



THE WESTERN BALKANS TRIAL MONITORING REPORT

From Paper to Practice

Evaluating the Effectiveness of Judicial Responses
to Serious Organised Crime and Corruption

Review Period July 2021 - March 2024



Funded by
the European Union

This publication is produced within the framework of the Organization for Security and Co-operation in Europe (OSCE)'s extra-budgetary funded **“Regional Trial Monitoring Project - Combatting Organised Crime and Corruption in the Western Balkans”**. Funded by the European Union.

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REGIONAL TRIAL MONITORING PROJECT
COMBATting ORGANIZED CRIME AND CORRUPTION
IN THE WESTERN BALKANS

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*All references to Kosovo, whether to the territory, institutions or population, should be understood in compliance with United Nations Security Council Resolution 1244.

Abbreviations

BD BiH	Brčko District Bosnia and Herzegovina
BCC	Basic Criminal Court Skopje
BiH	Bosnia and Herzegovina
BPPO	Basic Public Prosecution Office (North Macedonia)
CC	Criminal Code
CCJE	Consultative Council of European Judges
CEPEJ	European Commission for the Efficiency of Justice
CMIS	Case Management and Information System (Kosovo)
CPC	Criminal Procedure Code
CSO	Civil Society Organisations
DG NEAR	Directorate-General for Neighbourhood and Enlargement Negotiations
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FIU	Financial Intelligence Unit
HJC	High Judicial Council (Albania)
HJPC BiH	High Judicial and Prosecutorial Council of Bosnia and Herzegovina
HPC	High Prosecutorial Council (Albania)
IPA	Pre-Accession Assistance
KAJ	Kosovo Academy of Justice
KBA	Kosovo Bar Association
KJC	Kosovo Judicial Council
KPC	Kosovo Prosecutorial Council
MLA	Mutual Legal Assistance
Moj	Ministry of Justice
NCA	National Chamber of Advocates (Albania)
NGP	Negotiated Guilty Plea Agreements
OCC	Organised Crime and Corruption
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
PBA	Plea Bargaining Agreement
PRIS	Case Management System (Montenegro)
RS	Republika Srpska
SCCOC	Specialised Courts for Corruption and Organised Crime (Albania)
SIMs	Special Investigative Measures
SPAK	Specialised Prosecution Office (Albania)
SPO	Special Prosecutor's Office (Montenegro)
SPRK	Specialised Prosecution Office (Kosovo)
SSPO	Supreme State Prosecutor's Office (Montenegro)
UNODC	United Nations Office on Drugs and Crime
WB	Western Balkans

Foreword

Projects of this nature are not just about identifying challenges; they are about creating ways to overcome them. This Western Balkans Trial Monitoring Report marks a significant milestone in the journey, made possible by the support of the EU as the project's donor, to help build more resilient criminal justice systems that can effectively respond to serious organised crime and corruption.

This report highlights the systemic problems that judicial systems across the Western Balkans region encounter. From lack of resources and accountability, the obstacles may seem daunting. Rather than simply cataloguing the problems, though, the report charts a course for addressing them through evidence-based analysis and actionable recommendations.

By promoting transparency, strengthening capacity and encouraging change, we can break the cycles that undermine public trust and the rule of law. While the road ahead will be challenging, the obstacles are not insurmountable. The priorities outlined in this report provide a robust framework for progress, that is already underway in all jurisdictions.

We would like to express our deep appreciation to our partners at the EU



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Directorate-General for Neighbourhood and Enlargement Negotiations (DG NEAR) and EU Delegations on the ground for their collaboration and support on this important initiative. We are also grateful to stakeholders from judicial and prosecutorial councils, courts, prosecutorial offices, and Ministries of Justice in all jurisdictions. They have been consulted on the findings of this report, providing valuable context and helping us to triangulate our analysis; they have accepted the vast majority of its recommendations, already incorporating a number of them into their reform frameworks.

Only through continued cooperation and shared commitment can we hope to break down entrenched barriers to justice. This report is an important step in a sustained effort by the OSCE, together with international and local partners, to support the independence and integrity of the judiciary.

We have an opportunity to transform criminal justice systems, build societal resilience against organised crime and corruption, and make fair and accessible justice a reality for all citizens.

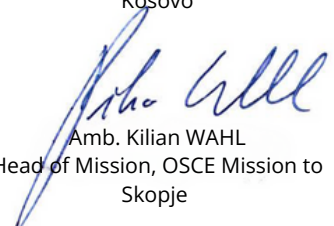
We stand firmly with all those who are committed to this essential work.



Amb. Michel TARRAN
Head of Presence, OSCE Presence in
Albania



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Kosovo



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I. EXECUTIVE SUMMARY

Effectively handling serious organised crime and corruption (OCC) is vital for improving the rule of law. Strong implementation of a sustainable justice sector reform agenda and decisive judicial and prosecutorial leadership are needed to establish a credible track record across the Western Balkans (WB) and meet the respective jurisdictions' key strategic objectives.

The international community, including the Organization for Security and Co-operation in Europe (OSCE), has called for improved performance in OCC cases and identified areas in need of urgent reform. Despite the judiciary's commitment to and stated political positions supporting reform, the judicial response to OCC in the WB has scope for improvement, especially as public confidence in the judiciary continues to decline due, in part, to the outcomes of OCC cases.

This regional Report, developed by the OSCE "Regional Trial Monitoring Project - Combatting OCC in the Western Balkans" ([Project](#)¹), presents key findings and recommendations to address issues identified during trial monitoring from July 2021 to March 2024. It is also the product of consultations with judicial officeholders on the jurisdiction-specific reports shared with relevant counterparts in November 2023.

The Report outlines the Project's monitoring methodology and data collected in Chapter II; presents common trends across all jurisdictions on the effectiveness of the judicial response to OCC and the way forward in Chapters III & IV; and discusses issues in each jurisdiction and makes recommendations in Chapters V to IX.

¹ <https://www.osce.org/WesternBalkansTrialMonitoring>

II. PROJECT BACKGROUND

Project objectives

The Project, funded by the European Commission (EC) and implemented by the OSCE in Albania, Bosnia and Herzegovina, Kosovo, Montenegro and North Macedonia,² aims to support a more effective judicial response to OCC in the WB, where high-level OCC represents a threat to long-term stability and prosperity. The Project supports these jurisdictions in tackling

serious OCC by working to enhance the independence, quality and efficiency of their judicial systems. Since July 2021, the Project has applied trial monitoring as a multi-faceted and systematic diagnostic tool to relevant cases, with the core deliverable of establishing an evidence-based framework for reform. The table below offers a snapshot of the Project's theory of change.

IMPACT	Public confidence in judicial system	Decreased levels of serious organised crime and corruption			
VISION	A sustainable criminal justice system that can efficiently and effectively respond to serious organised crime and corruption				
JUSTICE SECTOR OUTCOMES	FAIRNESS in proceedings	EFFICIENCY in proceedings		EFFECTIVENESS in proceedings	
JUSTICE SECTOR OUTPUTS	Increased transparency & accountability	Increased independence	Improved resource allocation	Increased capacities & professionalism	Greater expediency
CORE ASSUMPTION	Clarity on roles and responsibilities among justice sector institutions for policy design, its meaningful implementation, evaluation and continuous improvement				
TRIAL MONITORING OUTCOMES	Provide an evidence-based framework for future reform that meets real needs				

Table 1 - Regional Trial Monitoring Project's Theory of Change

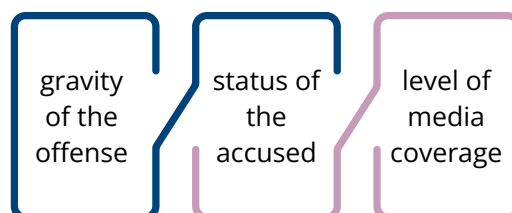
² Serbia will join the Project as of July 2024. This Report does not contain any findings pertaining to Serbia.

Methodology and data collection scope

Methodology

The Project's Methodology, developed and adapted for the project by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) based on its Trial Monitoring Manual and drawing on the extensive experience of OSCE Field Operations in monitoring OCC cases, encompasses trial monitoring from the confirmation of indictment to the final and binding verdict. Cases are selected based on three key criteria reflecting: 1) the gravity of the offence, 2) the status of the accused, and 3) whether the case attracts significant media attention. Cases are categorised from low to high+, with high and high+ being prioritised for monitoring.³

The Project monitors hearings and analyses judicial acts, primarily indictments and judgments, in cases that meet these selection criteria.



In order to produce analysis that is useful for the local policy landscape and comparable across jurisdictions, the Project adopted an agreed-upon working definition of “effectiveness” in the judicial response to serious OCC. As there is no universally accepted definition of judicial effectiveness as a whole, or in targeted areas such as the criminal justice sector, the Project uses its own working definition of effectiveness, which informs its entire data collection and analysis methodology.

