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Balkan Investigative Reporting Network**

MONITORING THE COURTS

**Monitoring the work and administration
of courts in Prishtina, Peja, Mitrovica,
Gjilan, Ferizaj, Vushtrri and Skenderaj**

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EXECUTIVE SUMMARY

A weak judicial system is one of the key problems confronting Kosovar society. Ten years after the end of the war, thousands of cases remain open, resulting in high levels of public dissatisfaction and directly contributing to social insecurity.

Research and reports by international organisations have shown that Kosovo's courts are the institutions suffering the highest level of corruption and public dissatisfaction. Indeed, the level of satisfaction with Kosovo's courts stands at 20%, making them the lowest-ranking institution in terms of public satisfaction¹.

This report is a presentation of BIRN's findings, based on intensive and consistent monitoring. It was produced in order to identify the problems faced in the daily work of judges.

BIRN's monitoring has shown that many cases remain open for a protracted period, or are not heard within a reasonable time-frame, due to poor management by the judicial administration, delays in starting proceedings and even the failure of parties to turn up, amongst other reasons. This monitoring has also revealed another aspect of the judicial system: the corruption and poor management of judges. It further demonstrates a series of other violations, including significant breaches of protocol for trials.

The violations noted during the monitoring can be grouped into violations of 'absolute' and 'relative' importance, but there are also observations about the poor management of judges or judicial administrators and legal processes in general².

Monitors present at judicial sessions have often seen cases where prosecutors participate in various trials simultaneously; in which judges, prosecutors, and lawyers in particular, use mobile telephones during trials; in which judges hold trials in their offices even when court rooms are available; the failure to use electronic equipment even by courts equipped with it; and the failure of the judging body and prosecutors to wear uniform.

1 Early Warning Report UNDP December 2008.

2 The applicable legislation in the Republic of Kosovo specifies the criteria according to which violations can be deemed 'absolute' or 'relative'. The effect of violations on the procedural process varies depending on what type of violation occurred during the procedure. 'Absolute' violations are those that can result in the annulling of decisions made since the beginning of the process.

Furthermore, thousands of sentences have not been enforced, despite being declared (especially in civil cases), which makes the rule of law in Kosovo more fragile. The Annual Report of the Kosovo Judicial Council (KJC) states that, of the 522,573 cases processed during 2008, 312,379 have been heard, while 210,194 remain open.

Another problem with Kosovo's legal system is that judges are paid very little. While in other states, the salary of the head of the Supreme Court is almost equivalent to the salary of the President of the State, the salary of the head of the Kosovo Supreme Court is €775.60 (gross), whereas the salary of the President is €3,400.

METHODOLOGY

BIRN's monitoring report is based on data collected from 600 questionnaires completed between March 2008 and March 2009. These questionnaires were filled out based on monitors' observations during trials and interviews with the parties involved in the legal.

The questionnaires provide the quantitative aspect of the data gathered, with the project's qualitative information gathered from interviews conducted with heads of courts, court administrators, lawyers, other court staff, officials from the KJC and parties involved in legal cases.

Over the one-year period studied, a total of 60 interviews were conducted. Due to financial restrictions, the project was confined to the regular courts in Prishtina, Peja, Mitrovica, Ferizaj, Vushtrri and Skenderaj³.

The project's scope included monitoring the work of domestic judges and, after the start of the work of the European mission for the rule of law (EULEX), some trials led by EULEX judges.

In order to protect the identity of the parties in judicial cases, as well as some judges and other participants, this report refers to them only by their initials.

³ In municipalities where they exist, this monitoring programme did not include municipal courts for minor offences.

BACKGROUND TO THE PROBLEM

BIRN organised the ‘Monitoring the Courts’ project because of the importance of the rule of law in Kosovo’s society. In its narrowest sense, the ‘rule of law’ refers to the quality of the work of the courts, and this can have a major effect on a society’s economy, including the level of foreign investment, and security in general. Of particular importance is the impact the state of the rule of law has upon Kosovo’s integration processes with international and regional organisations.

Kosovo, as an autonomous region based on the Constitution of 1974, enjoyed substantial rights, having its own assembly, judicial system, Supreme Court and Constitutional Court.

In 1989, the Constitution was changed, revoking the autonomy guaranteed to Kosovo in the 1974 Constitution. As a result, the judicial sector was constantly subject to political pressures. In the beginning, during a period of great social and political change, those people in Kosovo who exercised their rights to freedom of expression and assembly were judged and persecuted because of their convictions or ethnicity, as part of a systematic repression. Such people were tried and persecuted by the judges and public prosecutors of the region at that time.

The 1990s witnessed the creation of a parallel system and, in most, but not all, cases, Albanian judges and prosecutors were expelled from their jobs.

With the end of the war in 1999, the administration of the judicial sector was conducted as part of Kosovo’s emergency reconstruction, within an institutional vacuum. The sector’s responsibilities were gathered together in the so-called ‘First Pillar’ of the UN structure, which dealt with policing and justice. In the beginning, the field of justice was within the competences of the UNMIK Department for Legal Issues and the Kosovo Joint Interim Administrative Structure, which together led the Administrative Department of Justice. In May 2000, the Department of Justice was formed by UNMIK.

After the creation of the Kosovo government in March 2002, specific administrative competences for the organisation of legal administration were transferred to the Ministry of Public Services’ Department of Judicial Administration (DJA). In this period, up until the promulgation of the Constitution of the Republic of Kosovo in 2008, judges and prosecutors were selected by a commission of the Kosovo Assembly and appointed by the Special Representative of the Secretary General (SRSG), who was the highest authority, with powers over the appointment and removal of officials.

Since, for many years, it had not been possible to organise Bar examinations because the regime had not recognised diplomas from the parallel Law Faculty (1990-1999), appointments after the war could only include former judges and former prosecutors or jurists who had completed their Bar examinations under the previous regime. During the first phase of appointments, the administration of the judicial sector was jointly directed by UNMIK and local authorities.

This phase of appointments was not preceded by an assessment of officials' ethical and professional values, nor of their past activities whilst exercising their responsibilities.

With the founding of the Ministry of Justice in 2005, a limited subset of the competences in the field of justice passed to this ministry. Also in 2005, the Kosovo Judicial Council was founded as the highest body within Kosovo's judicial system, responsible for administering the entire system. This body also, like all domestic institutions of that time, was formed under the authority of the SRSG.

During 2006, as anticipated in UNMIK Regulation No 2005/53, after a positive assessment of the results achieved by the new institutions, the SRSG issued a second regulation (No 2006/26), which transferred a further set of responsibilities in the field of the rule of law, broadening the responsibilities of the Ministry of Justice and the Ministry of Internal Affairs.

From this phase, until Kosovo's declaration of independence in February 2008, the judicial sector was administered by UNMIK, with some responsibilities transferred to domestic institutions.

It should be noted that, from the moment UNMIK's administration was established in Kosovo, the applicable law was constituted by UNMIK Regulations in addition to laws in force since 22 March 1989, the last date upon which Kosovo enjoyed its autonomy within the Socialist Federal Republic of Yugoslavia. Laws passed after 1989 could be applied only if they related to an issue or situation not covered by any law existing prior to 1989, on the further condition that such a law was not be discriminatory. In addition, later laws issued by the Kosovo Assembly and declared by the SRSG were also valid.

Due to the application of different laws, there have, and continue to be, cases in which legal dispositions clash, weakening legal security in Kosovo and creating significant doubts amongst the professional community regarding the correct implementation of the law and the balancing of these differing dispositions.

Since mid-2004, the legal system began to apply the Provisional Criminal Code and the Provisional Criminal Procedure Code as the two basic laws of criminal justice, approved in accordance with European standards. For some time, Kosovo's institutions have worked on gathering ideas about the changes necessary for these two codes. This process, despite some alterations last year, cannot be considered complete. A substantial change were amendments to the codes which promoted the use of plea bargaining. The systematisation of this principle in the two criminal codes has made the implementation of laws in the criminal field much easier. Civil law, on the other hand, remains unregulated, with basic laws enacted by the Kosovo Assembly.

After the declaration of independence, a small increase in domestic institutions' responsibilities can be noted. However, these are not the only institutions in the judicial sector, as EULEX holds executive powers in this field, alongside its monitoring and advisory responsibilities in this and other sectors of the rule of law. Besides a lack of clarity in the creation of a legal basis for this mission, it remains to be seen whether EULEX will implement the applicable law in Kosovo in those areas that the Republic of Kosovo's institutions have not yet been able to exercise their jurisdiction.

INTRODUCTION

During BIRN's monitoring of, and visits to, the courts covered by this project, all the heads of the district and municipal courts explained that the large number of cases still open was due to the restrictively small number of judges.

According to them, judges are burdened with a large number of legal cases, and the failure to appoint new judges, which had previously been a problem for UNMIK's Department of Justice⁴, is now the responsibility of the Kosovo Assembly, which is not yet appointing new judges⁵.

