" according to Article 252 paragraph 1 of the Criminal Code, P.Nr. 2268/08.

75 Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

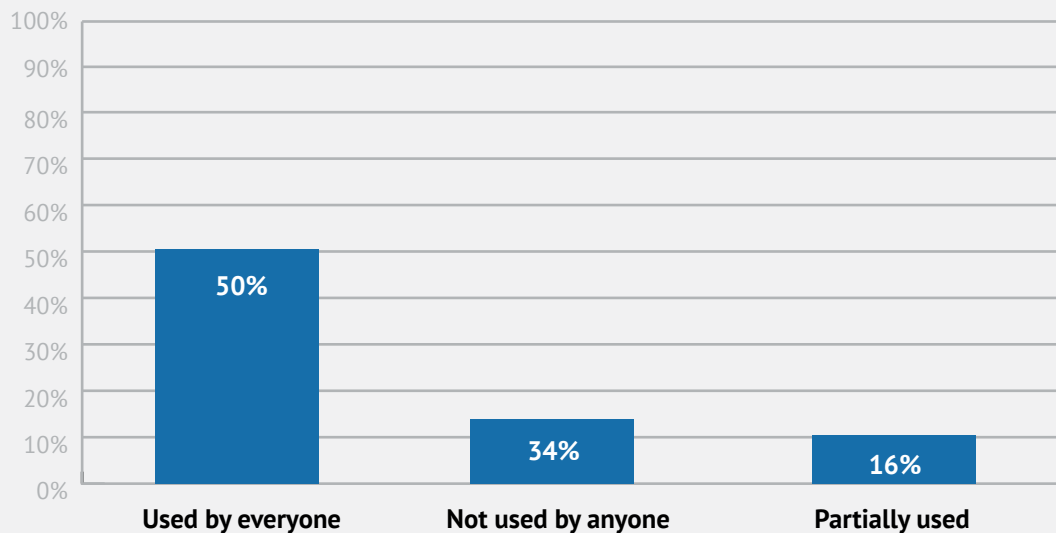


9. Judicial uniforms

The trial panel/judges, prosecutors and lawyers according to the code of ethics must be equipped with uniforms during court hearings.⁷⁶ Similar to previous years, judicial uniforms continue not to be used by judges, prosecutors and lawyers even they have them.

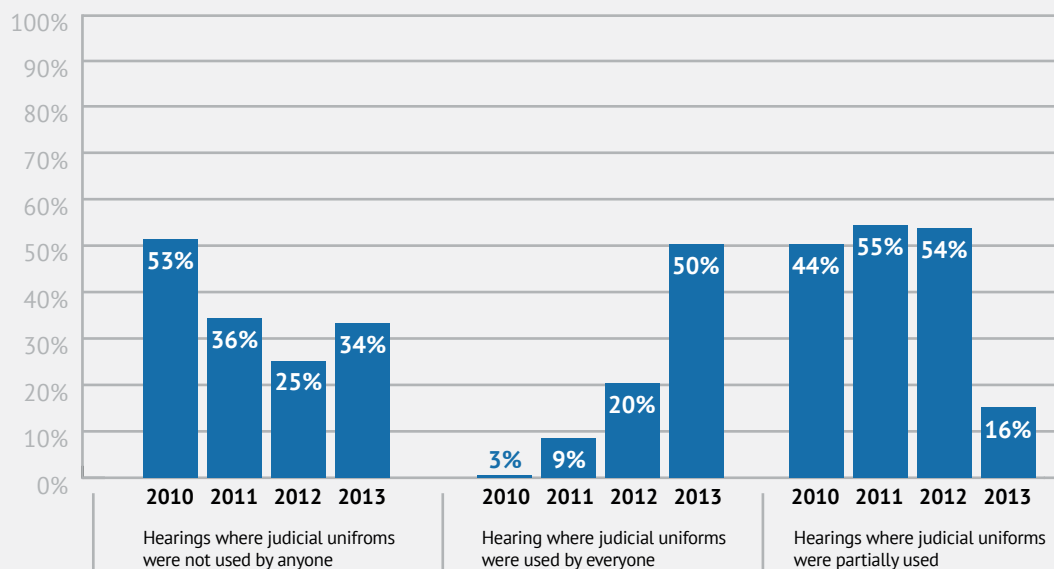
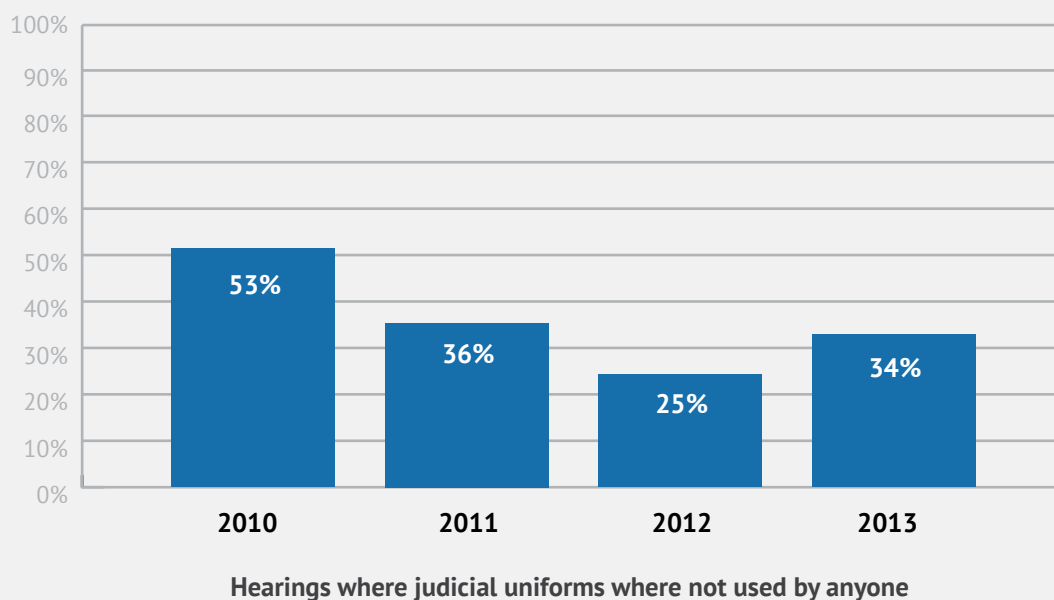
The following table depicts the cases when judicial uniforms were not used at all, were used by all parties or were partially used.