The Project's working definition of effectiveness is as follows:

Effectiveness measures whether or not the institutions in question are achieving the goals society has set for them.

³ High+, according to the Methodology, is reserved for when at least one of the involved defendants is a high ranking or high-profile elected public office holder. For example, heads of state or government, ministers and deputy or assistant ministers; members of parliament or similar legislative bodies; members of the governing bodies of political parties; mayors of the capital city and other main cities in each IPA beneficiary; or the highest-ranking officials of federal units.

Effectiveness should be considered first and foremost in relation to the *raison d'être* of the respective institutions mandated to reduce crime and create legal certainty.

Indeed, the Project Methodology prescribes that “one should distinguish between the general goal of the criminal justice system, which is to deliver justice by convicting and punishing the guilty while protecting the innocent, and the specific goals of the different institutions that constitute the system”.

In this sense, the Methodology encompasses both substantive and procedural dimensions of judicial responses to OCC cases, addressing fair trial rights, accountability and independence. The Methodology's assessment extends beyond courtroom proceedings, considering external factors like media coverage and institutional design and performance. Against this background, and based on the Project's objectives, the Methodology identifies the following four core dimensions to assess judicial response to OCC:

i. fairness

ii. efficiency

iii. capacity/
performance

iv. strategic
use of
judicial tools

i. The **fair** administration of justice, a democratic cornerstone, is enshrined as a human right under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, commonly referred to as the European Convention on Human Rights (ECHR) and domestic laws that protect the right to a fair trial. Accordingly, the Project assesses the right to an independent and impartial tribunal; to a public hearing; to be presumed innocent; to 'equality of arms', and to the uniform and predictable enforcement of both procedural and substantive criminal laws.

In addition, the Project takes a broader approach to fairness by examining issues relating to legal certainty, accountability and transparency in the work of the judiciary.

ii. Judicial systems must deliver justice **efficiently**, and as part of the overall requirement to a trial within a reasonable time. Efficiency bolsters public trust, legal certainty and fair trial rights.⁴ The Project assesses efficiency by examining the timeliness of proceedings and the effective allocation of resources.

⁴ Council of Europe, Judges: Independence, Efficiency, and Responsibilities: Recommendation CM/Rec(2010)12 and Explanatory Memorandum (Strasbourg: Council of Europe, 17 November 2010), para. 30.

iii. The Project aims to evaluate judicial office holders' professionalism, diligence and proficiency, focusing on their capacity to prosecute and adjudicate cases impartially, fairly and promptly.⁵

Capacity is assessed not only in terms of court performance, but also, crucially, in the quality of judicial acts, emphasizing coherent and convincing reasoning as a safeguard against arbitrariness. Flawed, unclear or unconvincing reasoning may signal incompetence, legal framework issues, deficiencies in the judicial academies training programmes or non-legal considerations on the part of the judge or prosecutor.

iv. The Project evaluates the use of key procedures and **tools** in handling OCC cases, focusing on asset seizure and confiscation. Financial investigations play a central role, alongside measures to freeze assets during probes, directly targeting wealth accumulation – the main driver of OCC.⁶

Since trial monitoring serves as a *diagnostic tool* to identify symptoms of systemic deficiencies, the Project also carries out a series of complementary needs assessments and analyses to understand the root causes of the identified challenges. These activities, aimed at further substantiating the findings, focus on data collection

through structured consultations with justice sector stakeholders, namely bilateral meetings and multi-stakeholder roundtable discussions.

Methodological Scope

Given the Project's focus on identifying systemic issues, all analytical products – including this Report – delineate *trends* across the monitored cases without discussing or identifying individual cases. For this reason, all details that could lead to the identification of cases have been removed from this Report.

Furthermore, according to its Methodology, the Project monitors and analyses cases upon confirmation of the indictment. This means that the Project does not have access to nor does it systematically analyse data from the investigation or pre-trial phases. Given this scope, the analysis of certain elements of the handling of OCC cases, such as financial investigations, is based on what can be discerned from the indictment and trial, as well as from consultations with stakeholders.

In addition, trial monitoring generally assesses the totality of the proceedings, i.e., up to the final and binding judgment, as deficiencies identified at one stage of proceedings may be remedied at a later stage.

⁵ Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Guidelines on the Role of Prosecutors (United Nations, 7 September 1990), paras. 1 and 2; Council of Europe, Recommendation on judges: independence, efficiency and responsibilities, paras. 59 and 65.

⁶ The United Nations Convention against Corruption, Art. 31, and the United Nations Convention against Transnational Organized Crime, Art. 12, call for the use of freezing and confiscation of illegally acquired assets.

Core trial monitoring activities in the reporting period

During the reporting period, July 2021 to March 2024, the Project monitored a total of 264 cases across the region at an average of 52 high- and medium-level cases in each jurisdiction.

ALBANIA

- Specialised Court of First Instance for Corruption and Organised Crime
- Specialised Court of Appeal for Corruption and Organised Crime

BOSNIA AND HERZEGOVINA

- Court of Bosnia and Herzegovina
- Supreme Court of Republika Srpska
- District Court of Banja Luka
- Supreme Court of Federation of Bosnia and Herzegovina
- Cantonal Courts in Bihać, Mostar, Sarajevo, Široki Brijeg, Tuzla, Zenica
- Municipal Courts in Bihać, Cazin, Gračanica, Sarajevo

KOSOVO

- Kosovo Supreme Court
- Kosovo Court of Appeals
- Basic Courts in Prishtinë/Priština, Ferizaj/Uroševac, Prizren/Prizren, Gjakovë/Đakovica, Mitrovicës/Mitrovica, Gjilan/Gnjilane, Pejë/Peć

MONTENEGRO

- Basic Court in Kotor
- High Court in Podgorica
- Appellate Court of Montenegro

NORTH MACEDONIA

- Basic Criminal Court Skopje
- Appellate Court Skopje
- Supreme Court of the Republic of North Macedonia

The graphs below provide a general overview of the type of cases being

monitored, as well as the procedural phase.

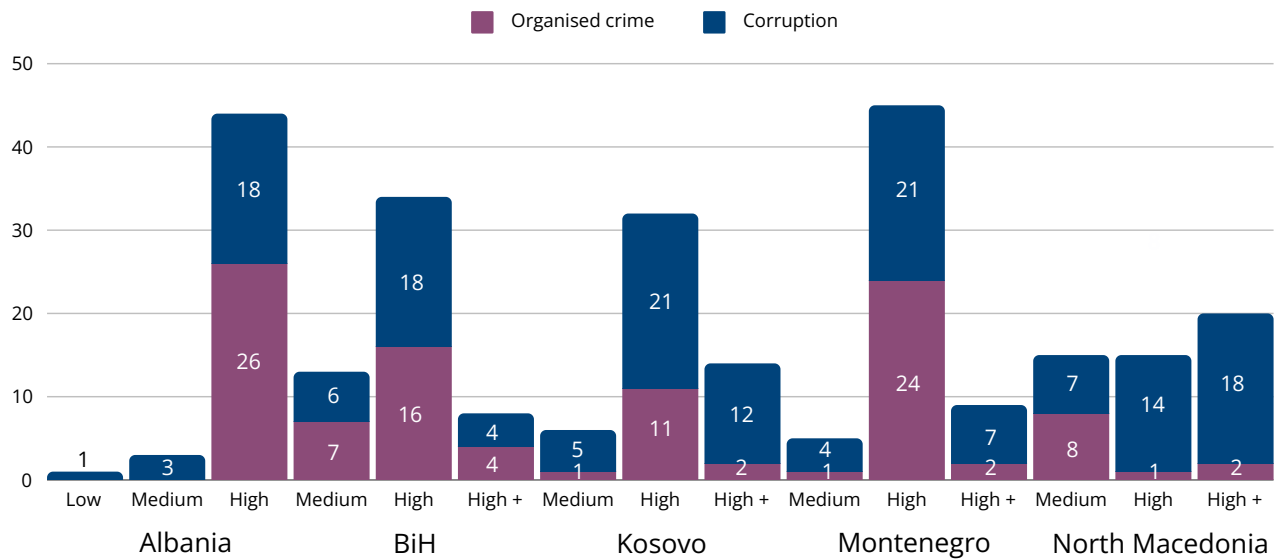


Figure 1 - Number of monitored cases from July 2021 to March 2024, disaggregated - organised crime/corruption & methodology scoring criteria.