Perhaps it should be noted that the process of choosing judges and prosecutors in Kosovo is institutionally complex, and has evolved out of structures in which the UNMIK administration held the key role. Furthermore, UNMIK's head, the SRSG, held this authority, which was then partly delegated to domestic institutions during the transitional phase, through the founding of the Judicial Council and the inclusion of the Kosovo Assembly. Even at this time, the SRSG took the final decisions, including those passed by the institutions created after the promulgation of the Constitution of the Republic of Kosovo⁶.

In order to reflect the responsibilities guaranteed by the applicable legislation in Kosovo today, its new institutional structures do not only include the responsibilities of the Assembly of the Republic of Kosovo, but also those of the Judicial Council and the President of the Republic of Kosovo. However, it should be emphasised that Kosovo has a small number of judges in comparison with the number of cases and the size of its population. Even so, this project found significant problems affecting the resolution of even those cases in which domestic judges did pass judgments. These problems are not only related to the small number of judges as a proportion of to the population, as a number of other reasons and factors, as highlighted in the Executive Summary, are also involved in the development of a backlog of unresolved cases.

4 The Department of Justice functioned within the 'First Pillar' of UNMIK, which dealt with issues of justice and internal affairs in Kosovo under the international administration of the UN. This Pillar gradually began to transfer its responsibilities to the Provisional Institutions of Self-Government in Kosovo, formally doing so in December 2005. However, the process of transferring these competences entered the negotiation stage in August 2005, including the founding of the Provisional Judicial and Prosecutorial Council, the Ministry of Justice, the Ministry of Internal Affairs and the division of transitional powers between local institutions and those of UNMIK with regard to the Kosovo Police Service.

5 Based on interviews conducted with the heads of courts in Peja, Ferizaj and Mitrovica in April 2008.

6 For this, see the relevant UNMIK Regulations, i.e. 1999/5, 2000/6, 2000/34, 2001/2, 2001/08, 2002/20, 2005/52, 2005/53, as well as the Constitution of the Republic of Kosovo.

The number of judges also varies according to the structure of the different judicial branches. However, the current structure is expected to be radically reformed, as specified by Kosovo's Constitution. At the beginning, the judicial institutional reform⁷ could not occur because the highest legislation of state, the Constitution, did not exist. However, this is not sufficient explanation for the failure to draft systematic laws on the judicial branch in Kosovo⁸. If Kosovo's institutions used the absence of the highest political-legal act of the country as their excuse before, it remains to be asked how it is possible that they have still not produced legislation for institutional reform, a year since the deputies of the Kosovo Assembly signed the Constitution of the Republic of Kosovo.

On the basis of BIRN's analysis, it can be concluded that the process of preparing this legislation is not technically easy, nor is finding a political compromise between the actors included in this process⁹. The absence of legislative policies and regular interventions in draft laws in this field has made it possible for many different projects and experts from international organisations such as USAID, the European Commission (which provides technical assistance), EULEX authorities and the US State Department, to impose their ideas. Such actors' support appears to be critical due to the absence of local capacities to prepare appropriate legislation. However, some actors, especially EULEX, also have executive responsibilities within the very competencies that these laws intend to regulate.

7 Institutional reforms include the specification of competencies within different levels of the courts. This requires special legislation approved in accordance with the highest legal acts of the Republic of Kosovo and in line with the practices and standards of international legislation.

8 Some systematic laws are still not implemented, such as the Law on Mediation and the Law on Notaries. Laws still not approved by the Assembly and declared by the President are: Law on the Judicial Branch, Law on the Judicial Council, Law on the Public Prosecutor and the Law on the Prosecutorial Council (the names of these laws may change). The laws declared are not being implemented by the Ministry of Justice, whilst those not approved remain so, despite having been part of Kosovo's legislative strategy now for many years.

9 It has been made known various times publicly, including on an episode of the RTK TV show 'Jeta në Kosovë' (a current affairs programme co-produced by BIRN) broadcast on 10 October 2008, that the draft laws changed various times over the four-year period of their preparation.

POOR MANAGEMENT OF LEGAL CASES

The data gathered by BIRN's monitors show that almost all trials began late, most often because judges did not arrive on time. (See table no. 4)

While one judge may hear as many as 99 cases in a single month, another might not hear even one. Based on the fact that cases in Kosovo's judicial system are, in principle, assigned on the basis of order rather than any discriminatory criteria, the large variation in the number of cases heard in regular courts raises many questions and presents a challenge for raising the quality of management for the rule of law sector and improving legal security in the near future.

In order to give a clearer impression¹⁰, the following statistics present the number of cases heard by each judge in the Peja District Court during June 2008.

1. Esat Shala, judge and head of the Peja District Court: 99 cases heard¹¹
2. Sudan Gorani, judge: 0 cases heard
3. Ukë Muqaj, judge: 17 cases heard
4. Salih Mekaj, judge: 28 cases heard¹²
5. Muharrem Hoti, judge: 13 cases heard
6. Osman Cucovic, judge: 16 cases heard
7. Muharrem Shala, judge: 23 cases heard
8. Isa Kelmendi, judge: 24 cases heard
9. Hasan Sala, judge: 38 cases heard

It is to be expected that the main phase of an investigation would demand more time than the confirmation of an indictment in criminal cases, or the duration and specification of preparatory sessions¹³. Nevertheless, monitors believed that the extreme variation in the time taken between cases is unjustifiable. According to the head of the Supreme Court, Mr. Rexhep Haxhimusa, during the day, judges are committed for an average of five and a half hours to issues related to their duties.

10 Access to information and statistics was difficult and highly restricted, despite our insistence that this project could be strengthened with better access to notes and data, which we believed could contribute further to the objectivity of both the monitoring and this report.

11 Cases heard by Esat Shala included 16 cases of preliminary procedures, 20 cases of confirming indictments, 19 criminal cases of the first level and 44 acceptances of foreign judgements. Shala, the head of the court, died in February 2009.

12 Salih Mekaj left the Peja court in November 2008, taking up a position as a judge in the Supreme Court.

13 Preparatory sessions are not necessary for disputes in which the judge decides alone. The assignment of a preparatory session should not occur automatically, as there may be no need for one. The main purpose of preparatory sessions is to allow for the compilation of material and formal evidence, making possible an effective and quick treatment of the material and conduction of the judicial process in general.

The main reason for the backlog of cases is that Kosovo's courts do not work to full capacity; work without deadlines; have poor management systems; lack adequate capacities and, in the executive area, do not have nearly enough personnel to achieve the desired objectives.

FAILURE OF LAWYERS, PROSECUTORS, WITNESSES AND DEFENDENTS TO PARTICIPATE IN TRIALS

In many cases, the courts fail to inform parties of their obligation to participate in trials. This occurs mainly because they do not know the addresses of witnesses and defendants.

Besides this, during monitoring, it was noticed that the courts often do not adequately inform witnesses about the scheduling of trials, even when they possess correct contact details¹⁴.

In addition to the routine absence of prosecutors, the judging body and witnesses, trials are also delayed due to the absence of defendants¹⁵. Obviously, a session has to be delayed if it does not fulfil the essential conditions to proceed¹⁶. This was not the key issue for this monitoring project, although it was a common enough malpractice as to have a significant negative effect upon the quality of courts' work.

Delays also occurred because of problems with the transportation of defendants from prison¹⁷. The competencies in this field have been transferred from the international administration to domestic institutions. The number of cases delayed because of the transfer of persons detained in detention centres, after domestic institutions took control of these responsibilities, are evidence of the low level of cooperation between Kosovo's security and justice institutions.

14 For example, in criminal case P 114/04 in the District Court of Peja, court officials invited the main witness, M.W., a Swiss citizen, to give evidence in a trial held on 22 September 2009 by telephone rather than by an official invitation sent through the Swiss Embassy in Prishtina, according to protocol. A similar case occurred in Ferizaj. During trial P642/07, in the municipal court of Ferizaj on 29 July 2008, a witness was called on the telephone during the judicial session. Another case in which the court did not invite the parties in a standard manner relates to the criminal case Pnr: 104/09, the case of assisting prisoners' escape, held in the District Court of Peja. The two witnesses, H.K. and XH.K, declared during the trial that they had not received official invitations from the courts. The judge, U.M., reacted by saying that the invitations were signed, but the two witnesses claimed that the signatures on the court invitation were not their own. Witness H.K. said that he came himself to the court to find out about the case and, on this occasion, learned the date and time of the trial, whilst the other witness, XH.K, said that he was contacted by the police to participate in the trial.

15 For example, case P.No.459/2007, held in the municipal court of Vushtrri, related to criminal acts of bodily harm, was delayed because of the absence of the parties.

16 As is the case when the head of the judging panel verifies that there is no evidence that the parties were invited as prescribed by law.

17 In this manner, the trial arranged for 18 March 2008 in the district court of Peja was not held because the international police, who were responsible for transporting prisoners at that time from prison to the courts, did not manage to bring GJ.N, accused of murder, from the prison in Dubrava.

Facts and statistics

Out of a total of 513 trials monitored during the year covered by this report, 304 cases began late, 21 were not held at all, and 188 were held on time.