Table 11 Judicial Uniforms 2013



During BIRN monitoring through 2013, BIRN found out that in 34% of the monitored cases or 202 hearings, judicial uniforms were not used at all, in 16% of cases (98 hearings) uniforms were partially used (only by the judge, prosecutor or lawyer) and in 50% of monitored hearings (301 hearings) uniforms were worn by all parties.

Compared to previous years, wearing of judicial uniforms has increased as depicted next:

**Table 12 Judicial Uniforms 2010 - 2013****Table 13 Judicial uniforms 2010 - 2013**

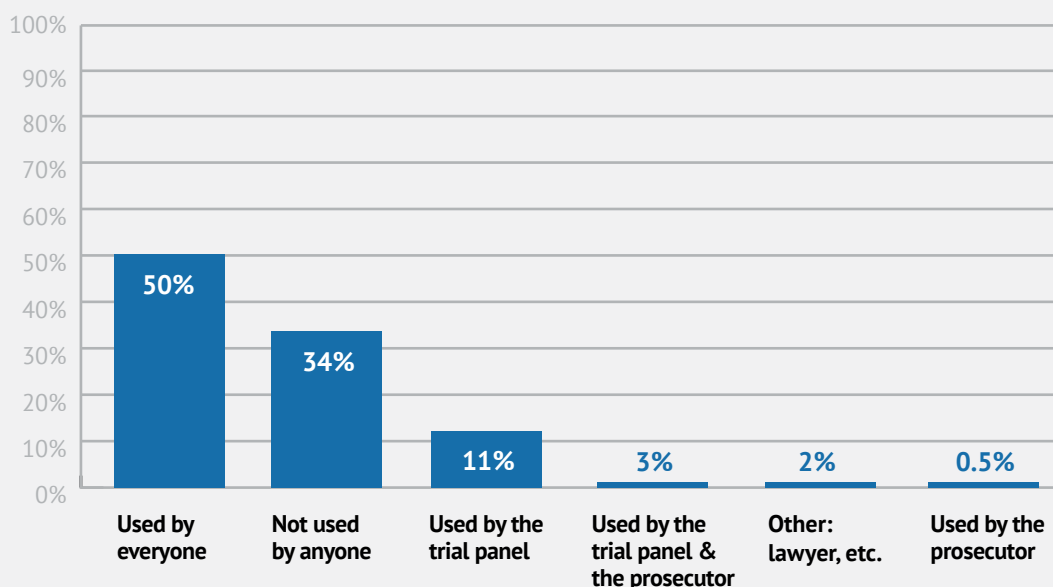
In 50% of monitored hearings in 2013, uniforms were worn by all parties (judges, prosecutors and lawyers), against 20% in 2012, 9% in 2011 and 3% in 2010.

Table 13 on the other hand shows that while in 2010 the percentage of those who did not wear judicial uniforms at all was very high, 53% saw judges, prosecutors and lawyers not wearing the uniform, while in 2013 this percentage has fallen to 34%. Hence, BIRN monitoring shows that compliance with the Code of Ethics has increased significantly but unfortunately uniforms are not worn by anyone more than one third of the time.



The table below shows concrete cases of usage of judicial uniforms by judges, prosecutors and lawyers:

Table 14 Judicial uniforms 2013



The table shows cases of usage or non-usage of judicial uniforms by all parties and specific cases when they were used either only by the judge or prosecutor or lawyers.

Last year when only 20% that wore the uniform, so 50% in 2013 is a significant improvement.

On the other hand there are other cases when the uniform is not worn by all those obliged to do so. 11% of the time its worn only by the trial panel/case judge. 0.50% only by the prosecutor, 3% by the trial panel/case judge and the prosecutor and 2% by the lawyer, lawyer and the trial panel/case judge and prosecutor.

In the roundtable of discussion organised by BIRN, the head of the Basic Court in Prishtina, Hamdi Ibrahim requested that the Kosovo Bar Association design one type of uniform for lawyers. According to him, the different design of lawyers' uniforms creates the impression that some lawyers are more worthy of representing their clients than the others⁷⁷

Ylli Zekaj from the Kosovo Bar Association justified this by explaining that the uniforms were a donation and assured the present panellists that all lawyers are now equipped with uniforms.⁷⁸

BIRN has continuously been recommending the use of judicial uniforms first by the trial panel/judges so that they would make sure that prosecutors and lawyers consequently wear uniforms also. KJC, KPC and KBA should also provide sufficient uniforms and make sure that measures are taken against those who do not wear the uniforms.