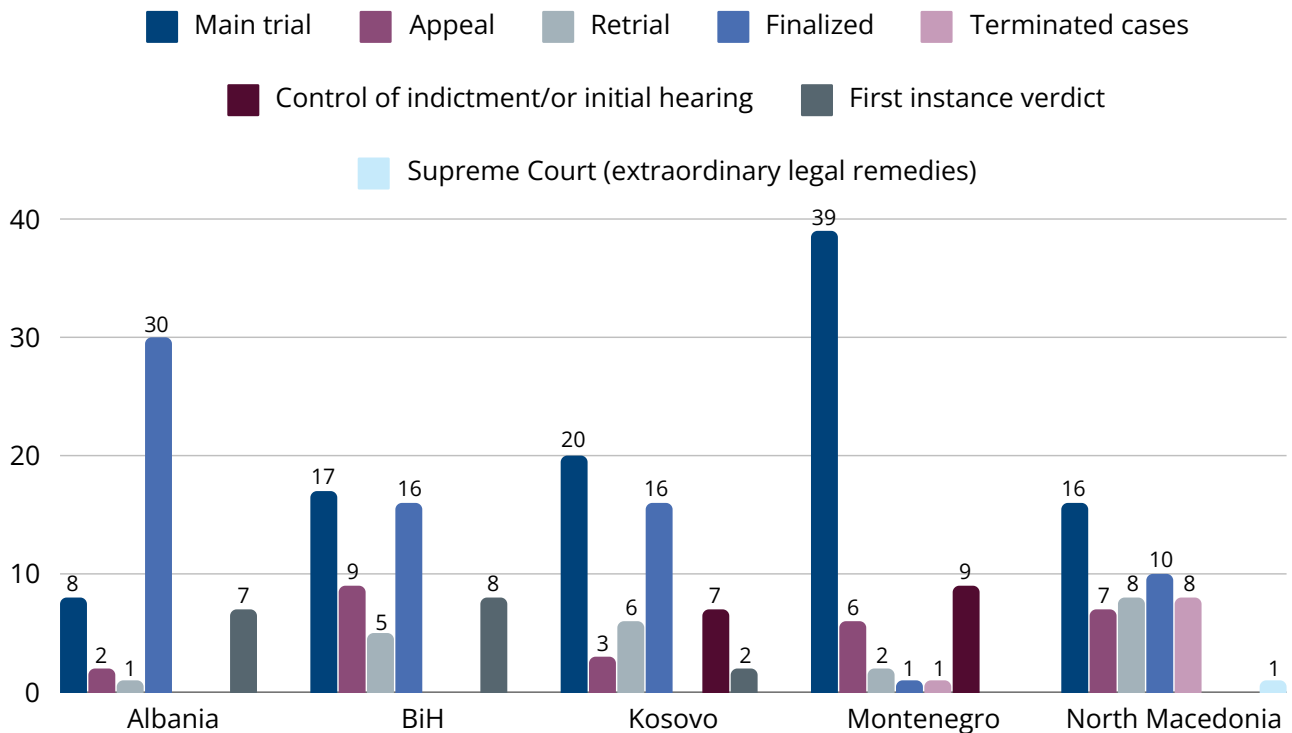


Figure 2 - Procedural phases of cases monitored, disaggregated by jurisdiction (July 2021 to March 2024).

The Project's findings reflect data collected in case hearings and while reviewing key judicial acts.

The graph below illustrates the data collection sources for the selected cases.

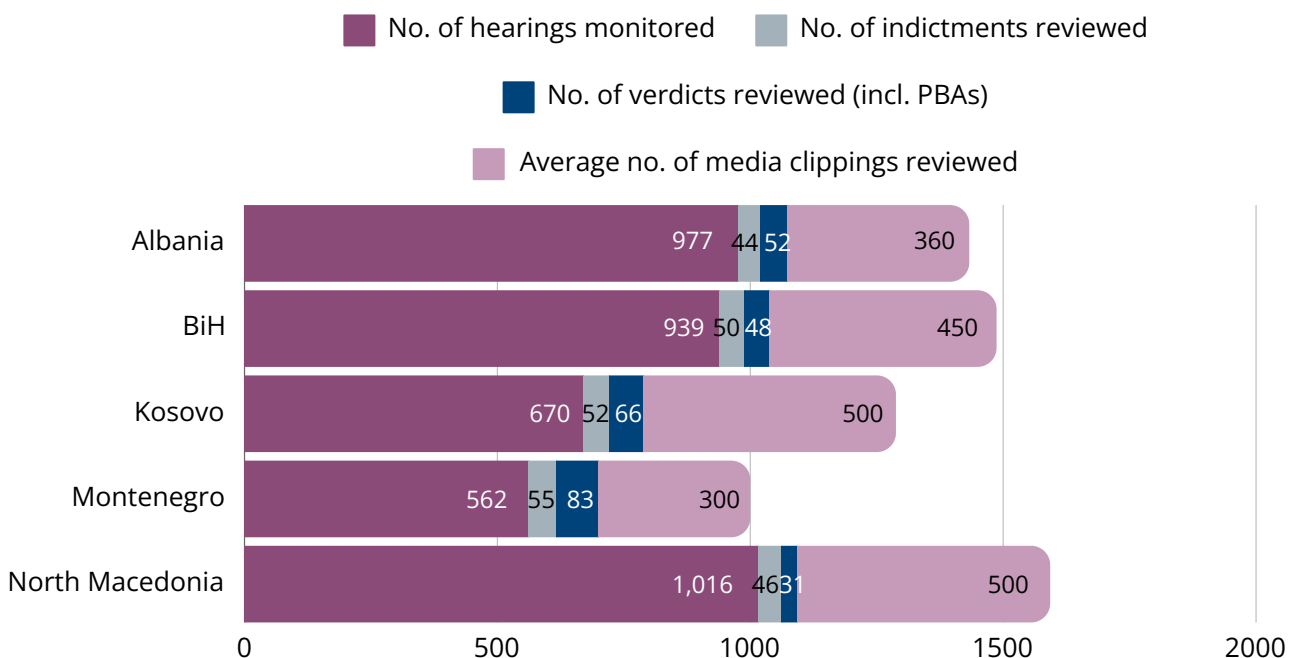


Figure 3 - Disaggregation of trial monitoring activities per jurisdiction from July 2021 to March 2024.

As noted above, the Project identifies systemic issues by assessing the totality of proceedings. Such assessments aim to:

- i. Identify interdependencies between systemic failures that manifest in key legal acts and at different stages of the procedure. Of note, failures at an earlier stage may have cascading effects.
- ii. Enable the development of targeted and sustainable reform or intervention proposals.

These proposals should address the root causes of each problem, which may be found in a previous procedural stage or document.

However, at the time of writing, only a limited number of cases monitored by the Project had reached the final and binding judgment. New cases are being added as resources allows. Figure 2 illustrates the number of finalised cases per jurisdiction and provides some initial observations on the outcomes of those cases.

III. REGIONAL TRENDS

Overarching institutional challenges

The Project's trial monitoring identified symptoms of systemic challenges across all jurisdictions to varying degrees that indicate issues ranging from capacity at the individual level to capacity at the institutional, legislative and policy levels.

Challenges remain regarding fairness, efficiency, effectiveness and capacity in the processing of serious and complex OCC cases. Concerns persist with regard to independence and impartiality of judicial officeholders and institutions, vis-à-vis the interests of both public and private actors, as do inconsistent practices regarding transparency and access to information in cases of public interest. Proceedings are somewhat inefficient, including due to case management and a lack of procedural discipline. Indictments and verdicts can lack quality, and asset forfeiture remains underutilised. Moreover, plea agreements are often not used strategically and rarely secure the forfeiture of illegal gains. That said, the severity of these issues varies in different jurisdictions and shall be discussed in more detail in their respective chapters.

In this section, the report focuses on overarching institutional challenges that appear to underpin all the other issues identified in the trial monitoring data, as briefly alluded above. These overarching challenges do not necessarily manifest themselves directly in hearings or judicial acts, but emerge from consultations with key stakeholders in the justice sector, as well as from in-depth expert research into what may be the root causes of the problems that do arise in the trial monitoring data.