In 114 cases, the reason for the delay, or for not hearing the case at all, was the absence of one or more of the parties; in 56 cases, the judging panel was not complete; some 155 trials were delayed or not held at all due to technical reasons¹⁸. (See table 5)

These delays and, worse, failures to execute the process at all, cause legal insecurity and reduce public trust in the institutions of justice. Insecurity can be noted through two phenomena: that of citizens taking the law into their own hands, particularly when parties decide to solve their problems through violent means; and also by the eventual time limitation of these and/or other cases.

¹⁸ Included in these 'technical reasons' are the lengthening of preliminary trials beyond that planned for by the judge; the failure to send invitations according to the rules; the failure of witnesses and experts to attend trial and so on.

PROBLEMS BETWEEN THE COURTS AND SECRETARIAT OF THE KOSOVO JUDICIAL COUNCIL (SKJC)

The administration of the courts is conducted by the Judicial Council. Managerial responsibilities belong to the Secretariat of the Kosovo Judicial Council (SKJC).

The division of competencies between institutions is stipulated in UNMIK Regulations 2005/52 and 2005/53, as well as the Constitution of the Republic of Kosovo.

Beyond this, the normative direction of the responsibilities of these institutions is expected to be regulated by systematic laws on Kosovo's judiciary, including the courts, prosecution, the Judicial Council and the Prosecutorial Council.

The preparation of these normative frameworks began in 2004, and continues at the time of preparing this report (May 2009). It is known that there have been a number of phases in the preparation of these laws, in addition to serious disputes regarding the structure of the relevant organisations and division of responsibilities in this field. To illustrate this more clearly, it should be noted that, in the early stages, there were disagreements over the establishment of the Judicial and Prosecutorial Inspectorate which, at that time, was the exclusive responsibility of UNMIK. There was disagreement between working group members over whether this unit should stay within the Ministry of Justice, shift to the Executive Agency within the Kosovo Assembly, or be under the authority of the Judicial Council.

At that time, it was argued that, were this unit to be under the umbrella of the Ministry of Justice, the judiciary might become subject to the daily politics of the minister or political groups.

However, should the unit pass to the Kosovo Assembly, there was thought to be a danger of political interference over its functioning, as well as a risk of the unit becoming irrelevant, as there is a widely-held belief that agencies working within the Assembly do not generally achieve significant progress.

On the other hand, if the unit should pass to the Judicial Council, it was believed by some that it would lead to a direct conflict of interests, since the Inspectorate would investigate violations of the ethical code by judges and prosecutors, while they at the same time might be members of the Judicial Council, and would naturally find their cases positively.

In 2008, it was decided that the Judicial and Prosecutorial Inspectorate should remain within the Judicial Council and, as a result, the doubts about its functionality remain the same.

In addition, the process of preparing the legislative framework¹⁹ was not sufficiently transparent. The drafts of these laws were never debated publicly, despite the fact that the Ministry of Justice signed three Memorandums of Understanding²⁰. Besides sending the drafts late for debate in working groups, most of the groups' members were not informed about the contents of the draft laws. Usually, working groups constitute government members (legal officials) and officials from technical assistance projects. No-one from civil society or any well-regarded organisation that monitors the development of legislative policies was invited to these working groups.

19 Preparation of draft legislative acts is regulated by the Government of Kosovo.

20 These were between the Ministry of Justice and the Society of Judges, the Society of Prosecutors and the Chamber of Advocates.

Facts and statistics

The main problem with the Secretariat of the Kosovo Judicial Council (SKJC), according to the heads of district and municipal courts, is related to the power of appointment for courts' administrative staff.

During meetings with the heads of the courts, all expressed similar dissatisfaction with their lack of authority over the selection of administrative staff. As a result, they said, it is impossible to administer, discipline or punish civil staff, even when they work inefficiently²¹. However, the head of the SKJC, Halit Muharremi, said that the appointment of administrative staff is done on the basis of employment legislation for civil staff. The SKJC, said Muharremi, chooses civil administrative staff via a commission made up of five members of the central administration and the relevant court²².

Another problem highlighted by the heads of the courts was the limited use of trainees. However, this was also rejected by Muharremi, who said that 76 trainees have been assigned to courts for the calendar year, for as long as their traineeship lasts.

During the monitoring, it was concluded that a process of teaching trainees²³ and professional co-workers about all legal instances is necessary for the reform of the judicial sector in Kosovo. During its reform, the judicial sector will require new candidates. These candidates must learn to deal with concrete, practical problems. Having a sufficient number of trainees and co-workers can release judges from laborious duties related to the preparation of written statements and technical work, which apprentices and co-workers could accomplish without great difficulty, once they have followed the work of the courts for a short period.

Since judicial administration is centralised, it seems that the selection of trainees and co-workers causes disagreements over the management of the courts' human and financial resources.

Embracing a method of selecting co-workers or trainees from the central level of the SKJC, or choosing them from courts they have applied to, does not solve the problem. Only a form of decentralised management, in conjunction with the delegation of responsibilities and stringent evaluations, can make judicial administration efficient.

In addition, in order to increase the number of trainees and co-workers in general, more workspace must be created.

21 Meeting with a senior official of the Municipal Court of Ferizaj, April 2008.

22 Interview with Halit Muharremi for BIRN, March 2009.

23 Meeting with officials of the district court in Peja (April 2008) and with officials of the municipal court in Gjilan (December 2008).

DIVIDING RESPONSIBILITIES BETWEEN THE JUDICIAL COUNCIL OF KOSOVO AND THE MINISTRY OF JUSTICE

Some competencies of the UNMIK Department of Justice were transferred to domestic institutions such as the Judicial Inspectorate and the Auditing Unit of Judges. Competencies were also passed to the KJC, whilst the Special Chamber of the Supreme Court and the Office of the Special Prosecutor retain certain competencies, according to EULEX's executive power. Responsibilities relating to international judicial cooperation have passed to Kosovo's Ministry of Justice.

According to Muharremi, this division of responsibilities in the judicial sector has strengthened the belief that legal jurisdictions may be confused between the Ministry of Justice and the KJC, and that that would be contrary to Kosovo's Constitution²⁴.

The inclusion of members of the government's executive and legislative bodies, as well as representatives of public administration, in the KJC constitutes another violation. This is in accordance with Regulation No 52/05 of the SRSG for the formation of the KJC, but in violation of the Law on the Provisional Constitution of the Kosovo Judicial Council, which entered into force on 30 January 2009²⁵.

The current membership is temporary, intended only to last until the completion of the re-evaluation process for judges in Kosovo. This will end the conflict between the norms of Article 108, clause 6 of Kosovo's Constitution and Article 151, upon which the membership of the current, provisional council is based.

On the basis of Article 108, the constitution of the Judicial Council does not guarantee the independence of the judiciary, as is demanded in Opinion No. 11 of the Council of Europe. This Opinion, amongst others, demands that the constitution of the highest bodies of the judicial administration should ensure total independence from executive and legislative authorities. As a result, continuing to reserve places for members of the executive and legislative on the Judicial Council in future will hamper its independence.

24 Statement by an official of the SKJC to BIRN, March 2009.

25 Law on the temporary constitution of the Kosovo Judicial Council, no. 03/L-123, Article 3.

In contrast to this general division, a connection exists between the Kosovo Government and the prosecutorial system²⁶. On the basis of UNMIK Regulation No 2005/53, annex XV, clause (iii), the Ministry will:

Provide guidance in respect of the development and implementation of the prosecutorial policy of the Office of the Public Prosecutor of Kosovo, which shall not limit, hamper or interfere in any way with the operations of the Office of the Public Prosecutor and the conduct of criminal investigations.

The Ministry of Justice also has a role in the advancement of public prosecutors through the Judicial Institute, whereas, on the basis of clause (ii) of the same regulation, regarding management, the Ministry of Justice will:

Manage, in cooperation with the Ministry of Finance and Economy, administrative, financial and budgetary affairs of the Ministry, and the development of administrative, technical and financial rules and rules governing support personnel and material resources to ensure the effective functioning of the prosecutorial system without limiting, hampering or interfering in any way with the operations of the Office of the Public Prosecutor and the conduct of criminal investigations.

Bearing in mind the nature of this monitoring project, which was limited to the role of judges and phenomena noticed in the administration of their duties, it should be briefly added that Kosovo's executive has undeniable authority over the public prosecution and its administration. The fact that the Ministry of Justice administers the prosecution directly affects the work of Kosovo's public prosecution. It has resulted in a lack of equipment, the common phenomenon of the public prosecution shifting responsibility and accountability directly onto the Ministry of Justice for not creating suitable working conditions for prosecutors, and the continued failure to fight the many manifestations of crime, particularly organised crime, present in Kosovo.

The lack of progress in the administration of the prosecution, along with the failure to develop prosecutorial policies, must be addressed by the Ministry of Justice.

²⁶ See UNMIK Regulation No 2005/53, Annex XV on the Ministry of Justice.