⁷⁷ Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

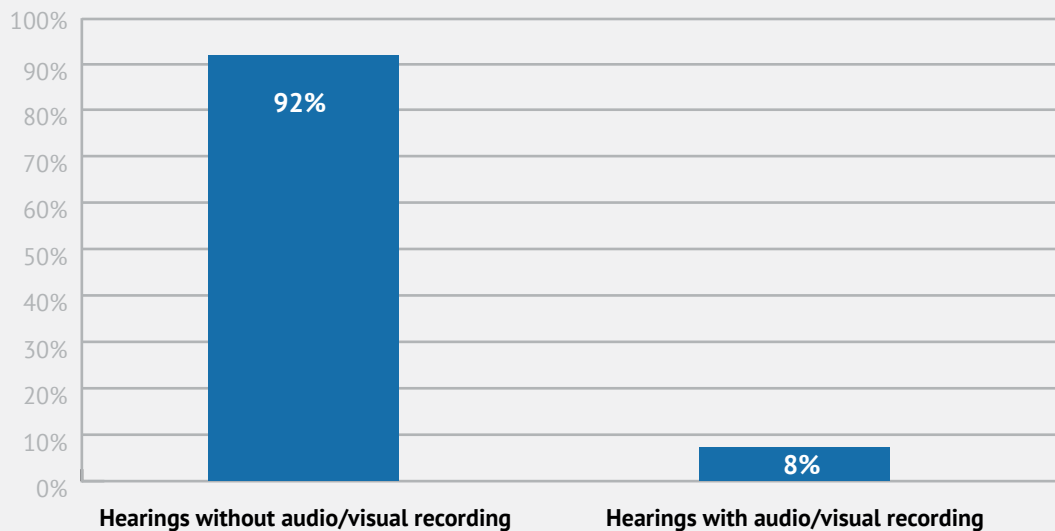
⁷⁸ Ibid.

10. Audio-visual recording of hearings

During this year long monitoring, BIRN has identified hearings that were not audio-visually recorded. The audio-visual recording seems not to be able to surpass 8% since 2009. In 2012 93% were not recorded at all.

The following table shows the hearings that were recorded and those that were not audio-visually recorded at all:

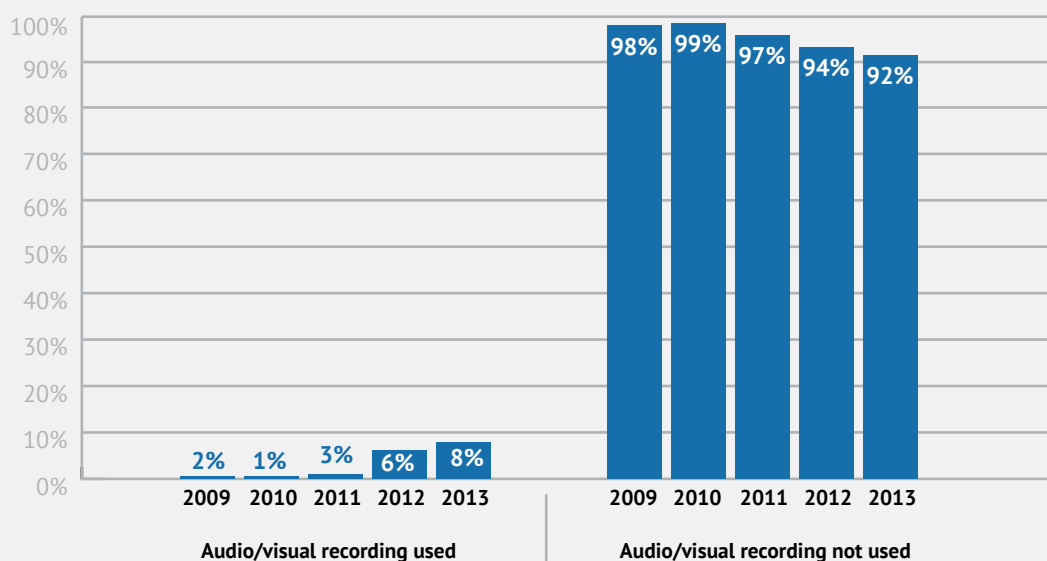
Table 15 Recording of court hearings 2013





Out of the held hearings that BIRN monitored, only 47 (8%) of them were recorded while in 554 hearings (92%) there was no audio-visual recording. The table below reflects the monitored hearings that were audio-visually recorded and those that were not for the period of 2009 – 2013.

Table 16 Audio/visual recording of court hearings



In 2009 only 8 hearings were audio-visually recorded but this has slightly improved annually so that in 2013 there were 47 hearings recorded or 8%.

The head of the Basic Court in Ferizaj, Bashkim Hyseni stated the importance of recording the hearings due to the fact that the lack of such recording may prove difficult when wanting prove the relevance or the order of the whole process.⁷⁹

Recording court hearings would prove extremely important especially in cases of appeal mostly related to procedural actions where they could be used to prove the claims of the parties.

⁷⁹ Round table of discussion organised by BIRN to discuss the judiciary and held on April 1st 2014 in Prishtina.

11. Summary of major trials monitored

11.1 Klečka case, set free after a retrial

Fatmir Limaj and nine of his co-combatants were found innocent on 17 September 2013 after a retrial on charges of war crimes in the so-called “Klečka” case. This marks the second time that Limaj and those under his command are released as innocent from the court. Limaj and the others were found not guilty on all charges in 2012. In November of the same year the case was brought back to court for retrial.