These reflections on root causes are usually left unspoken because of the inevitable difficulty of producing hard, objectively verifiable data that leaves no room for interpretation. However, as progress is made on paper but remains elusive in practice, it is important that root causes be acknowledged, to broaden the discussion and prompt their targeted assessment. Addressing these challenges will require a long-term vision from all relevant stakeholders.

i. Ownership of reform processes

Despite significant judicial reform processes, and initiatives to improve the processing of OCC cases, effectiveness seems to be hampered by insufficient commitment by relevant justice sector stakeholders. While the proliferation of guidelines, policy proposals and capacity-building efforts is encouraging, co-ordinated implementation

and ownership are essential to avoid confusion or lack of sustainability. The development of a shared vision for reform, led by relevant stakeholders, along with clear oversight mechanisms and robust communication channels, is crucial to foster collaboration and accountability among responsible authorities.

ii. Resources

Trial monitoring and feedback from judicial officeholders confirm that judicial institutions face material and human resources challenges, especially in terms of specialized experts for financial investigations. Even in jurisdictions with a seemingly sufficient number of judges and prosecutors, resource allocation may be ineffective or inefficient. Lengthy vacancies for judicial and prosecutorial appointments exacerbate this problem. Additionally, judicial institutions often lack sufficient

legal support staff. Addressing these challenges requires Ministries of Justice to align their political commitments with financial backing, as well expediting appointment processes for judicial and prosecutorial councils, judges and prosecutors. A lack of basic human and material resources also adversely affects the perception by justice sector actors regarding the value and importance of their own work, fueling further inertia and underperformance.

iii. Capacity and expertise

Identifying the root cause of inadequate capacity is challenging. Issues include insufficient structural resources, including ineffective management and co-ordination by senior judicial actors as well as a lack of skills or unwillingness to utilize existing skills. For instance, in the majority of indictments in all jurisdictions, the project found

discrepancies between the factual description and the legal qualification, inadequate reasoning and even a failure to specify the economic damage allegedly caused by the offence; shortcomings that often lead to charges not being proved and, consequently, to acquittals and limited asset forfeiture. In all jurisdictions, there are also problems

with inadequate reasoning in judgments, which regularly lead to retrials. Capacity-building programmes offered by both local institutions and the international community are abundant in a wide array of subjects across the region.

However, to varying degrees, readily available guidelines, training manuals and established practices remain underutilized. There would thus be merit in conducting a targeted needs assessment to ascertain the real causes of weak capacity and the appropriate level and type of remedial response required.

iv. Accountability mechanisms & performance management

Individual Performance and Accountability

Ineffective performance management systems for judges and prosecutors, including assessment criteria that favour quantity over quality, does not incentivize optimum performance. In addition to improving the assessment of individual performance, a concerted effort to promote and standardize best practices is needed, along with incentives to implement standards that exist on paper but are not yet translated into meaningful performance management in practice.

Institutional Performance and Accountability

The evaluation of overall judicial performance requires considerable

improvement, with most judiciaries focusing on output rather than outcome metrics. Further, fragmented and inconsistent data collection hinders meaningful insight.

Most judiciaries do not gather comprehensive data in relation to serious OCC, leaving critical issues and concerns insufficiently analysed. Indeed, the data published by judicial institutions does not allow for the identification of trends in the administration of justice, reducing the capacity of decision-makers to take evidence-based decisions and minimizing the impact of such data on public awareness and confidence.

A data-driven approach would assist with these aspects.

Similar to the rest of Europe, judiciaries in the WB are struggling to balance their desire to foster transparency with the right to privacy and data protection regulations.⁷ Regardless, the absence of robust data-driven accountability mechanisms undermines judicial effectiveness and erodes public trust. The Project will continue to work on identifying the statistical values and

frameworks that can capture performance in meeting the "goals society sets for the judiciary" (as prescribed in the Project Methodology).

Additionally, sustained efforts by initiatives like the Council of Europe's European Commission for the efficiency of justice (CEPEJ) have a crucial role to play in addressing this issue, particularly from an efficiency perspective.

v. Prevalence of formalism

Across the region, a culture of formalism compels judicial officeholders to adhere strictly to minimum requirements. This is particularly pronounced where regulatory frameworks are absent or vague, with judicial officeholders deferring both vertically within the hierarchy and horizontally to their colleagues. The Project's findings indicate that this

culture of formalism reduces impetus to implement and ownership over reforms; hampers the quality and efficiency of proceedings, leading to the confirmation of technically flawed indictments as well as a failure to address inadequate legal representation or procedural errors by all parties.

⁷ Policy Group of the Project 'Building on the European Case Law Identifier' On-Line Publication of Court Decisions in the EU (Building on the European Case Law Identifier, 15 February 2017), <https://boecli.eu/uploads/deliverableserrrrdrffff/Deliverable%20WS0-D1.pdf>

IV. WAY FORWARD

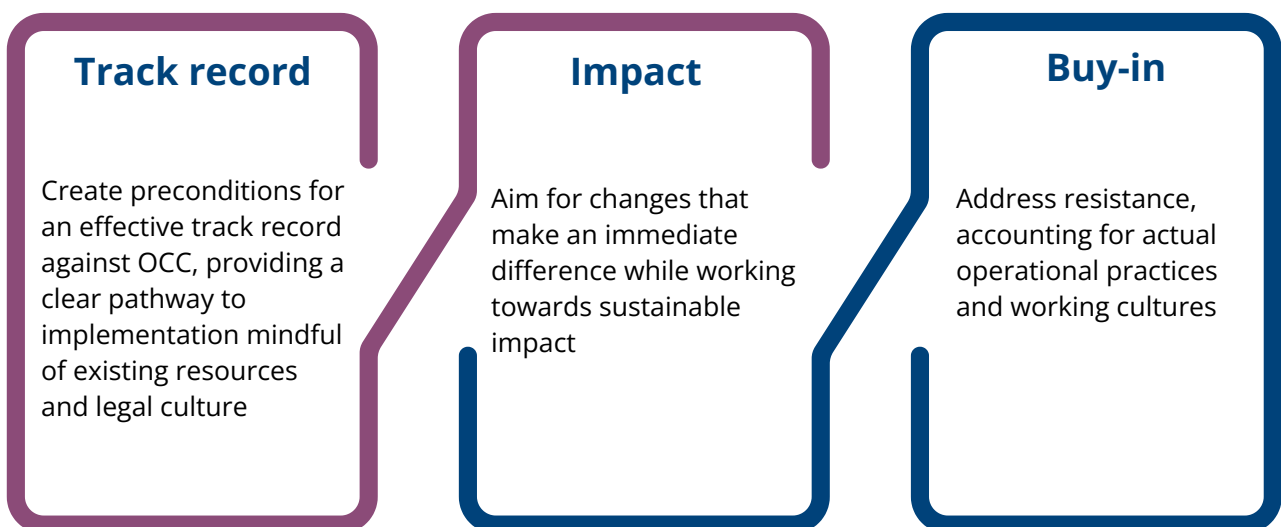
In all five jurisdictions, authorities and the international community have initiated activities to address many aspects of the issues identified in this Report. These include strategies, action plans, guidelines and capacity building. These are substantial investments; achieving sustained progress will require some additional work.

With this Report, the Project aims to promote policy recommendations developed to address systemic issues in the handling of OCC cases. These recommendations must be considered in the broader context of the entire criminal justice system. Just as there is no universally accepted methodology for assessing effectiveness, likewise, there can be no “one-size fits all” approach to the judicial reforms needed to improve OCC case processing. Different legislation and institutional policies can be consistent with international standards, local societal goals and perceptions of justice.

Judicial stakeholders must embrace flexibility in the design of policies, while still respecting accepted standards and considering how different policy and institutional design choices interact. As such, the Project took a nuanced approach to the complex task of developing relevant, actionable, and innovative recommendations.

The Project’s recommendations strive to enable ownership, foster sustainability and enhance public confidence in the judiciary. Implemented properly, these policies should establish a consistent track record, create sustainable impact, foster operable solutions and address potential resistance.

Cognisant that significant efforts are already underway in this area, the Project has placed a special emphasis on activities that could improve stakeholders’ motivation to implement the tools that are already available to them.



The present recommendations are based on the Project's 2023 non-public working papers (review period July 2021 to June 2023), which were shared directly and in confidence with justice sector stakeholders in November 2023. The Project consulted with these stakeholders to assess their views of these recommendations prior to their inclusion in this Report. These recommendations were also endorsed by Ministers of Justice at the 2023 EU-Western Balkans Ministerial Forum on Justice and Home Affairs.

In endorsing a majority of these recommendations, justice sector stakeholders in the five jurisdictions have already included some of them in their reform frameworks. In recognition of all stakeholders' commitment to constructive and forward-looking partnerships with the OSCE and the EU as the Project donor, the recommendations that have already been implemented by stakeholders are duly reflected in this Report. However, the implementation of these efforts will remain within the scope of this Project, and progress will be reported on in future reports.

V. Albania

Introduction

Recent assessments conducted by the Project in the processing of OCC cases in Albania revealed both progress and persistent challenges.

Generally, fair trial rights are being upheld in monitored cases, but concerns arise over courts suspending pre-trial detention time limits for all co-defendants, regardless of their individual contribution to delays. Transparency suffers from inconsistent communication with media and irregular website updates⁸, potentially undermining public trust. Identified shortcomings in indictments and verdicts as well as persistent issues such as slow appointment processes and vacancies in crucial positions persistently undermine efficiency and pose additional challenges to the effective administration of justice,

which requires motivated professionals with specialised skills.