ON BREACHES OF THE RULES AND OTHER VIOLATIONS IN THE JUDICIAL SYSTEM IN GENERAL

As there were a variety of different problems affecting the effective working of the courts, we have classified the issues into the following categories: obstacles to the maintenance of procedures, violations of the criminal code and non-compliance with courts' internal regulations.

1) Participation of public prosecutors in multiple trials simultaneously

In a trial held on 2 June 2008 in the municipal court in Peja, the public prosecutor left the judicial hearing without giving any reason.

Similarly, in Vushtrri, during trials held in the second week of June, P.11/2008 and P.62/2008, the public prosecutor went from one trial to another, taking part in both at the same time.

With regard to these cases mentioned above, it should be emphasised that attending to numerous trials simultaneously will lower a prosecutor's productivity and the level of argument he is obliged to give in each court's proceedings, as he will be dealing with charges he himself raised against the defendants. Furthermore, it seems very odd that some prosecutors do not manage to follow any of the cases they have been assigned, whilst others can follow more than one case at the same time!

2) Trials held in judges' offices

One of the main principles of the courts is that trials should be open, except when explicitly decided otherwise²⁷. Yet, according to our monitoring, a number of cases were held and judged without any public presence, even though the decision to make the proceedings private bore no relation to the protection of the interests of the court or the procedural interest of the parties or the public interest.

²⁷ As in cases where the eugenic interests of one or more parties must be protected (e.g. disputes over divorce and rape etc.), and also in cases where the interests of children, or the public, must be protected.

We have concluded that the majority of trials in municipal courts are held in judges' offices and not in the courts²⁸, which obviously makes participation and observation by the public, on the whole, impossible²⁹. Of the 513 trials monitored, 138 were held in courtrooms, whilst 375 were held in judges' offices (see table 9).

3) Use of mobile telephones during trials

According to BIRN's monitors, judges, prosecutors and other participants very often used their mobile telephones during judicial sessions, even though such behaviour is prohibited³⁰.

As the Republic of Kosovo still has no programme for the protection of witnesses, information, identity, statements and so on, the system is not secure. Our monitors considered that the phenomenon of carrying and communicating using mobile phones in courtrooms while trials are taking place endangers the successful progress of those trials, and could also allow for the transfer of information to ill-intentioned persons, threatening guaranteed privacy.

The nature of communication between the court, the judges and the parties is regulated by law. The presence of mobile phones should be absolutely prohibited, especially as most models of phones have the capacity to record. In addition, the use of any form of communication device during the judicial session should be strictly prohibited.

4) Holding trials without translation for minority parties

Offering, and guaranteeing access to, judicial processes in a language that each party can understand is a standard that all courts should provide for, in accordance with the legal obligations included in Article 30 of the Constitution of the Republic of Kosovo.

Our monitors found evidence of failures to make appropriate provisions in both civil and criminal cases.

28 The trial of criminal case P 50/08, in the municipal court of Ferizaj, was not held in the courtroom even though it was available. Since the trial was held in the small office of the judge, B.H., a great number of participants were obliged to remain standing throughout the trial. Also, the lay judges were not sitting in their respective positions – one was sitting close to the judging panel, whilst another was near the public prosecutor.

29 It is, of course, understandable that the offices of judges are too small to accommodate the public in a judicial session. Our complaint is that proceedings should take place in court rooms, as far as possible.

30 For example, during the trial held on 21 May 2008 in the municipal court in Ferizaj, the judge, A.SH, used his mobile telephone a number of times. Then, on 26 May 2008, a trial in the same court was interrupted many times by judge R.A's telephone calls. According to BIRN's monitors, the use of mobile phones is a very common phenomenon in trials, not just in the municipal court in Ferizaj. Holding trials under these conditions threatens the order of the judicial process and creates a strong base for suspicions of abuse.

For example, in the civil case Cnr 743/07, held in the municipal court of Peja, no translator was present, even though one of the parties involved in the property dispute was a member of the Serb community. Also, no translator was present for case Cnr 825/07/07, also held in the Municipal Court of Peja. In another case from Peja, Cnr 1041/08, the translator left half way during the trial, on the grounds that both parties understood Albanian, even though one of the parties was a member of the Bosnian community, and had not claimed to understand or speak Albanian.

In the criminal case Pnr 114/08, held in the Municipal Court of Peja on 22 September 2008, one of the witnesses, M.W., was Swiss. The documents used as evidence and the declarations of other witnesses were not translated, so M.Ë did not know what had been previously said about the case. Translation was attempted only during the trial³¹.

5) Inefficiency of court-appointed lawyers

BIRN monitors observed that public lawyers did not make contact with their assigned clients before the start of their respective trials.

As an extreme example, in case P no. 28/08, held in the municipal court of Peja, which had been delayed three times previously because of repeated failure to fulfil conditions for due legal process, lawyer B.C. asked the prosecutor which person was his client.

There is no question that Kosovo's legal institutions should educate staff at correction centres and police stations about relevant jurisprudence, such that defendants can effectively exercise their right to legal defence, including access to public lawyers.

The courts must offer sufficient information to the defence regarding all the important issues and activities undertaken up until that moment.

In cases of criminal justice, we consider that the courts must be open and transparent in providing access to documents and evidence, including police dossiers, involved in the criminal process.

31 As well as Constitutional obligations, Article 15 of the Criminal Procedure Code of Kosovo states that:

- (1) The languages and scripts which may be used in criminal proceedings shall be Albanian, Serbian and English. Another language or script may also be used if it is prescribed by law for use within the individual territorial jurisdiction of a court.
- (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.
- (3) A person referred to in paragraph 2 of the present article shall be informed of his or her right to interpretation. He or she may waive this right if he or she knows the language in which the proceedings are conducted. The notification of the right and the statement of the participant shall be entered in the record.

6) Failure by prosecutors and judges to wear uniform during trials

During the year-long period of monitoring, it was noted that no judges, prosecutors or lawyers wore their relevant uniform, with the exceptions of Zyhdi Haziri, a judge in the municipal court of Gjilan, who always wore uniform in his trials, and those officials involved in the case Pnr: 178/08, held on 6 January at the district court of Peja.

7) Failure to use electronic equipment in courts

According to the new Criminal Procedure Code, since 6 April 2004, audio equipment must be used in court to create recordings of proceedings.

However, BIRN monitors gathered evidence that such policies were not being effectively implemented. For example, Sadri Qosja, a judge at the municipal court of Peja, told a BIRN representative that, even though the appropriate equipment had been procured, his court does not use it. Osman Cucovic, another judge at the same court, told a BIRN representative that he had never used the video and audio recorders. Indeed, he and his assistant did not even know how to work them. Lumturie Hoxha, a lawyer, declared that no trial she has taken part in has been recorded.

The USAID project ‘Activity for Reforming the Justice System in Kosovo’ (ARJSK) has encouraged the implementation of the recording policy, testing the use of audio recording equipment in nine courts and one prosecutor’s office. In addition to this project, technical assistance has also been provided by European Agency for Reconstruction projects, through the Court Management Information System (CMIS). CMIS additionally aims to create a system for the automatic registration of cases.

However, despite the equipment procured through the ARJSK project being installed in district and municipal courts across Kosovo, according to monitors it is very rarely used³².

Out of the 513 trials monitored, recording equipment was used in only 8 cases (see table 6).

Despite the investment provided through the CMIS project for the digitalisation of statistical data, the municipal and district courts in Peja still produce and archive data on paper.

The head of the municipal court of Peja, Xhelal Radoniqi, said: *“We are very old and it would be difficult to apply such a system, because it hasn’t even been achieved technically. Only one judge, Afërdita Mulhaxha, participated in the training.”*

32 Information published on the KJC’s website: www.kgjk-ks.org

However, even those who attended training sessions for handling data in electronic formats do not use it. *"I and my assistants have had some training for this project, but nothing concrete changed and we still work with the old system,"* Muharrem Shala, a judge at the district court of Peja, told BIRN.

On the registration of cases, Ferit Osmani, a judge at the municipal court of Skenderaj, said that the filing and archiving of cases remains as it was before attempts at digitalisation.

According to the BIRN monitors, trials are also not recorded in the municipal court of Vushtri, where the district and municipal courts of Mitrovica have been relocated.

Kadrije Lubishtani, administrator of the municipal court in Ferizaj, stated that the first phase of the CMIS project began in 2007 and her court has a computer with new software. However, according to her, the judges' and clerks' computers are too old to run this software.

The CMIS project remains unimplemented in the district court of Prishtina.

Over the last three years, staff and judges were trained in the use of the automatic registration system for court cases. However, according to the head of the district court of Prishtina, Anton Nokaj, the system remains non-functional. Nokaj criticized court staff, calling them "lazy". Also, Nokaj considers the training ineffective and to have been carried out hastily. Feriz Berisha, administrator of the district court of Prishtina, emphasised that only 30 per cent of judges have been prepared for this system, and even they, according to him, do not use it. *"Judges still work with the old system. They still believe more in the pencil and writing in a notebook, than in registering data on a computer,"* he said.