On the “Klečka” case charged for crimes against civilian population and prisoners were Arben Krasniqi, Naser Krasniqi, Nexhmi Krasniqi, Behlul Limaj, Fatmir Limaj, Refki Mazreku, Naser Shala, Sabit Shala, Shaban Shala and Besim Shurdhaj.

Fatmir Limaj and his co-defendants are charged of having in co-perpetration “have violated the bodily integrity and health of an uncertain number of Serbian and Albanian civilians and also Serbian prisoner soldiers, detained in the detention centre in the village of Klečka, in the municipality of Lipjan.”

These Serbian and Albanian civilians and prisoner Serbian soldiers, according to the indictment, were kept in inhumane conditions (chained, on cold ruined buildings, in total absence of sanitation and food, and subject to continuous beating).⁸⁰

All the offenses include the period from 1999 until middle of June of the same year.

Fatmir Limaj, a member of the Parliament of Kosovo, will face another trial during 2014 in the case so-called MTPT case, where he is accused for misuse of official duty during the time he was the minister in the Ministry of Transport Post and Telecommunication.

11.2 Tolaj, Bukoshi ect.

On June 2013 the Basic Court of Pristina found the permanent secretary of the Ministry of Health, Ilir Tolaj, guilty and sentenced him to 18 months of jail time. His subordinates Hajrullah Fejza and Arbenita Pajaziti were sentenced to 8 months of conditional jail time while their superior Bujar Bukoshi, former Minister of Health, now vice prime minister was found not guilty.⁸⁰

Tolaj and Fejza are prohibited to exercise public duties for three years while Pajaziti is prohibited to exercise public duties for two years.⁸¹

The former head of the Pharmaceutical Department in the Ministry of Health, Bekim Fusha, former head of the Procurement department, Zenel Kuqi and former official of the Procurement department, Ismet Hyseni were acquitted.

Ilir Tolaj, was indicted by the Special Prosecution of Kosovo for 12 counts of misuse of official duty or authorizations, bribery, tax avoidance and obstruction of evidence.

The former minister Bukoshi was accused of two counts of misuse of official duty.

The Special Prosecutor from EULEX Maria Bamieh filed a complaint against the verdict of the Basic Court, where she asks that the punishments for Tolaj be more severe. She also asked that Bukoshi be found guilty. The Court of Appeals is expected to come up with a verdict on this case in 2014.⁸²

80 “Tolaj is convicted with 18 months of jail”: <http://gazetajnk.com/index.php?cid=1,1018,5825>.

81 Ibid.

82 “Tolaj case – Higher convictions are required”: <http://gazetajnk.com/index.php?cid=1,979,6654>



11.3 Medicus

After more than 100 court sessions held on the case known as “Medicus,” named for the clinic where illegal kidney transplants took place, the Basic Court of Pristina on April 30th 2013 sentenced 5 persons to 20 years jail time for organized crime, human trafficking and heavy bodily injury.⁸³

Lutfi Dervishi, the head and owner of the “Medicus” Clinic, was found guilty of organized crime and human trafficking. He was sentenced to eight years in jail and a penalty of ten thousand euro. The penalty should be paid within three months from the day the verdict of the judgement is taken. Dervishi is also forbidden to exercise his medical profession as a urologist for two years.

Mr. Dervishi's son Arban, an economist in the clinic, was found guilty for organized crime and trafficking and was sentenced to seven years and three months jail and with a penalty of 2,500 euro.

Lutfi and Artan Dervishi are obliged from the court to reimburse the victims with fifteen thousand euro.

Anesthesiologist Sokol Hajdini was found guilty of severe bodily injury and sentenced to three years of jail. He is prohibited to work on his profession as anaesthesiologist for one year starting from the day of the verdict. Hajdini was acquitted of all charges of organized crime and illegal exercise of medical activity.

Assistant anaesthesiologists Islam Bytyqi and Sylejman Dula were sentenced each with one conditioned year of jail for severe bodily injury. The condition is that within a period of two years they should not commit a criminal offense.

Ilir Rrecaj, former permanent secretary of Ministry of Health, was acquitted of the charge of abusing the official duty and the charge of falsification of official documents.

Surgeon Driton Jilta was acquitted of charges of misuse of official duty and falsification of documents.⁸⁴

The Special Prosecution has another indictment against Yusuf Sonmez, the surgeon who performed the 24 kidney transplants, and Moshe Harel also who is charged of human trafficking and organized crime.

The Prosecution has started investigations against eight other persons related to “Medicus”.⁸⁵

11.4 ‘Bllaca 3’ sentenced with 4.5 years of jail.

After two trials, one that ended in 2011 and the other a year later, seven persons were sentenced based on the declarations of Nazim Bllaca on 19th of June 2013. The Basic Court of Pristina sentenced Bllaca with four years and six months of jail.⁸⁶

Bllaca has been sentenced for the murder of Ibush Kllokoqit., which he admitted during the court session, apologizing to the family of the victim.

“Nazim Bllaca murdered Ibush Kllokoqin shooting him to death with six bullets. This happened on 6th of August 1999 in Pristina”, was stated on the indictment secured by Jeta Ne Kosove.⁸⁷

11.5 PTK and Devolli released free of charges.

The Basic Court in Pristina on 28th of June 2013, released Blerim and Shkelqim Devolli, Ismet Bojku, Shyqyri Haxha and Rexhe Gjonbalaj of all charges due to lack of evidence.⁸⁸

The brothers Shkelqim and Blerim Devolli, owners of Devolli Company and Ismet Bojku director of the company were released of all charges filed against them.