Despite these challenges, there is a notable increase in investigations of high-profile OCC cases, including money laundering cases, indicating the Specialised Prosecution Office's (SPAK) commitment to combatting OCC cases. Rules of conduct and ethics, and professional evaluation guidelines for prosecutors and judges have been established. The Ministry of Justice (MoJ) has also created an anti-corruption coordinator network to enhance anti-corruption efforts. The High Judicial Council's approval of guidelines for court-media relations is also a positive step in addressing concerns related to transparency. The effects of all those developments should be closely scrutinised to assess tangible progress.

⁸ <https://www.gjp.gov.al/>

<https://gjykata.gov.al/gjykata-e-posacme-e-apelit-per-korrupsionin-dhe-krimin-e-organizuar/gjykata-e-posacme-e-apelit-per-korrupsionin-dhe-krimin-e-organizuar/>

Fairness

1

Recommendation

Ensure that court practice on the suspension of pre-trial detention is in line with international standards and best practices on fair trial rights. Towards this end:

- i. In the short term, the High Court should issue a unifying decision harmonising practice and ensuring compliance with international fair trial standards.
- ii. In the long term, Parliament should adopt amendments to Article 265 of the Criminal Procedure Code (CPC) to avoid legal ambiguities concerning the suspension of pre-trial detention time limits for all co-defendants.

Pre-trial detention serves as a common security measure in Albanian criminal justice, especially in cases involving OCC cases, with 40 out of 48 monitored cases featuring defendants in pre-trial detention. However, this practice has implications for trial proceedings, as a day in pre-trial detention equates to one-and-a-half days in the final conviction sentence. This is often used as a defence tactic to minimise sentences but contributes to trial delays.⁹ To avoid situations where defendants are released due to the

exhausting pre-trial detention time limits¹⁰, the CPC amendments in 2017 enforced the suspension of these timelimits if procedural delays are caused unjustifiably by the defendant and/or defence lawyer.

However, the Project identified concerns with courts suspending pre-trial detention time limits for co-defendants who did not cause the postponement in 73 hearings, extending pre-trial detention unreasonably.

⁹ Article 57 of the CC

¹⁰ See: Delijorgji vs Albania, Application no. 6858/11

This raises issues regarding the right to liberty under Article 5 of the ECHR, as defendants face consequences for delays caused by others, contrary to fair trial standards. The suspension occurs when defendants or their lawyers cause adjournment due to "unjust acts or requests" or failure to appear.¹¹ Despite the absence of explicit provisions, courts interpret the law in a manner that seemingly contradicts defendants' right to liberty.

A comparative analysis with European countries, notably Italy, found similar provisions in their CPCs. However, the Italian CPC clarifies that the suspension of time limits does not apply to co-accused persons who request separate trials. The European Court of Human Rights (ECtHR) criticised Albania's handling of pre-trial detention, citing delays caused by co-defendants' counsel as evidence of inadequate diligence.¹²

Underlining this position, in a decision against Albania, the ECtHR considered that the first instance court, in justifying the applicant's pre-trial detention, had referred to the delays in the proceedings caused by his co-accused's

lawyer. In the absence of any measures to address such delays, it could not be said that the domestic criminal justice system had handled the applicant's case with "special diligence"¹³.

Judges and prosecutors acknowledged this problem, attributing it to ambiguity in CPC provisions and inconsistent High Court decisions. Suggestions included issuing decisions on case severance, or amending the CPC to address this issue and align with international fair trial standards. Alternatively, as observed in Italy, the High Court could issue uniform decisions to harmonise practices and ensure compliance with fair trial standards. These actions would rectify ambiguity in law interpretation, safeguard defendants' rights, and uphold fair trial principles in the Albanian criminal justice system.

Finally, on 14 September 2023, the MoJ has presented a partial draft of the general part of a new Criminal Code (CC) for public consultation, where the calculation of the pre-trial detention is equalised to one day of conviction in the final sentence. The Project considers this to be a step forward in addressing the issue.¹⁴

¹¹ Article 265 of the CPC

¹² Article 304 para. 5 of the Italian CPC

¹³ Case of Mucaj vs Albania, Decision of 11 July 2023, § 23

¹⁴ Një Kod Penal i ri për Shqipërinë - Ministria e Drejtësisë (drejtesia.gov.al)

Ensure effective legal representation in line with international standards and best practices. Towards this end:

- i. The MoJ and the National Chamber of Advocacy (NCA) should conduct a regulatory and budgetary review combined with a cost/benefit analysis – through an inter-institutional working group – to facilitate an adequate increase in the fees of ex officio lawyers. Emphasis should be placed on remuneration for ex officio lawyers appointed to represent defendants before the Specialised Courts for Corruption and Organized Crime (SCCOC courts).
- ii. The MoJ and NCA should develop a specialised list of ex officio lawyers to represent defendants before the SCCOC courts.
- iii. The MoJ and NCA should work on a proposal for an amendment to the Law on the profession of advocate¹⁵ and introduce a specific procedure in the NCA Statute for monitoring ex officio defence lawyers' work in cases of mandatory defence.
- iv. The NCA should reinforce a transparent, timely and consolidated procedure for processing claims against defence lawyers to increase their accountability and improve the efficiency of proceedings.

The right to a fair trial, guaranteed by core human rights treaties, includes effective legal defence. Defendants have the right to quality legal assistance, whether chosen or provided free of charge if they cannot afford it,

ensuring fair criminal proceedings.¹⁶ In Albania, the constitutional right to effective legal defence is undermined by challenges in providing assistance by ex officio defence lawyers. The Project observed the absence of ex officio

¹⁵ Law No. 55/2018, "On the profession of advocate in the Republic of Albania".

¹⁶ Article 6, paragraph 3 (c) of the ECHR provides that: "to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

lawyers during trials and ineffective representation, including refusals to take cases or resignations. In nearly 48.1% of unproductive hearings (265 out of 552), the absence of defence lawyers was cited as a key reason, leading to prolonged proceedings.¹⁷ Furthermore, the Project noted that the courts had reported and informed the NCA of misconduct by appointed defence lawyers as per legislation.¹⁸

Concerns also arose regarding low fees paid to ex officio defence lawyers, contributing to the aforementioned problems. Fees, paid on a trial basis, are notably low compared to other WB jurisdictions, discouraging quality representation. Current fees, ranging from ALL 36,000 (approx. EUR 330) to ALL 88,000 (approx. 800 EUR),¹⁹ cover trials that can extend over three years or longer, posing financial problems for lawyers. The United Nations Office on Drugs and Crime (UNODC) Criminal Justice Assessment Toolkit underscores the influence of competence, education, and proper remuneration on the quality of representation by ex officio lawyers, who are typically paid less than judicial counterparts.²⁰

Increasing ex officio lawyers' fees requires amendments to the Common Order of the Minister of Justice²¹ and the Head of the NCA, ensuring a foreseeable calculation modality based on clear criteria and a fair remuneration policy. Expedited and structured remuneration processes for each procedural step are essential. Heightened fees motivate better representation, encouraging regular attendance and preparation for hearings to ensure effective defence.

However, the Project considers that increasing the fees for ex officio lawyers alone will not address concerns regarding the quality of legal representation. The NCA should also develop a separate list of ex officio lawyers engaged in cases of mandatory defence before the SCCOC courts, equipped with the specialised skills and experience needed for the role. Such a list should be developed closely with the MoJ and courts. Furthermore, the project also considers that a specific legal provision should be enacted to require ex officio lawyers involved in mandatory defence cases before the

¹⁷ Article 31, paragraphs (b) and (c) of the Constitution of the Republic of Albania provides that: "During a criminal proceeding everyone has the right to have the time and sufficient facilities to prepare his defence," as well as "to be defended by himself or with the assistance of a defence lawyer chosen by him; [and] to communicate freely and privately with him, as well as to be assured of free defence when he does not have sufficient means".

¹⁸ Article 56 of the CPC and the provisions of Law No. 55/2018 "On the Profession of Lawyer in the Republic of Albania".

¹⁹ The Common Order of the Minister of Justice and the Head of National Chamber of Advocacy no. 1284/3, dated 16 March 2005, "On the approval of payments and tariffs for providing legal support" envisages and determines the fees of ex officio lawyers.

²⁰ See p. 1 of UNODC's Criminal Justice Assessment Toolkit "Access to justice: Legal Defence and Legal Aid"; https://www.unodc.org/documents/justice-and-prison_reform/cjat_eng/4_Legal_Defence_and_Legal_%20Aid.pdf.

²¹ Common Order of the Minister of Justice and the Head of National Chamber of Advocacy no. 1284/3, dated 16 March 2005, "On the approval of payments and tariffs for providing legal support".