Berisha says that staff in the district court of Prishtina do not use the available audio recording equipment. *"Currently, we have only one such piece of equipment which works; however, it is not used by domestic judges, since international judges usually hold sessions in the room where the equipment is,"* he explained. The CMIS project is also not being implemented in the municipal court of Skenderaj. Ferit Osmanit, a judge in this court, said that filing and archiving cases occurs by hand, not in an electronic format³³.

Besides the lack of staff capability to use the CMIS system, another reason for the failure of realising this project, according to those interviewed, is that courts' computers are very old, and so the software cannot be used.

When cases are not recorded, there is a strong basis for concern that facts and statements may disappear from official records.

33 Statements by heads of courts, judges and court administrators taken during interviews with monitors of BIRN in February 2009.

However, whilst planning reforms for court administration and judicial staff in this area, one should bear in mind the lack of will to embrace new standards, as well as the limited equipment and technical skills available.

8) Lack of judicial police

According to the Criminal Procedure Code, the prosecutor is obliged to lead the development of investigations.

In most cases, investigative duties should be performed by the Judicial Police. However, this police unit has not yet been founded.

This work is currently conducted by members of the Investigative Unit of the Kosovo Police (KP).

The lack of a judicial police force limits the efficiency of prosecutors and the courts.

This can be seen particularly in the loss of material evidence through unprofessional conduct and/or intentional destruction. Such losses result in a different treatment of the case when proceedings continue. Since the Code's promulgation, the lack of a judicial police force can be noticed mainly in the weakening of disciplinary policies and the failure to punish those who commit criminal acts. It is rare that prosecutors are involved at all in leading investigative procedures.

The easiest method for implementing this part of the Code would be to pass an Administrative Order. On the other hand, creating a judicial police force would require an increase in the human capacities of the Kosovo Police.

The continued failure to create a judicial police unit is one of the reasons for the inability to, for example, solve the 1,400 reported crimes in the municipality of Ferizaj occurring in 2008 alone. The Chief Municipal Prosecutor in Ferizaj, Ekrem Shabani, said that the absence of a functional judicial police to conduct investigations is one reason behind the large number of unsolved crimes in Kosovo³⁴.

9) Lack of transparency in the courts

Although BIRN had access in order to monitor trials, the courts are not really transparent. In general, the courts are closed institutions, with the release of each piece of requested information (such as reports of cases heard by judges) requiring the approval of the head of the court, since there are no officials dealing with public relations.

³⁴ Debate held by the NGO 'INPO' with the theme 'Cooperation between the police, prosecution and judge in the Municipality of Ferizaj', held in March 2009

In many cases, monitors reported that notifications and announcements of timetables for trials were not present in the vicinity of courts.

Courts also do not have web pages where the public can learn about the work of the institutions and access (non-confidential) information on particular trials.

10) Lack of an effective quality control mechanism for the work of the courts

The lack of effective quality control for the work of judges, and courts in general, is considered to be one of the major problems permeating the institutions of justice and hindering the reform process.

For example, no mechanism exists for assessing the past decisions and judgements of officials currently suspended for abuse of their position. As earlier noted, monitors reported a case of one head of court who, despite being under investigation for misconduct, continued in the performance of their duties unrestricted and unmonitored. Indeed, no instances of a judge or prosecutor suspected of abuse being subjected to a 'quality control' assessment was reported.

BIRN believes that there is a silent 'amnesty' towards this phenomenon in the Republic of Kosovo. This silence seems accepted by colleagues in the justice system, augmented by a lack of political will to improve the quality and extent of the rule of law.

11) Process of re-evaluating judges and prosecutors

On the basis of UNMIK Administrative Order no. 2008/2, as well as Article 150 of the Constitution of the Republic of Kosovo, the process of re-appointment is led by the Independent Judicial and Prosecutorial Commission (IJPC), an autonomous body of the KJC.

The process of re-evaluating judges and prosecutors is one of the most important processes for strengthening the rule of law.

On the basis of the reappointment programme, which will last about 22 months³⁵, anyone reapplying to serve as a judge or a prosecutor must comply with a system that will analyse their past activities and receive a positive evaluation.

35 It is believed that only after the conclusion of this process can there be an increase in the income of domestic judges and prosecutors, which would result in at least a doubling of their current salary. It was made known that, since 2006, there has been a request to increase the budget to allow a doubling of judges' and prosecutors' incomes, but such a policy was not possible because of a lack of political will, both domestic and international, to increase salaries before the judiciary was 'cleansed' of judges unworthy of their positions through re-evaluation. The compromise reached was to double the pay of judges and prosecutors immediately following a positive conclusion of their evaluation. However, because of disagreements between donors and UNMIK, the process of re-evaluation was delayed by 3 years (statement by former Minister of Justice, Mr. Jonuz Salihaj, 2007).

The deadline for applications from those interested in working as judges and prosecutors was scheduled to pass during the preparation of this report.

The re-appointment process is expected to ‘cleanse’ the judiciary of judges who have abused their positions. However, it is not very certain what will happen to those currently active judges who do not re-apply and will, therefore, not be subjected to an inspection of their past.

We believe that the entire judiciary should be ‘scanned’, and that there should be no ‘amnesty’ for any judge or prosecutor, even if he or she decides not to reapply for open positions. In addition, we consider that no judge or prosecutor (even if they do not apply again) should be allowed to work within any legal or state administrative position until the re-evaluation process proves they are professionally suitable and ethically clean. Since the period of re-evaluation for judges and prosecutors is expected to last 22 months, the Chamber of Advocates should specify compulsory measures that do not allow current judges and prosecutors to become licensed lawyers in the meantime. This is important for the credibility of the profession and to increase trust in other freelance professionals as well.

In terms of public opinion, it is not clear what will happen. It does not appear that the IJPC has produced any significant improvements in public opinion, nor has it taken any satisfactory steps to involve civil society in the process. Improved links with civil society could help with gathering information useful for developing an appropriate evaluation of members of the judiciary.

The number of cases judged stands in the hundreds of thousands, whilst those not heard are increasing in number. Clearly, the IJPC will not be able to comprehensively re-evaluate all cases presided over by judges and prosecutors since they took up their positions. BIRN is therefore convinced that the IJPC’s capacity is not sufficient to complete their task to the high standard we would wish to see.

Examining all cases will require a lot of time, and information from civil society organisations could support this process. In particular, it would be useful to establish a system for gathering and storing confidential information so that all cases of bad management and abuse could be reported and investigated.

12) Legal education and the failure to hold Bar exam

Although the Ministry of Justice is obliged to organise Bar exam at least three times a year, they have not been held since January 2008.

Every judicial reform requires a suitable number of officials capable of replacing those staff who are removed from their positions. Even though the need for judicial reform is understandable in itself, the failure to hold Bar examinations limits the number of those who can apply for judicial work.

In response to these obstructions and violations of the law by the Ministry of Justice, the Independent Judicial and Prosecutorial Commission (IJPC) approved a regulation allowing the submission of preliminary applications by persons who have still not completed their Bar examinations.

However, we cannot find any reason justifying the creation of instruments outside those approved by existing legal regulations. If examinations were organised as prescribed by the Law on Bar Exams, the Commission would have less work creating new options for candidates and, instead, it would be able to focus more on assessing cases, with the quality of new applicants being consequently higher.

NON-ENFORCEMENT OF SENTENCES

Although this project did not deliberately deal with the problem of the non-completion of civil cases in the regular courts, it became clear that, besides delays in resolving cases, one of the biggest problems in the judicial system is the non-enforcement of sentences³⁶. This is a problem especially with civil cases and those related to non-payment for public utility services³⁷.

Although it was expected that the legislation on enforcement procedures approved last year would help to reduce such outcomes, it seems that this will not start in earnest until a real reform of the judicial sector begins³⁸.

In addition to this, according to the head of the municipal court of Prishtina, Nuhi Uka, out of the 20,490 civil cases that reached his court, 1,939 sentences were enforced, while 18,551 cases are still being processed. According to Uka, during the first three months of the year 2009, 1,548 civil cases arrived, but only 491 sentences were enforced.

During 2008, there were 591 criminal cases punishable by imprisonment and, of those, 298 cases actually led to imprisonment (the enforcement of sentences passed in criminal cases is technically easier and, therefore, more likely).

According to Mr. Uka, the main problem leading to the widespread non-enforcement of sentences is that the municipal court of Prishtina has just one official responsible for the enforcement of sentences. According to him, the majority of civil cases (about 80%) in Prishtina relate to demands from municipal enterprises for the payment of electricity, waste, water and heat service bills.

Between 2000 and 2008, in the municipal court of Peja, a total of 11,267 cases were registered, awaiting the enforcement of sentences. According to Hysen Ademi, the court official responsible for enforcement, during 2008, the court staff prepared 3,878 cases for such enforcement, while only 1,012 sentences were actually completed. In the municipal court of Peja, there are five officials responsible for enforcing civil sentences, and two clerks for criminal cases. According to Ademi, the main causes of the backlog are incorrect addresses, the lack of court space to store legal deposits (e.g. there is no space at court to store debtors' cars), as well as the small number of executors.