They were charged with offenses of fraud, access on harming contracts and falsification of the official documents in special cases.

The former chief executive officer of PTK Shyqyri Haxha and the head of the board of directors in PTK Rexhe Gjonbalaj due to lack of evidence were released of all charges of criminal offenses such as access to harming contracts and misuse of official position or authorizations.⁸⁹

83 “Kidneys – exploitation of the poor”; <http://gazetajnk.com/index.php?cid=1,1018,5464>

84 Ibid.

85 “Another eight people are investigated for kidney transplants”; <http://gazetajnk.com/index.php?cid=1,1018,5466>

86 “Cooperating witness, Bllaca, is convicted”; <http://gazetajnk.com/index.php?cid=1,1018,6062>

87 Ibid.

88 “Devolli brothers and PTK executives are found innocent”; <http://gazetajnk.com/index.php?cid=1,1018,5912>

89 Ibid.



11.6 Anti-corruption Prosecutor sentenced

Former head of the Anticorruption Task Force, Prosecutor of Special Prosecution Nazmi Mustafai from 23rd of May passed on the other side of the law. He was sentenced from the Basic Court in Peja to five years in jail and a penalty of 10,000 euro. His co-perpetrators, brothers Reshad and Xhelal Zherka were sentenced four years in jail and the same penalty as Mustafi. Mirela Ndoci was sentenced to six months of jail and also a 10,000 euro penalty.⁹⁰

The court prohibited Mustafi from any kind of official activity for three years.

He was accused by the prosecution on two counts of misuse of official duty, and illegal possession of weapons.

Reshad and Xhelal Zherka were accused from the prosecutor Cezary Michalczuk for using their influence and pushing the misuse of official duty and Mirela Ndoci for helping after criminal offense commitment.

The defence of the parties declared that complaints on the verdict of the Basic Court of Peja will be filed.⁹¹

11.7 The Minister released free

The Basic Court of Pristina on 28th of February 2013 announced the verdict for the well known case as "Petković and others", where the defendants were former minister for Returns and Communities (MKK), Sllavisha Petković, former permanent secretary, Branislav Gerbiq, former head of procurement, Nemanja Vujović and the owners of some construction companies, who were accused for misuse of 1.1 million euro. The court found the main defendant Sllavisha Petković, not guilty, due to lack of evidence.⁹²

Branislav Gerbiq, the former permanent secretary and former Minister of MKK was found guilty on two counts and was sentenced with four years of jail.

Nemanja Vujović, former employer on the logistics and former head of Procurements in MKK and later also deputy-minister of Health, was sentenced with three years and six months of jail.⁹³

According to the verdict of the court, Gerbiq and Vujović are prohibited for two years to work in institutions.

Muhamet Sadiku, owner of the construction companies "3 Labi" and "Projekti Group" and Ismet Hasani, owner of the construction company "N.N.Valoni" were found guilty for the criminal offense of fraud and collaboration and were sentenced each with one year and six months jail.⁹⁴

Rifat and Fidan Sadiku (father and son) owners of the construction companies "N.P.Sh.Riar-Alfisi" and "Riar", Shemsi Haliti owner of construction company "N.N.T. Brezi Kufitar"; Gani Zeneli, owner of the construction company "N.Sh. Atdhetari" and Driton Hamiti, owner of a company for processing of wood "N.N.P Diti", were found guilty for the criminal offense of fraud and were sentenced each with one year of jail.⁹⁵

The abovementioned sentences for Muhamet Sadiku, Ruzhdi Prebreza, Ismet Hasani, Fidan Sadiku, Rifat Sadiku, Shemsi Haliti, Gani Zeneli and Driton Hamiti were suspended with condition for a period of three years.

The two former ministers Petković and Gerbiq were charged for misuse of official duty or authorization, appropriation on the duty, misuse, fraud on duty, falsification of official documents and falsification of documents. For all the criminal offenses except the one of misusing the official duty all the others were done in collaboration with other defendants.

Nemanja Vujović in addition to being accused for all these criminal offenses was also charged for bribery, taking money from Ruzhdi Prebreza, which was accused for giving the money.⁹⁶

11.8 The Group of Llap is sentenced

On 7th of June 2013, the Basic Court in Prishtina found three people guilty of war crimes. Latif Gashi known as Lata, was a member of the parliament of Kosovo and during the war head of the Army Informative Service. Rustem Mustafa, known as Remi, was during the war a commander in Llap region. Nazif Mehmeti was the former executive of the Military Police Commander. The case is widely referred to as the 'Llap Group'.⁹⁷

90 "The former prosecutor of corruption is convicted with five years of jail"; <http://gazetajnk.com/index.php?cid=1,1018,5633>

91 Ibid.

92 "Petković is innocent, other get 4 and 1 years of prison"; <http://gazetajnk.com/index.php?cid=1,1018,4836>

93 Ibid.

94 "Petković is innocent, other get 4 and 1 years of prison"; <http://gazetajnk.com/index.php?cid=1,1018,4836>

95 Ibid.

96 "Petković is innocent, other get 4 and 1 years of prison"; <http://gazetajnk.com/index.php?cid=1,1018,4836>

97 "Llap group – guilty of war crimes"; <http://gazetajnk.com/index.php?cid=1,1018,5743>



Gashi was found guilty and sentenced with five years of jail for the count number eight of the indictment, which charged him for the offense of beating and torture in the detention centre of Llapashtica.