SCCOC courts to undergo specific training. Likewise, based on Article 244 (7) of Law No. 115/2016:

"On Governance Institutions of the Judiciary", as amended, the NCA may enter into a co-operation agreement with the School of Magistrates (SoM) to provide regular specialised training for ex officio lawyers.

Moreover, amendments should be proposed to Law No. 55/2018 and the NCA's Statute to introduce a specific provision and procedure for monitoring

the quality of performance of ex officio defence lawyers in cases before SCCOC courts.

This includes adopting internal regulations and missing sub-legal acts to establish a transparent and consolidated practice for addressing allegations of misconduct promptly. Judges unanimously support these recommendations, recognizing the multifaceted nature of issues such as unproductive hearings and compromised defence rights due to ex officio lawyers' absence and unprofessionalism.

3

Recommendation

Ensure that the High Judicial Council (HJC) strengthens transparency and access to information in OCC cases by implementing the guidelines regulating the relationship of SCCOC courts with the public and media. Towards this end, specifically:

- i. The HJC should ensure that accurate and timely information on OCC cases is published/updated regularly on the relevant public platforms, including the court schedule of public hearings.
- ii. The HJC should improve its communication with civil society and media by ensuring that the HJC and SCCOC courts respond to requests for information in a timely, consistent, and comprehensive manner.

Recommendation

This improvement should include holding press conferences on a regular basis and/or when there are OCC cases of high public interest.

iii. The HJC should ensure that SCCOC courts consistently publish shorter version of verdicts – and the full version where possible – while respecting privacy rights.

Proper implementation of the tasks of the judge assigned for public relations through regular communication with the public and media, the real-time updating of significant judicial developments and a more standardised approach to publishing verdicts would all increase transparency, ultimately increasing public trust in the judicial system. Albanian legislation²² provides that all court verdicts should be published according to respective legal requirements while also considering relevant personal data restrictions. The current legal framework also provides for the role and responsibilities of a specific judge assigned for public relations in each court who should be in charge of the institution's communication with the public and the media, ensuring the provision of regular

information on important judicial developments and observing the publication of court verdicts in compliance with legal provisions²³.

However, the Project has noted concerns about courts' failure to inform the public and media about the activity of SCCOC courts regarding the publication of verdicts, communicating with the media, and the provision of other important information in instances of great public interest, irrespective of whether this pertains to presenting courts' general work or providing details on specific cases. The website of the SCCOC courts provides for the publication of the disposition of a limited number of verdicts, leaving out cases adjudicated by these courts.

²² Article 46, "Relations with the Public", of Law No. 98/2016 "On the Organization of Judicial Power".

²³ Article 91, "Access to Justice and Public Relations", of Law No. 115/ 2016 "On Governance Institutions of the Justice System".

This absence of a clear and comprehensive communication strategy with the public was confirmed during consultations with civil society organizations (CSOs) representatives, who highlighted the excessive limited quantity of information in verdicts.

Although Albania recently ratified the Convention of Tromso (the Council of Europe Convention on Access to Official Documents)²⁴, there is no unified practice on what constitutes personal data. There are cases in which even the names of the judge and prosecutor are anonymised, thus impeding the public's right to be informed.

As a positive step in addressing this issue, the HJC approved a set of guidelines²⁵ addressing the main concerns noted by the Project in this regard. The guidelines regulate the relationship between the courts and the public and media and provide detailed and clear regulation of the duties and responsibilities of the judge and other court employees assigned to maintaining public relations.²⁶

Ultimately, the Project recommends that the HJC prioritise the implementation of the aforementioned guidelines to ensure that there is a transparent and comprehensive communication between the SCCOC courts and the public and media.

²⁴ In July 2022, Albania ratified the Council of Europe Convention on Access to Official Documents, [CETS 205 - Council of Europe Convention on Access to Official Documents \(coe.int\)](#).

²⁵ On 6 December 2023, the HJC approved the "Standard Guidelines on the Relationship of the Courts with the Public and Media", VENDIM-Nr.-716-Datë-06.12.2023-PËR-MIRATIMIN-E-UDHËZUESIT-STANDARD-TË-MARRËDHËNIEVE-TË-GJYKATAVE-ME-PUBLIKUN-DHE-MEDIAN-.pdf

²⁶ The guidelines stipulate the matter of the anonymisation and publication of the verdicts by the courts, clearing up the ambiguity noted by the Project in a previous first draft of the guidelines. More specifically, the guidelines provide that for high-profile OCC cases adjudicated by the SCCOC courts, court verdicts should be published non-anonymised due to the high level of public interest in such cases. Having clarified the previous "grey areas" by determining the active role of the courts in providing information, the new guidelines facilitate an equal application of the right to public information when it comes to high-profile cases bearing great public interest.

Efficiency

4

Recommendation

National authorities should define and prioritize high-level OCC cases. Towards this end:

- i. The HJC and High Prosecutorial Council (HPC), in co-operation with the MoJ, should adopt regulations to define corruption and organised crime cases for statistical and policymaking purposes.
- ii. For the same purposes, the HJC and HPC, in co-operation with the MoJ, should adopt additional criteria to differentiate high-level corruption and organised crime cases from “ordinary” corruption and organised crime cases.
- iii. Based on this categorization system, the MoJ, HJC, and HPC should consider the following:
 - Prioritizing the prosecution and adjudication of high-level OCC cases, including prosecutor’s offices and courts adopting work plans to process such cases.
 - Mapping high-level OCC cases to allocate adequate resources to prosecutors’ offices and courts involved in their processing.
 - Making sure that the criteria for evaluating the performance of judges and prosecutors adequately reflect the specific challenges present when processing high-level OCC cases.

In its 2018 WB Strategy, the EC underlined that the path to enlargement requires the establishment of “a concrete and

sustained track record in tackling corruption, money laundering and organised crime”, as a matter of urgency.²⁷

²⁷ (Balkans_BorchureA5_V7.indd (europa.eu) p.5).

A pre-condition for establishing this track record is the setting up of a well-tailored and reliable categorization system to identify OCC cases and high-level OCC cases. After all, it is commonly accepted that one cannot improve what one cannot measure²⁸. At a minimum, categorizing OCC cases and high-level OCC cases would enable domestic institutions to produce solid statistics on the processing of such cases and provide a clear reference point for evaluating related progress.

The Project is aware that national authorities often use criminal law-based criteria to identify OCC cases and high-level OCC cases. For example, corruption cases are identified as those involving certain specific crimes (such as bribery or abuse of office); high-level corruption cases are identified as those within the jurisdiction of specialised prosecution offices or specialised courts dealing with a narrower set of corruption offences.

However, this is unreliable for statistical purposes or as a basis for policymaking. Criminal law provisions must be strict, objective, and unambiguous to ensure legal certainty. Consequently, criminal law-based criteria are rigid and unable to capture the nuances that ultimately define a high-level OCC case.

For example, a corruption case against a higher-ranking official is likely to be higher level than a similar case against a lower-ranking official. This difference, however, cannot be detected solely based on the application of criminal provisions. For these reasons, it is recommended that the national authorities adopt ad hoc criteria for defining cases that are independent from the criminal law framework and specifically for policy-making purposes.

The proposed categorization system, if properly devised, could be an essential tool in shaping and implementing key measures to improve judicial responses to OCC, regarding high-level cases. In addition to creating reliable quantitative data regarding the processing of such cases, this system could also be used to prioritise the prosecution and adjudication of high-level OCC cases by prosecutors' offices and courts.

For example, specific goals regarding the processing of these cases could be envisaged in the annual work plans of courts and prosecutors' offices. The mapping of high-level cases across the various prosecutors' offices and courts in the domestic system could be used to re-allocate human and material resources when and where they are most needed.

²⁸ (You Are What You Measure (forbes.com))

Finally, the performance evaluation criteria for judges and prosecutors should reflect the additional work and challenges required by OCC cases, particularly high-level cases. Rewarding judges and prosecutors who work on these cases with extra evaluation points,²⁹ for example, could be an effective tool in incentivising a more efficient and professional judicial response to OCC.

That said, the development of such criteria requires attention and expertise. This is particularly true regarding the categorization of high-level OCC cases. The requirements in question should capture the essential features of a high-level case in terms of its seriousness and complexity while being sufficiently clear and easy to apply. Suitable criteria could either point to the sensitivity of the case – for

example, by categorizing cases based on the power and prominence of the defendant – or to the gravity of the conduct by adopting criteria based on the economic damage or gain resulting from the offence, or consequences on the life and well-being of its victims.

Other types of criteria could refer to the complexity of the case, for example, in terms of the number of defendants, the quantity of evidence to be produced, the number of expert witnesses required, confiscation of assets, or the need for Mutual Legal Assistance (MLA) or Special Investigative Measures (SIM).

All of these criteria are relevant, and the best approach would be to adopt a combination of criteria that could be weighted through a well-balanced scoring system.