36 In the cases monitored, this mostly refers to the payment of monetary compensation (i.e. fines).

37 Many court cases are related to the disputes between public companies (e.g. electricity, water, waste management) and people who either fail to pay for services or receive the services illegally. For example, some properties receive electricity without having the appropriate meters installed to measure usage.

38 Other states in the region treat failure to execute sentences differently to Kosovo. For example, Macedonia has a special agency for this purpose, while Albania has a 'two-path' system consisting of a public and a private agency enforcing sentences. However, in Kosovo, despite changes to the Law on Civil Procedure, the rules on enforcement have not changed substantively and enforcement remains the exclusive responsibility of state institutions.

One of the factors contributing to the non-collection of fines is the lack of cooperation between financial institutions and the courts. For example, in case Enr:31/08, in which the subject of the case was a debt of €25,000, the court approached Pro Credit Bank for information on the debtor's current account. The bank informed the court of the debtor's business account number twice; first, in a memorandum dated 21 February 2008 and again in a memorandum dated 13 March 2008. On 14 March 2008, the court sent the bank an order to transfer funds from the debtor's account to that of the creditor.

On 17 March 2008, Pro Credit Bank informed the court in a memorandum that the debtor's account had been blocked by a decision of the Central Banking Authority because of a previous debt and, as a result, no transaction could be made with respect to the court order. In this manner, the court remained unable to punish the criminal because, according to Article 27 of UNMIK Regulation No 2001/26: "*A bank shall be bound by confidentiality and shall not disclose any information concerning accounts to anyone except the customer, unless it is required to do so pursuant to a court order or in accordance with the applicable law or pursuant to the customer's express authorization*". Beqir Muhaxheri, the court official responsible for sentence enforcement, declared that Kosovo's banks do not respect these regulations and, in most cases, do not allow access to debtors' accounts, even when they receive court orders.

Between 2000 and 2008, 352 criminal sanctions in Peja municipal court were to be served, but only 197 of them were actually carried out, leaving 155 unpunished.

The head of the municipal court in Ferizaj, Mr. Rifat Abdullahu, told BIRN that the enforcement of sentences is one of the most significant problems in his court. According to him, while the punishment regime for criminal cases is not satisfactory, the system for civil cases "*is in true chaos*".

According to the 2008 working report of the municipal court of Ferizaj, 3,660 cases were carried over from the previous year, with a further 2,390 cases accepted during the year. In 2008, 6,050 cases were being processed, while just 604 cases had their sentences passed and enforced.

The municipal court of Gjilan started 2008 with 2,175 outstanding sentences (1,618 civil cases and 557 criminal cases), while, during 2008, 3,130 cases were accepted for the execution of sentences (2,615 civil cases and 515 criminal cases). During 2008, 1,471 sentences were enforced (1,009 civil cases and 462 criminal cases), while 3,834 sentences remained un-enforced (3,224 civil cases and 610 criminal cases).

According to Mr. Artan Arifi, an official in the Enforcement Office, of the 3,224 civil case sentences not yet completed, over 2,000 concern debts owed to the Post Office. "*The Post Office, as a creditor, sometimes initiates judicial proceedings for debts of €25 and, because of this, a large number of unpaid compensations are from Post Office debtors,*" Arifi said. According to him, the biggest reasons for non-payment of fines are incorrect addresses for debtors and the small number of court officials responsible for enforcement (just four, as of May 2009).

In the municipal court of Vushtrri, between the start of 2005 and the end of 2008, 725 sentences remained un-enforced (no figures were available for the division of criminal and civil cases).

800 cases were carried over from the previous year in the municipal court of Skenderaj, including some involving criminal sanctions with fines and some civil cases. In 2008, 475 sentences were enforced, whilst, in the first five months of 2009, 143 cases have been accepted for enforcement.

According to Isa Shala, a clerk in the Skenderaj municipal court, the main problems affecting the enforcement of sentences are the absence of storage space to hold items, registered evidence and sequestered property; travelling outside the vicinity of the court, especially on rough terrain (the court has just one vehicle); the lack, or incorrect registration, of parties' addresses; changes to road names causing confusion in registration and the fact that some debtors are outside of Kosovo.

CASES OF SUSPECTED ABUSE BY JUDGES

Cases of suspected abuse by judges are dealt with by the highest institutions of justice. The Judicial Council has a special unit for dealing with the preparation of cases relating to, amongst other things, the violation of the ethical code of judges and prosecutors. As would be expected, examples of police intervention in the investigation process of such cases were not lacking.

Although, for the moment, the number remains small enough, it appears that Kosovo's justice system is not free from the problem of cases being concluded on the basis of insufficient proof. Public trust in judicial institutions remains at low levels, despite commitments and investments made with the support of international institutions.

BIRN has specifically investigated the case of the head of the district court of Gjilan, Mr. Ymer Huruglica. Huruglica tried to exercise his influence over the trial of a relative of his, who had been caught with 10kg of heroin. Mr. Huruglica admitted this fact during an episode of BIRN's 'Jeta në Kosovë' (Life in Kosovo)³⁹ current affairs programme, transmitted on 26 June 2008, on the topic of corruption in the judicial system. The televised report had an immediate impact, as the Office of the Disciplinary Prosecutor (formerly the 'Judicial Inspector of Kosovo') began to investigate Mr. Huruglica. However, despite these investigations, Mr. Huruglica continues in his duties as head of the District Court of Gjilan. It is clear that allowing judges or prosecutors under investigation to continue performing their judicial duties severely damages the credibility of both the investigations and the legal decisions and activities of those officials under investigation. This is at least one direct cause for the low level of trust in Kosovo's judicial institutions. Furthermore, the case of Mr. Huruglica is special because he is also the head of the Kosovo Society of Judges. As of summer 2008, Mr. Huruglica remains under investigation by the Office of the Disciplinary Prosecutor.

An investigative report broadcast as part of the 'Jeta në Kosovë' show on 29 May 2008 brought to light a link between Dragan Stamenkovic, and a lawyer, Bajram Krasniqi. The latter had falsified documentation relating to the property rights of an apartment in Prishtina, giving the rights to Stamenkovic. These false documents were verified both by the judge of the municipal court of Prishtina, Nexharije Hoti, and, later by the district court of Prishtina. This verification created a conflict between two individuals, Krasniqi's client, Mejdi Hajdari, who had bought the apartment from Stamenkovic, and Sylejman Klllokoqi. Both claimed they were the legal owner of the apartment in question, and both had sales contracts verified by the municipal court of Prishtina.

After the transmission of the TV report, the Supreme Court of Kosovo abrogated the decision of both the municipal court and the district court of Prishtina, and the case was returned for re-examination.

39 'Jeta në Kosovë' is co-produced by BIRN and Radio-Television Kosovo (RTK), the public TV broadcaster. The show can be seen on RTK, every Thursday at 20:20.

In a televised debate on the standard of justice in Kosovo as part of the ‘Jeta në Kosovë’ episode broadcast on 29 October 2008, judge Zahide Gjonaj was proved⁴⁰ to have ruled on cases even before they were registered in court. Such malpractice occurred consistently, raising concerns over this particular judge’s possible involvement in corruption. In addition to this, €100 was found in a file of documentation for a case Gjonaj was dealing with. All her trials have been held in her office, where she acted in both the role of judge and that of lawyer for the majority of her clients. These claims were verified by the Office of the Disciplinary Prosecutor.

It is very odd that cases judged by Gjonaj were often concluded within fifteen minutes, in contrast to the average duration for cases, which often take months or years just to be heard. Obviously, amongst these short cases, there could have been non-serious disputes; however, on the grounds that she held sessions in her office, went beyond the competencies of her role as judge and the discovery of money must constitute satisfactory indicators to activate institutional mechanisms within and outside of the Kosovo Judicial Council for investigation. After the report’s broadcast, the Office of the Disciplinary Prosecutor, using the arguments presented in ‘Jeta në Kosovë’ as a basis, re-prepared a dossier on Gjonaj.

This dossier was sent to the KJC for a decision on what further action, if any, to take. However, for reasons unknown, the KJC had not made any ruling as of January 2009 on this and a number of other cases, and, at this time, the mandate of the KJC has been terminated in a decree by the President of the Republic of Kosovo, in accordance with the transitional dispositions of the Constitution of the Republic of Kosovo⁴¹.