Gashi was sentenced also before from the District Court of Pristine in 2009 for the counts number 5 and 14 of the same indictment, with two years for each offense.⁹⁸

The Basic Court in Pristina unified the two sentences to a total of six years of jail for Gashi. The Court will calculate the period already passed in detention.

Nazif Mehmeti for count number eight of the indictment was sentenced with three years of jail. Before this defendant was sentenced by the District Court of Pristina with one year and six months of jail. He was sentenced with three years of jail altogether.

Rustem Mustafa, known as Remi, was found guilty for the count number eight of the indictment and sentenced to four years of jail. He was also sentenced before from the District Court with two years of jail connected for the point 5 of the indictment. Mustafa was sentenced with an overall period of four years of jail.⁹⁹

11.9 Sami Lushtaku and Ramadan Muja

On June 2013 a trial panel of the Basic Court of Pristine didn't find any offenses made by the mayor of Skenderaj, Sami Lushtaku and others, on the charges of threat and violation of the equal status as a citizen, against the journalist Jeta Xharra, director of Balkan Investigative and Reporting Network (BIRN).¹⁰⁰

Sami Lushtaku, Rexhep Hoti owner of "Infopress", Avni Azemi, former editor of this newspaper and the opinion columnists Rizah Hajdari and Qani Mehmedi were charged for threats and violation of equal status of citizen against the journalist Jeta Xharra, director of BIRN.

The court didn't find that Hoti owner and Azemi editor of "Infopress" had organized a campaign against Jeta Xharra and BIRN and a direct connection of the published articles in 2009 in this newspaper and the threats against the injured party. All the defendants were acquitted; the prosecutor announced a complaint.¹⁰¹

Ramadan Muja, the mayor of Prizren elected in 2013 is facing charges for misuse of municipal and public property. For the same offenses are being charged other municipal officials, Sadik Pacarizi, Avni Ademaj, Kadri Ukimeri, Abdullah Tejeci and Minir Krasniqi. On 17th of June in this municipality Nexhat Cocaj, Reshit Kushaj and Nezir Osmani were acquitted on charges of misuse of official position regarding the auctions made for pupil excursions. Hasan Hasani, Sadik Paçarizi, Zekë Tejeci and Sokol Hadri were accused of falsifying meeting minutes in order to sell confiscated cars from the municipality.¹⁰²

The case of the major of Prizren and other officials is still on going in the Basic Court of Prizren.

11.10 Drenica Group I and II

The special prosecution of Kosovo during the month of November 2013 presented two indictments against former soldiers of UCK, charging them with war crimes against civilians, murders, beatings, and violation of physical integrity of prisoners in the centre of Likovc in Skenderaj. The other indictment is on war crimes against civilians including rape.¹⁰³

Sami Lushtaku, Sylejman Selimi, Sahit Jashari, Avni Zabeli, Isni Thaçi, Jahir Demaku, Zeqir Demaku, Agim Demaj, Bashkim Demaj, Selman Demaj, Driton Demaj, Fadil Demaku, Nexhat Demaku, Sabit Geci and Ismet Haxhaare are the 15 accused for the first indictment on war crime.¹⁰⁴

For the second indictment filed by the prosecutor Maurizio Salustro, presented on 13th of November, Shefki Hyseni is charged for rape and Ismet Haxha, Nexhat Qubreli and Sylejman Selimi for consequent beating of two girls from Mitrovica who now are witnesses of the prosecution.¹⁰⁵

After the initial sessions were held, the defence has denied the charges of indictment.

The Basic Court in Mitrovica is about to come up with verdicts regarding the indictments for both cases. If the court doesn't conclude with a different verdict, both indictments will be processed from the basic court in Mitrovica during 2014.

98 "Justice in Kosovo" bulletin, nr 31; http://drejtesianekosove.com/repository/docs/Buletini_Mujor_qershor_2013_600712.pdf

99 Ibid.

100 "Lushtaku and Others" – no other criminal offences"; <http://gazetajnk.com/index.php?cid=1,1018,5726>

101 "Justice in Kosovo" bulletin, nr 31; http://drejtesianekosove.com/repository/docs/Buletini_Mujor_qershor_2013_600712.pdf

102 "The most voted person in Prizren returns in the defendants bench"; <http://gazetajnk.com/index.php?cid=1,1018,6964>

103 "Witnesses confess to misery controls of Drenica commanders"; <http://gazetajnk.com/index.php?cid=1,979,7033>

104 Ibid.

105 Confession of two witnesses of the horrors of the days in the hands of KLA soldiers"; <http://gazetajnk.com/index.php?cid=1,979,7085>



11.11 Natali Velija and her criminal group

The special prosecution of Kosovo on 7th of November presented to the basic court the indictment against nine accused people regarding a passport scandal. The Austrian company OESD contracted by the Ministry of Internal Affairs to produce the biometric passports in Kosovo, were not given 1,400,000 euro for the services they provided.¹⁰⁶

The German citizen Natali Velija, the main person accused regarding this case, is under suspicion for nine different criminal offenses including organized crime, money laundering, robbery, fraud, avoiding taxes, misuse of trust, falsification and special cases of falsification of documents.

Together with her and Blakaj brothers are accused also Ergyn Dogani, Imer Fazlia, Nazmi Thaci, Jakup Blakori, Sefedin Shala and Hashim Shala. All these people are accused of having committed different criminal offenses connected to Natali Velija.¹⁰⁷

The main trial for this case will most likely start during the year 2014.