²⁹ The Scoring Methodology for Judges Assessment is a tool the HJC uses to measure judges' yearly work. The evaluation outcome can substantially impact a judge's promotion.

Revise the subject-matter jurisdiction of the SCCOC courts to ensure efficiency in processing more serious OCC cases. Towards this end:

- i. The inter-ministerial Working Group (WG) for the adoption of amendments to the CC should revise the existing provisions to exclude the SCCOC courts from adjudicating misdemeanours committed by public officials (defamation and insult).
- ii. The inter-ministerial WG for the adoption of amendments to the CPC should propose amendments to raise the threshold determining the subject matter jurisdiction of the SPAK prosecution and SCCOC courts over corruption offences.

The 2016 constitutional reform established the SPAK and the SCCOC courts and defined their jurisdiction to prosecute and adjudicate, respectively, all OCC offences. In addition, the SCCOC courts are competent to try all criminal charges against high-ranking public officials currently in office or if the criminal offence was committed while serving in office.³⁰

In 2021, to ease the burden of work posed by low-level offences, Parliament adopted amendments to the CC and CPC by narrowing the jurisdiction of the SPAK only to the criminal offences with a minimum value of the proceeds of crime in the amount of ALL 50,000

(approx. EUR 450) for active corruption (Article 244), unlawful influence on public officials (Article 245/1 of the CC), and passive corruption (Article 259 of the CC); and ALL 800,000 (approx. EUR 6,800) for the offence of violating the principle of equality in public tenders (Article 258 of the CC).

The prosecution offices and courts of general jurisdiction are competent to prosecute and adjudicate the same criminal offences involving a lower value of proceeds of crime.

The Project has observed that corruption cases involving low-level offences but falling within the threshold

³⁰ Articles 135 (2) and 147/dh of the Albanian Constitution, as amended by the Law no. 76/2016.

of the specialized prosecution and courts (the prosecution offices and courts of general jurisdiction are competent to prosecute and adjudicate the criminal offences of a lower value) contribute to excessive caseload for the SPAK and SCCOC courts, which may affect their capacities to process more serious cases. Thus, the CPC should be amended to raise the threshold determining the jurisdiction of the SPAK prosecution and the two SCCOC courts.

During consultations, judges proposed calculating the amount by multiplying the minimum salary in force. The exact ratio for this multiplication should be determined after consulting with relevant stakeholders, legal and financial experts and international partners.

In addition, the specialised courts handle³¹ a large number of cases of "defamation" (Article 120 of the CC) and "insult" (Article 119 of the CC) against high-ranking officials. During consultations with the project team, judges from both instances – the SCCOC of First Instance and the Appeal – and prosecutors acknowledged an increased workload that requires additional efforts to deal with these less serious cases and that removing private criminal complaints from their jurisdiction when the defendants are high-level public officials would considerably decrease their workload.

Recently, the Head of the SPAK acknowledged the need to increase the subject matter jurisdiction value during the meeting of the EU Integration Committee of the Albanian Parliament.³²

³¹ Unifying Decision no.23/2021 of the Criminal Panel of the High Court.

³² Dumani kërkon heqjen e 'korrupsionit të vogël' nga kompetenca e SPAK – Reporter.al

The HJC, in consultation with judges of the SCCOC courts, should enact guidelines for the trial management of complex OCC cases, which would also include the role and function of the pre-trial hearing, among other areas. The guidelines should promote effective trial management techniques, such as holding consecutive hearings in complex OCC cases.

The trial management guidelines and case management rules would ensure the commitment of parties and the expediency of proceedings and should, at a minimum:

- i. Outline the amount of time required for the trial.
- ii. Agree on a pre-scheduled date for the hearing.
- iii. Stipulate the number and purpose of witnesses each party plans to call.
- iv. Outline whether there will be expert evidence or witnesses, along with the names, occupations, title/position of any expert witnesses.
- v. Examine whether either party will be represented by a lawyer and include their availability and personal data.
- vi. Outline if documents need to be exchanged or retrieved from abroad.
- vii. Outline how evidence will be presented.

Recommendation

- viii. Stipulate whether there are any special requests for the presentation of evidence (for example, an out-of-town witness who wants to give evidence by telephone or video-call).
- ix. Agree on employing a mutually agreed upon expert.
- x. Agree to exchange additional information.
- xi. Discuss the evidence required, including witnesses and documents, by listing them and determining how they will be found and presented to the court in the time required.
- xii. Include a track record of pre-detention timelines and an overall timeline of proceedings.
- xiii. Contain contact information to inform parties quickly of hearing cancellations – only for justified reasons – to avoid the unnecessary attendance of parties and witnesses at court.

The Project has identified the excessive length of proceedings in high and medium-level OCC cases as a systematic problem due to a lack of effective trial management.

High-level OCC cases can be prolonged indefinitely, as the judicial system is unwilling or unable to take adequate measures.

Average no. of hearings held monthly

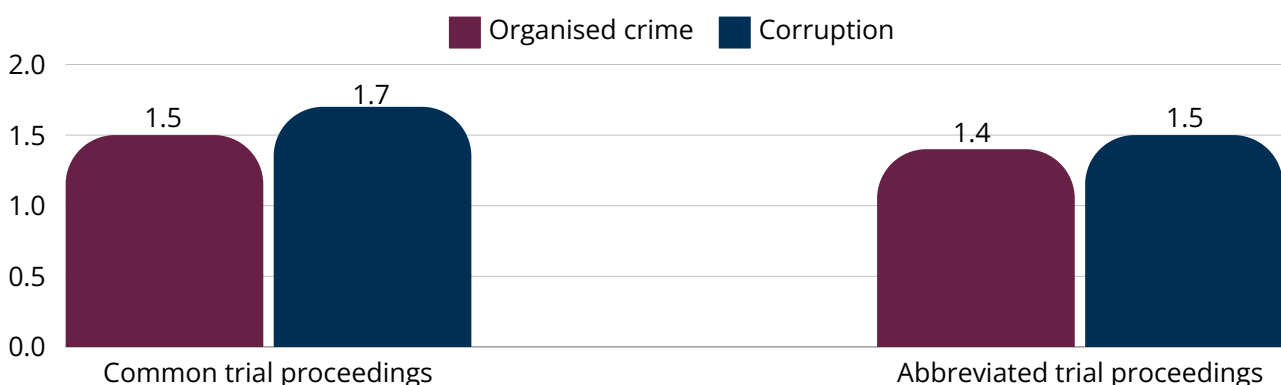


Figure 4 - Average no. of hearings per month

Average length of proceedings (in months)

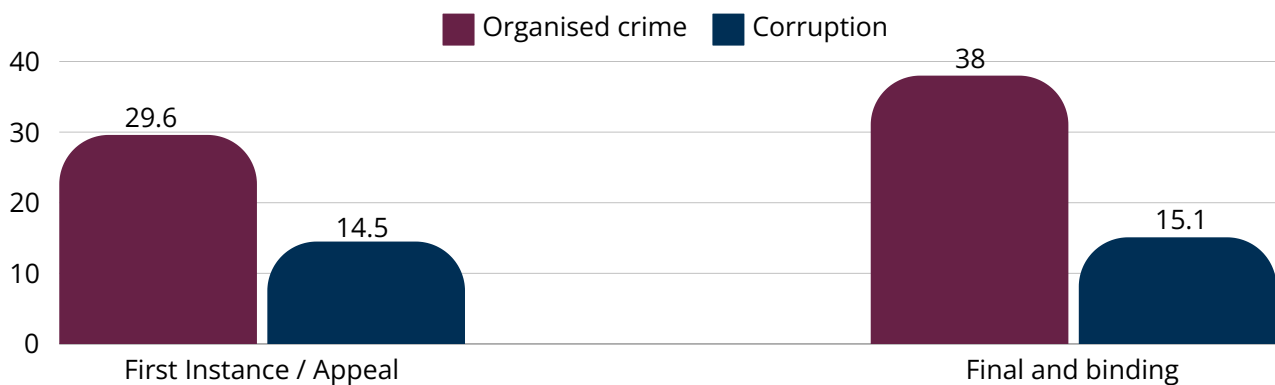


Figure 5 - Average length of Proceedings (in months)

Addressing this problem not only requires better managerial skills by judges and prosecutors, but it also requires a radical shift in institutional policy. The current legal framework provides for some pre-trial measures such as the setting of a hearing date, the summoning of witnesses and experts and other urgent measures.³³

However, these measures, apart from being an integral part of the main trial procedure provided by the CPC, are non-exhaustive and not comprehensive enough to address pre-trial needs.

Additionally, judges lament defence lawyers' tactics to prolong court proceedings, including frequent invocation of health issues, constant recusals on various grounds, and requests for adjournments of hearings due to conflicting commitments. The Project observed instances where the trial panel acted proactively to improve the efficiency of trials.