An investigative report broadcast as part of the “Jeta në Kosovë” show on 4 April 2008, revealed the corruption at Gjilan Municipal Court. The case was related to a trial on attempted murder, which took place during a shooting between two local gangs in Gjilan. BIRN revealed that despite police and prosecution office efforts, the members of E7 and GG gangs remained free due to the corruption at the judiciary. By examining the case of the attempted murder, related to an intentional car accident and the shooting, BIRN secretly filmed the judge of this court Refki Halili, who admitted that due to the family relations, he reduced the sentence of the persons involved in the incident. As a consequence of this, the criminal act of attempted murder and the one of illegal possession of weapons was changed by the judge into the disturbance of public order by sentencing the involved persons with only five months imprisonment. Whereas according to Kosovo Criminal Code, the minimum sentence for attempted murder is seven months imprisonment, while the minimum sentence for illegal possession of weapons is six months imprisonment. The report includes the interview with judge Halili, the sequences of the interview with him filmed with hidden camera, interviews with persons involved in the incident, who confirmed and admitted the charges as well as the interviews with the police, which said that because of the corruption at the courts, they arrest the same people over and over again.

40 Through documents provided to BIRN.

41 Information available in April 2009 confirmed that there had been no progress in the development of investigations against the aforementioned judges.

RECOMMENDATIONS

For easier reference, general recommendations addressed to the competent authorities are listed below:

Recommendations for the Parliament of the Republic of Kosovo:

The Parliamentary Commission for Legislation and Justice should begin issuing judicial legislation and monitor its implementation.

The Kosovo Assembly should engage civil and academic society in improving the quality of draft acts on judicial matters.

Recommendations for the Government of the Republic of Kosovo:

As the sponsor of the compilation of legislation, the Government of Kosovo should quickly submit to the Assembly a draft law on the courts, a draft law on the organisation of the judicial council, a draft law on the public prosecutor and a draft law on the organisation of the prosecutorial council.

The Government of Kosovo should prepare new legislation, and amend existing legislation, on civil justice, not signed by the SRSG (as was required under UNMIK). Priorities include the law on obligations and the law on existing rights.

The Government of Kosovo should amend the laws for enforcement procedures, in order to improve the legislation and strengthen the mechanisms for enforcing sentences.

The Ministry of Justice should urgently undertake adequate measures to ensure the implementation of the law on public notaries, the law on the enforcement of criminal sanctions, the law on mediation, the law on organisation and the holding of Bar examinations.

The Ministry of Justice should prepare the legal infrastructure for the establishment of a judicial police unit, which is one of the most urgent obligations of this ministry, in cooperation with the Ministry of Internal Affairs.

The Government of Kosovo should guarantee transparency in the preparation of legislation. Interest groups should be involved from the first phase of preparation.

The Government of Kosovo must set aside a larger budget for the justice sector.

The Government of Kosovo should finance the construction of better working spaces for the courts.

The Government of Kosovo must increase the physical security of judges and prosecutors.

The Government of Kosovo should provide dignified salaries for judges, in line with other branches of the government.

The Government of Kosovo must secure resources for witness protection.

The administration of those competencies divided between the Ministry of Justice and the Kosovo Police, such as transporting those under arrest, must be conducted with the utmost level of care.

The Government of the Republic of Kosovo should coordinate donations for the field of justice.

Recommendations for the Judicial Council

The Judicial Council must develop more effective mechanisms of quality control and evaluation of the management of cases appearing before the courts, since the number of cases that remain open is increasing, whilst the number of judges is decreasing.

The Judicial Council should require courts to process cases using the automatic registration system.

The judging panel, regardless of the level of the court, must inform the chief prosecutor every time a prosecutor assigned to a case does not attend court when required. This information should be held in an official register and be used in the evaluation of the quality of the prosecutor's work.

The head of the court, regardless of the level of the court, should control the working pattern of judges. The imbalances between judges' workload must be addressed, and measures to reduce this undertaken. In extreme cases, judges should be disciplined and removed from office.

The Judicial Council should ensure that the administration of human resources occurs on the basis of a dispersed management system at court level.

The Judicial Council must be active in the process of developing Kosovo's legal infrastructure in accordance with the country's Constitution and the Opinions of the Council of Europe.

The Judicial Council must put in place, and enforce the implementation of, strict regulations prohibiting the use of all communication devices, such as mobile phones, inside judicial buildings.

The Judicial Council should demand respect for the uniforms of judicial officials involved in court proceedings.

The Judicial Council should require that the organisation of trials be conducted in court rooms, so that all relevant parties are given a fair opportunity to comment and disagree. Offices are not court rooms!

The Judicial Council should ensure that courts offer access to proceedings in a language understood by each party, in accordance with the legal obligations deriving from Article 30 of the Constitution of the Republic of Kosovo.

Recommendations for the Police of the Republic of Kosovo

The Police of the Republic of Kosovo must take care that, whilst investigating abuse by judges of their official role, they also monitor the official under investigation's activity in other cases, both those which have been concluded and those which remain open.

Whenever a prosecutor is not present, as required by law, the Kosovo Police should report them to the Chief Public Prosecutor, for as long as institutions for administering prosecutors do not exist. This information must be held in an official register and be used in the evaluation of the prosecutor's work.

Recommendations for donors:

The re-evaluation of judges and prosecutors must be a transparent process. It should be open to the media, civil society and those bodies that are able to help in the successful realisation of the re-evaluation programme.

Donors should give donations in accordance with identified requirements in a well-coordinated fashion, in order to avoid doubling up donations.

Donors should give assistance only where the capacity to absorb it exists.

STATISTICS FOR CASES HEARD BY JUDGES

ANEX 1 - STATISTICS OF CASES HEARD BY JUDGES

DISTRICT COURT – PRISHTINA

Name and last name of the judge that heard the case	<i>Pre-trial proceedings</i>	<i>Confirmation of the indictment</i>	<i>Trial panel</i>	<i>Criminal - Ist instance</i>	<i>Pre-trial proceedings for minors</i>	<i>Criminal offences committed by minors</i>	<i>Criminal - IInd instance</i>	<i>Civil - Ist instance</i>	<i>Civil - IInd instance</i>	<i>Civil - Various</i>	<i>Criminal - Appeals for minors</i>	<i>Period</i>	Total
Anton Nokaj			408							773			1181
Mejdi Dehari			138	111			144						393
Raif Emini		13		256									269
Marie Ademi	1	20	1	190									212
Isak Ademi			10				547						557
Fällënza Kadiu			1	12	39	33					23		108
Selmon Bogiqi	103	300											403
Shemi Hajdini	41	86										July-Dec.	127
Hamdi Ibrahimimi	5	26		1								July-Dec	32
Sylejman Nuredini									302				302
Zahide Gjonaj								640					640
Rrahman Ratkoceri								36	279				315
Ferid Bislimi									260				260
Bashkim Latifi									194				194
Ekrem Agushi									504				504
Elez Hoxha			1	58								Jan-May	59
Bedri Krasniqi	82	174										Jan-April	256
Drita Hoxha	79	252										Jan-April	331
Total	311	871	559	628	39	33	691	676	1539	773	23		6143

Note:

This report does not include various activities within ‘Pre-trial proceedings’, such as different orders, participation of several judges in trial panels composed of local or UNMIK judges, participation in panels, and so many other activities

DISTRICT COURT – PRIZREN

Name and last name of the judge that heard the case	<i>Preparatory procedures for minors</i>	<i>Complaints during investigations</i>	<i>Pre-trial Proceedings</i>	<i>Appeals against decisions on detention</i>	<i>Confirmation of the Indictment</i>	<i>Criminal - Ist instance</i>	<i>Criminal - Minors</i>	<i>Criminal - Enforcement</i>	<i>Criminal - IInd instance</i>	<i>Civil - Ist instance</i>	<i>Civil - IInd instande</i>	<i>Enforcement of judgements in civil cases</i>	<i>Trial panels</i>	<i>Civil- Various</i>	<i>Criminal- Various</i>	<i>Absence of the trial panel</i>	<i>Various cases</i>	TOTAL
Jakup Gurmani			2			32			165									199
Xhevdet Elshani			33		47	52												132
Fillim Skoro			78		58	45												181
Valdete Daka			44		58	50	9										11	172
Raima Elezi			57		62	55	8										6	188
Erdogan Haxhibeqjri										126	217							343
Engjell Qeta										138	208							346
Fikri Shishku										155	197							352
TOTAL			214		225	234	17		165	419	622						17	1913

DISTRICT COURT GJILAN

Name and last name of the judge that heard the case	Investigations	Complaints during investigation	Pre-trial Proceedings	Appeals against decisions on detention	Confirmation of the Indictment	Criminal - Ist instance	Criminal - Minors	Criminal - Enforcement	Criminal - IInd instance	Civil - Ist instance	Civil - IInd instance	Enforcement of judgements in civil case	Trial panel	Civil - Various	Criminal - Various	Absence of the trial panel	Other	TOTAL
Ymer Huruglica										18			62	174		21		275
Ilmi Dalipi	7	4	54		13		14		119				5		67			283
Fahredin Ymeri			3		66	7				2	320							398
Vlastimir Dimiq						10												10
Hasan Sadiku			1		43					220	36							300
Kadri Sylaj	8	1	26	1	44	33	9						13		35	2		172
Refik Alili						67												67
Other																	606	606
TOTAL	15	5	84	1	166	117	25		119	240	356		80	174	102	23	606	2111