Fatmir Limaj and nine of his co-combatants were found innocent on 17 September 2013 after a retrial on charges of war crimes in the so-called "Klecka" case. This marks the second time that Limaj and those under his command are released as innocent from the court. Limaj and the others were found not guilty on all charges in 2012. In November of the same year the case was brought back to court for retrial.

On June 2013 the Basic Court of Pristina found the permanent secretary of the Ministry of Health, **Ilir Tolaj**, guilty and sentenced him to 18 months of jail time. His subordinates Hajrullah Fejza and Arbenita Pajaziti were sentenced to 8 months of conditional jail time while their superior Bujar Bukoshi, former Minister of Health, now vice prime minister was found not guilty.

Lutfi Dervishi, the head and owner of the "Medicus" Clinic, was found guilty of organized crime and human trafficking.

After two trials, one that ended in 2011 and the other a year later, seven persons were sentenced based on the declarations of **Nazim Billaca** on 19th of June 2013. The Basic Court of Pristina sentenced Billaca with four years and six months of jail.

The Basic Court in Pristina on 28th of June 2013, released **Blerim** and **Shkelqim Devolli**, **Ismet Bojku**, **Shyqyri Haxha** and **Rexhe Gjonbalaj** of all charges due to lack of evidence.

Former head of the Anticorruption Task Force, Prosecutor of Special Prosecution **Nazmi Mustafai** from 23rd of May passed on the other side of the law. He was sentenced from the Basic Court in Peja to five years in jail and a penalty of 10,000 euro. His co-perpetrators, brothers Reshad and Xhelal Zherka were sentenced four years in jail and the same penalty as Mustafi. Mirela Ndoci was sentenced to six months of jail and also a 10,000 euro penalty.

The Basic Court of Pristina on 28th of February 2013 announced the verdict for the well known case as "**Petković and others**", where the defendants were former minister for Returns and Communities (MKK), Sllavisha Petković, former permanent secretary, Branislav Gerbiq, former head of procurement, Nemanja Vujović and the owners of some construction companies, who were accused for misuse of 1.1 million euro. The court found the main defendant Sllavisha Petković, not guilty, due to lack of evidence.

On 7th of June 2013, the Basic Court in Pristina found three people guilty of war crimes. **Latif Gashi** known as Lata, was a member of the parliament of Kosovo and during the war head of the Army Informative Service. **Rustem Mustafa**, known as Remi, was during the war a commander in Ljapi region. **Nazif Mehmeti** was the former executive of the Military Police Commander. The case is widely referred to as the '**Ljapi Group**.'

On June 2013 a trial panel of the Basic Court of Pristina didn't find any offenses made by the mayor of Skenderaj, **Sami Lushtaku** and others, on the charges of threat and violation of the equal status as a citizen, against the journalist **Jeta Xharra**, director of Balkan Investigative and Reporting Network (BIRN).

The special prosecution of Kosovo during the month of November 2013 presented two indictments against former soldiers of UCK, charging them with war crimes against civilians, murders, beatings, and violation of physical integrity of prisoners in the **centre of Likovc in Skenderaj**. The other indictment is on war crimes against civilians including rape.

The special prosecution of Kosovo on 7th of November presented to the basic court the indictment against nine accused people regarding a passport scandal. The Austrian company OESD contracted by the Ministry of Internal Affairs to produce the biometric passports in Kosovo, were not given 1,400,000 euro for the services they provided.

106 "Natalia & Co "to hide the stoled money"; <http://gazetajnk.com/index.php?cid=1,979,7138>

107 Ibid.

Recommendations

Kosovo Parliament:

- » Kosovo parliament should proceed with and approve the Law on Minor Offences and Traffic Safety;
- » Parliamentary Committee on legislation and judiciary must monitor the implementation of the legislation related to the judicial system.

Kosovo Government:

- » Kosovo Government must make the necessary budget available per the request and needs of the KJC;
- » Ministry of Justice should amend the Law on Minor Offences and that on the Traffic Safety;
- » Ministry of Internal Affairs should provide access of Notaries in the database of the MiA in order to make the necessary checks prior to compiling authorisations for driving vehicles;
- » Ministry of Internal Affairs should establish a mechanism through which all paid traffic fines would be registered;
- » Ministry of Internal Affairs should make sure that the Kosovo

Police and the Centre on Vehicle Registration use this database;

Kosovo Judicial Council:

- » KJC should increase the number of judges in all court levels;
- » KJC must take necessary measures against the judges who violate the procedural rights of the parties on trial;
- » KJC should increase the number of professional associates;
- » KJC should cooperate with the Ministry of Justice in drafting the Law on Minor Offences;
- » KJC must ensure they issue concrete directives that oblige the court to schedule hearings at the moment the parties file the complaint on the traffic tickets;
- » KJC should ensure that the tariffs for filing of complaints for minor offences are increased;
- » KJC must ensure that the judicial fixed fee should be calculated in accordance with the expenses of the court and not as it was up to now in the amount of 5 euros;
- » KJC must make sure to place complaints filed against fines issued to foreign subjects and Kosovo

citizens driving vehicles with foreign plates (diaspora) as priority cases;

- » KJC should respect the agreement with Kosova Bar Association on ex-officio lawyer assignments;
- » KJC should make sure that all Basic Courts and their respective branches will make all their hearings public;
- » KJC should ensure that all court hearings start on a timely manner and to take measures against judges who do not respect the set schedules;
- » KJC should make sure that all hearings are held in courtrooms when they are available;
- » KJC should take all necessary measures against the usage of cell phones within the court building;
- » KJC should make sure that the code on the judicial uniform during the hearings is respected;
- » KJC must ensure that the system of publishing of hearings in the announcement boards is functional;
- » KJC must ensure appropriate interpretation during court hearing whenever necessary;
- » KJC should activate the system of audio-visual recording of court hearings;

Kosovo Prosecutorial Council:

- » Kosovo Prosecutorial Council (KPC) must increase the number of prosecutors in all levels;
- » KPC should respect the agreement with KBA for the assignment of ex-officio lawyers;
- » KPC must ensure enhanced transparency of prosecutors by encouraging them to be more communicative with the media and citizens but of course always making sure not to endanger investigations and on-going trials;
- » KPC should take measures against prosecutors who are late for court hearings;

Supreme Court

- » Kosovo's Supreme Court should come up with a legal opinion that will clarify the provisions of article 437, 1st paragraph of the Criminal Code of Kosova;
- » Kosovo's Supreme Court should ensure correct clarification and interpretation of criminal legal and procedural provisions;

Court of Appeals

- » Court of Appeals should deal with cases according to the dates they were filed;
- » Court of Appeals should not delay processing of court hearings;

Courts/Judges:

- » Judges should respect the provisions of the Criminal Procedures Code dealing with the order in which witnesses are examined during court proceedings;
- » Judges should comply with the provisions of the Criminal Procedures Code dealing with introduction remarks according to set order of speech;
- » Judges must with comply with Criminal Procedures Code provisions dealing with reading of the rights and

obligations of the parties in a court hearing;

- » Judges must comply with Criminal Procedures Code provisions dealing with reading of the declaration of the oath of witnesses;
- » Judges must comply with the agreements between the KBA, KPC and KJC related to ex-officio lawyers;
- » Heads of the courts and the judges in charge of their respective branches must ensure timely public announcements for court hearings;
- » Heads of the courts must make sure that judges are using courtrooms for court hearing whenever possible;
- » Presiding judges of trial panels/case judges should not use cellphones during court hearings;
- » Presiding judges of trial panels/case judges must ensure the well-functioning of court hearings by not allowing the usage of cellphones either from the parties or any other participants during trials;

Kosovo Police:

- » Kosovo Police must create a database where all traffic fines issues would be registered;
- » Kosovo Police should update the template of traffic ticket in such a way that they provide guidelines to citizens for complaint provisions;
- » Kosovo Police must ensure that all traffic offenders are aware that within eight (8) days the issued fines will be final and such a fine may not be reversed;
- » Kosovo Police must assign competent officials to register these fines in the database;

Kosovo Bar Association:

- » Kosovo Bar Association (KBA) must create suitable mechanisms for assigning ex-officio lawyers;
- » KAB must make sure that the agreement with the KJC and KPC for the assignment of ex-officio lawyers;
- » KBA must ensure the functionality of Regional Bars/ Chambers in assigning ex-officio lawyers;

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Basic Court in Gjakova – Malishevë branch

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Basic Court in Gjakova – Rahovec branch

Safete Tolaj

Basic Court in Peja – Deçan branch

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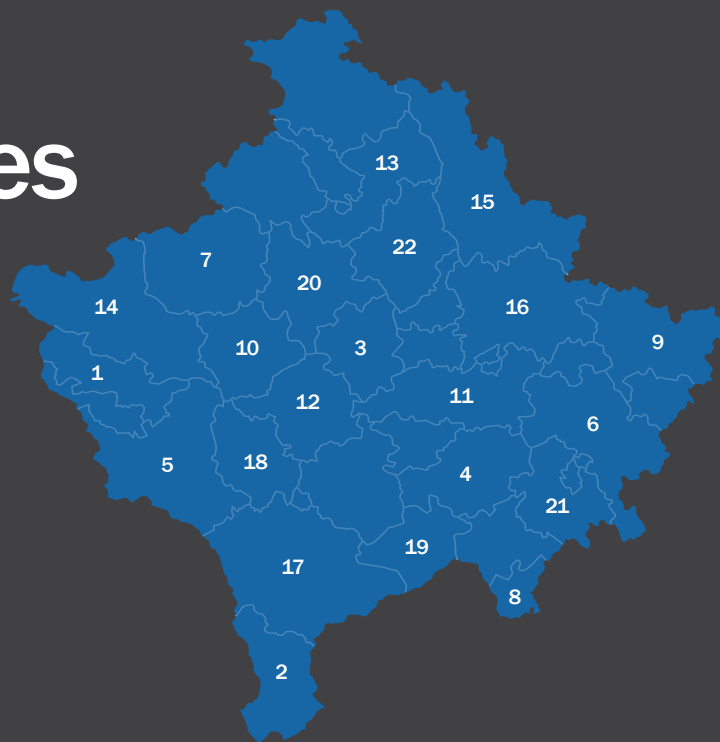


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BIRN KOSOVA

Monitored municipalities



1 Deçan

2 Dragash

3 Drenas

4 Ferizaj

5 Gjakovë

6 Gjilan

7 Istog

8 Kaçanik

9 Kamenicë

10 Klinë

11 Lipjan

12 Malishevë

13 Mitrovicë

14 Pejë

15 Podujevë

16 Prishtinë

17 Prizren

18 Rahovec

19 Shterpcë

20 Skënderaj

21 Viti

22 Vushtrri

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