DISTRICT COURT PEJA

Name and last name of the judge that heard the case	Investigations	Complaints during investigation	Pre-trial Proceedings	Appeals against decisions on detention	Confirmation of the Indictment	Criminal - 1st instance	Criminal offences committed by minors	Criminal - Enforcement	Criminal - IIInd instance	Civil - 1st instance	Civil - IIInd instance	Enforcement of judgements in civil case	Trial panels	Civil - Various	Criminal - Various	Absence of the trial panel	Acceptance of foreign judgements	TOTAL
ESAT SHALA-HEAD			65		201	61				5	1						665	998
SUDAN GORANI						17												17
UKË MUQAJ			5			165	5	46										221
SALI MEKAJ			2		8	88		43										141
MUHARRE M HOTI			31		58	96												185
OSMAN CUCOVIQ	3		9		25	128	3	1										169
ELMAZE SYKA			2		36	23												61
MUHARRE M SHALA										37	307							344
ISA KELMENDI			1		15					26	307							349
HASAN SHALA										430	3							433
TOTAL	3		115		343	578	8	90	498	618						665		2918

Notes:

- Judge Sudan Gorani heard only 17 cases during 2008, and has been on medical leave since mid-2008.
- Judge Elmaze Syka started working at the District Court in Peja from mid-2008.
- Judge Sali Mekaj was transferred to the Supreme Court of Kosovo in November 2008

Municipal Court of Peja

Name of the judge	<i>Number of cases heard in 2008:</i>		
	<i>Civil</i>	<i>Criminal</i>	<i>Total</i>
Ymer Jahmurataj	377		377
Agron Berisha	171		171
Sadri Qosja	110	188	298
Agim Shala	43		43
Aferdita Mulhaxha	352		352
Esad Muharremi	22		22
Elmaze Syka	44	177	221
Sejdi Blakaj	1	251	252
Xhelal Radoniqi	171	154	325
Hidajete Veseli		241	241
Total	1291	1011	2302

Municipal Court of Vushtrri

Ordinal Number (Or. No.)	Name of the judge	<i>Pre-trial proceedings</i>	<i>Confirmation of the Indictment</i>	<i>Criminal</i>	<i>Civil</i>	<i>Enforcement of sentences</i>	<i>Civil - Enforcement</i>	<i>Cases from Inheritance law</i>	<i>Non-contentious</i>	TOTAL
1	Sabit Beqiri-Head	12				148		4	26	190
2	Beqir Halili	2	6	170	82		98	58	62	478
3	Kada Bunjaku-Përquku	6	18	129	112		200	97	111	673
4	Vukosava Maxhuni			64	246		2	73	60	445
5	Gani Avdiu				123				1	124
6	Shadije Gërguri	10	5	19						34
7	Xhevdet Abazi			3						3
	TOTAL	30	29	385	563	148	300	232	260	1947

Notes:

Gani Avdiu, Shadije Gërguri and Xhevdet Abazi are judges delegated from the Municipal Court of Mitrovica to help judges of the Court in Vushtrri; they started working in Vushtrri only in mid-2008, which can help explain the small number of cases heard.

Municipal Court Gjilan

Name of the judge	<i>Civil</i>	<i>Criminal</i>	<i>Total</i>
Mursel Ahmet -Head-	1984		1984
Agim Ademi	230		230
Miodrag Paviq	65		65
Abdullah Ahmeti		353	353
Emine Salihu		284	284
Rasim Rasimi		339	339
Zyhdi Haziri		316	316
Drana Simani		144	144
TOTAL	2279	1436	<u>3715</u>

Notes:

During the period January – December 2008:

- Judge Mursel Ahmeti heard civil cases, enforcement and non-contentious cases
- Judge Agim Ademi heard non-contentious and civil cases
- Judge Miodrag Paviq heard non-contentious and civil cases
- Judge Abdullah Ahmeti heard criminal cases and pre-trial proceedings
- Judge Emine Salihu heard criminal cases and confirmations of indictments
- Judge Rasim Rasimi heard criminal cases, pre-trial cases and criminal cases against minors
- Judge Zyhdi Haziri heard criminal cases and pre-trial proceedings

Municipal Court in Ferizaj

Name and last name of the judge	TC	C	CIJ	CJ	VC	CC	CI	JPPJ	JPP C	C	I	VU-C	CE	IS	PO
Rifat Abdullahi	179	144				15	16		4						
Isak Neziri	107	100				2			5						
Adem Shabani	121						121								
Abdurrahim Islami	320	114	21	89		2	1	8	85						
Bashkim Hyseni	291	252	1 Ext. of detention			8	25		5						
Agim Maliqi	92	81				10			1						
Nazmije Ibrahim	333									165	119	6	43		
Muzafer Hetemi	201									2	109	5	46	38	1
Hasim Sogojeva	330									155	95	4	74	1	1
TOTAL	1974	691	24	89		28	139	8	100	322	323	15	163	39	1

Enforcement officers: Completed Enforcements - total: 557 cases

Completed "EXPERTISE" (Forensic Process) IN THE JPP: 197

Notes:

Column II (TC) Total of completed cases

Column III (C) Criminal cases heard

Column IV (CIJ) Criminal investigations against minors

Column V (CJ) Criminal cases against minors

Column VI (VC) Different criminal cases

Column VII(CC) Trial Panel (Cases heard by panels of judges)

Column VIII (CI) Confirmation of the Indictment

Column IX (JPPJ) Pre-trial judge in cases against minors

Column X (JPPC) Pre-trial judge for criminal cases

Column XI(C) Cases from the Contentious procedures

Column XII (I) Cases from inheritance law

Column XIII(VU-C) Various cases from non-contentious procedures

Column XIV (CE) Enforcement of Civil cases.

Column V (IS) Correction of rulings

Column XVI (PO) Protection Order

- Judge Isak Neziri has worked only for seven months, and is currently abroad for medical treatment⁴².
- Agim Maliqi started in September 2008, and has worked only four months.
- Muzafer Hetemi worked only until October.
- Adem Shabani was appointed Judge in Shtërpce and works only in the procedure for the confirmation of indictments.

BIRN was unable to obtain the number of cases heard by Judges of the Municipal Court in Prishtina. President of this Court said that, the Court had no copies of the annual report, which was sent to the KJC.

BIRN has not been able to find the number of cases heard by the judges of the municipal court of Prishtina. The head of this court said that the court does not have a copy of any annual report sent to the KJC.

53 Information taken in February 2009

ANEX 2 – STATISTICS OF COURT QUESTIONNAIRES

Table 1

		Region	
		Frequency	Percent
Valid	Prishtina	102	19.9
	Gjilan	16	3.1
	Ferizaj	139	27.1
	Mitrovica	100	19.5
	Pej	156	30.4
	Total	513	100.0

Table 2

Was there an adequate security procedure on entering the court?

		Frequency	Percent
Valid	Yes	383	74.7
	No	130	25.3
	Total	513	100.0

Table 3

Were you able to access your chosen case on the appropriate day?

		Frequency	Percent
Valid	Yes	473	92.2
	No	40	7.8
	Total	513	100.0

Table 6

Were electronic equipment used in the court?

		Frequency	Percent
Valid	Yes	8	1.6
	No	505	98.4
	Total	513	100.0

Tabela 7

Were statements by the parties taken correctly?

		Frequency	Percent
Valid	Yes	422	82.3
	No	91	17.7
	Total	513	100.0

Table 8

Were there any technical problems during the session?

		Frequency	Percent
Valid	Yes	95	18.5
	No	418	81.5
	Total	513	100.0

Table 9

Did the session take place in the court room?

		Frequency	Percent
Valid	Yes	138	26.9
	No	375	73.1
	Total	513	100.0

Table 10

Did the court body consist of the appropriate officials, according to the rules?

		Frequency	Percent
Valid	Yes	461	89.9
	No	52	10.1
	Total	513	100.0

Table 11

Was the involvement of lay judges as opposed to leading judge relative?

		Frequency	Percent
Valid	Yes	81	15.8
	No	240	46.8
	There were no lay judges (because it was minor offence case, or under three year conviction case)	192	37.4
	Total	513	100.0

Table 12

**Were the parties equally treated by the president of the court body
(in civil cases - the lawyers of the two parties; in penal cases - the
lawyer and the prosecutor)**

		Frequency	Percent
Valid	Yes	468	91.2
	No	45	8.8
	Total	513	100.0

Table 13

**Were there any problems impacting a witness' ability to come to
the court?**

		Frequency	Percent
Valid	Yes	56	10.9
	No	457	89.1
	Total	513	100.0

List of acronyms

BIRN	– Balkan Investigative Reporting Network
KJC	– Kosovo Judicial Council
SKJC	– Secretariat of Kosovo Judicial Council
UNMIK	– United Nation Mission in Kosovo
DJA	– Department of Judicial Administration
SRSG	- Special Representative of Secretary General
UN	– United Nation
ARJSK	– Activity for Reforming the Justice System in Kosovo
CMIS	– Court Management Information System
IJPC	– Independent Judicial and Prosecutorial Commission

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