In 15 out of 48 monitored cases, the trial panel pre-scheduled consecutive hearings or took measures such as distributing the expert's report before the hearing to enable the parties to be prepared for the hearing.

However, albeit positive, these measures were haphazard and not applied by all judges in a unified manner.

The absence of guidelines and a uniform procedure for the pre-trial phase is impeding the fair, economical and expeditious conduct of trials, which ultimately could defeat the very purpose of the proceedings.

While structural problems in terms of resources were recognized also by stakeholders during consultations, procedural tools already exist that could be used to address the issue. Judges supported the proposal to implement status conference rules, although there

³³ Article 333-338 of the CPC.

were different views on how this should be done, such as changes to the CPC or just developing guidelines for case management.

The application of this procedure in other legislations, such as in the United Kingdom,³⁴ for example, enables courts to identify any issues early, such as the needs of witnesses, and provides clarity on what must be done, by whom, and when. Such guidance would assist in setting the standard for criminal defence representation and provide a benchmark against which to determine when intervention may be warranted.

Implementation of the guidelines should be supported through comprehensive trainings to improve the level of representation.

Useful actions in this regard include the early setting of a timetable to ensure case progress; ensuring that evidence is presented shortly and clearly; discouraging delays; dealing with as many aspects of the case as possible and avoiding unnecessary hearings; encouraging parties to co-operate on ensuring case progression; and making use of technology. The Project recommends that the HJC establishes a working group, together with representatives of the SCCOC judges, to adopt guidelines on trial management and make them an integral part of the court's internal rules. In addition to ensuring a uniform application by all judges, these guidelines would aid in delivering swifter proceedings, safeguarding the rights of the accused and increasing court efficiency.

7

Recommendation

The HJC should create a pool of judges specialised in OCC cases, who could be immediately assigned to new or ongoing cases. To that end:

- i. The HJC should draft a separate regulation outlining the criteria and procedures for the functioning of the delegation system of judges only for the SCCOC courts.
- ii. The judges in the delegation scheme, or those who have been temporarily transferred or appointed to hear a specific case in the SCCOC courts (hereinafter "interim judges"), should receive specific training on OCC offences, as well as on the internal practices of the SCCOC courts from the (SoM).

³⁴ The Criminal Procedure Rules (UK), Part 3 "Case Management".

iii Judges in the delegation system of SCOCC courts should receive additional points in their performance evaluations from the HJC compared to judges in the delegation system in ordinary courts.

The Project noted concerns regarding the efficacy of the HJC appointment system and the performance of judges temporarily transferred from other courts or assigned to specific cases to address workload, backlogs, or specific needs within the judicial system. Notably, in addition to the issue of delays in their appointment, the Project observed instances where these interim judges caused delays and affected the efficiency of proceedings. Specifically, hearings (23 or 2.35 % of our hearings) were postponed beyond the statutory deadline of 15 calendar days due to interim judges' excessive workload, while provisions of the CPC do not allow for any extension of this deadline. The Project noted successive postponements of hearings due to an interim judge's unavailability due to their urgent commitments in other courts or their appointment to higher courts. It also identified protracted trials with frequent early adjournments in cases heard by interim judges.

OCC cases often involve multiple defendants, numerous investigations, voluminous case files, protected witnesses, defendants with extensive

criminal records, complex financial transactions, encrypted communications, and transnational legal issues. It is of the utmost importance that interim judges possess the necessary expertise and skills to handle OCC cases with the same proficiency as permanent judges. Having a distinct pool of judges trained for OCC cases would ensure handling such cases more effectively avoiding disparities and potential inequities in administering the case and sentencing, and an expedited recruitment process. In addition, a separate pool would incentivise interim judges by granting them more evaluation points than judges in the regular courts' delegation scheme and priority in the recruitment process for vacant positions in SCCOC courts.

Furthermore, the HJC should develop separate regulations outlining the criteria and procedures governing the delegation system for interim judges, solely for specific SCCOC cases, including incentives for being part of the pool. These specialised regulations should encompass specific selection criteria, apart from those provided for in

the applicable legislation, including compulsory training on organised crime and corruption offenses and familiarity

with the internal practices of the specialised courts, among other provisions.

8

Recommendation

Increase the minimum threshold of fines applicable to lawyers as a repressive measure against unjustified absence, as prescribed in Article 350 (4) of the CPC.

The Project has observed continuously that one of the main causes of procedural delays affecting judicial efficiency is the unjustified absence of lawyers. Although Article 350 (4) of the CPC grants the trial panel the ability to impose a fine (ranging from ALL 5,000 (EUR 50) to ALL 100,000 (EUR 1,000)) on the lawyer concerned if they do not appear at the hearing and there are no reasonable impediments, the Project observed that the majority of sanctions were closer to the minimum applicable threshold (ALL 5,000, or approximately EUR 50). This is not a sufficient penalty for this behaviour, especially considering the lack of uniform practice in imposing fines and their amounts.

In comparison, Article 34 of the Civil Procedure Code has sanctioned a minimum threshold of ALL 50,000 (or approximately EUR 400) in cases where the parties knowingly abuse their rights during the proceedings.

During consultations with the Project team, judges proposed calculating the fines based on a multiplication of the official minimum salary in force to avoid constantly updating the applicable legal provisions. The exact multiplication ratio should be determined after consultations with relevant stakeholders, legal and financial experts, and international partners.

The SCCOC of First Instance, the SCCOC of Appeal and the Specialised Prosecution Office (SPAK) should be provided with additional legal advisors to handle their heavy caseload. Towards this end:

- i. The HJC should implement the legal provision on establishing a legal unit appointing legal advisors to the SCCOC of First Instance.
- ii. The HJC and HPC should increase the current number of legal advisors respectively at the SCCOC of Appeal and SPAK.

The Project found a general lack of professional support for judges of the SCCOC courts. With the high caseload, this lack of professional support also adversely affects the timing of proceedings and the quality of judicial acts. This concern was underlined in the latest Annual Report on the State of the Judiciary (for 2022)³⁵ published by the HJC. It found that although the appointment of new judges (in 2022, three new judges were appointed at the SCCOC of Appeal, while one was appointed at the SCCOC of First Instance) slightly decreased the caseload per judge, the backlog of cases inherited from the previous year and the fact that both courts were still not

performing at full capacity in terms of human resources, significantly increased the time necessary to conclude a case. For the SCCOC of First Instance, the time required to process a corruption case doubled, while the time needed to process an organized crime case increased by 24% compared to the previous year. For the SCCOC of Appeal, the time needed to process a case increased by 40%.

Notwithstanding the above, the SCCOC courts still function as per the structure foreseen by the old legal provisions (before the amendments of 23 March 2021), whereby the SCCOC of First

³⁵ "2022 Annual Report of HJC", [RAPORT-VJETOR-2022-shkarko.pdf \(klgj.al\)](#), "2022 Annual Report of HJC", [RAPORT-VJETOR-2022-shkarko.pdf \(klgj.al\)](#), [RAPORT-VJETOR-2022-shkarko.pdf \(klgj.al\)](#)

Instance has no legal advisors and the SCCOC of Appeal has a limited number of legal advisors. Consequently, both courts currently operate without the structural support provided by law.

During consultations, judges confirmed the need for further support from legal advisors, emphasising the difficulties they faced in handling voluminous casefiles, keeping up with all legal deadlines, and finding the necessary time and support to draft judicial acts.

The recent amendments to Law No. 98/2016 "On the Organisation of the Judicial Power"³⁶ provide for the possibility that all courts of first instance and appeal (including the SCCOC courts) have a legal unit consisting of legal advisors appointed by the HJC.

Given the urgent need for professional support in managing the heavy caseload more efficiently, the Project recommends that the HJC appoint the maximum number of advisors provided for by law.

Capacity

10

Recommendation

The quality of judicial acts issued by SCCOC courts and the SPAK prosecution should be improved, including by developing specific tools to guide them in drafting those acts. Towards this end:

- i. The HJC should develop a template for drafting verdicts for SCCOC judges. It should reflect the legal requirements of verdicts, as well as additional requirements and techniques, to ensure the legality and quality of the act.
- ii. The HPC should develop a template for the drafting of indictments by SPAK prosecutors. The template should reflect the legal requirements of indictments, and include additional requirements and techniques to ensure the legality and quality of the act.

³⁶ Article 42 of Law No. 98/2016 "On the Organization of the Judicial Power", as amended.

Recommendation

iii. The SPAK prosecution should create internal mechanisms for reviewing indictments before finalisation while ensuring a proper balance between an individual prosecutor's autonomy and a supervisor's power to issue instruction in specific cases. The mechanism should rely on a specific set of guidelines that define the quality control process for drafting indictments precisely and include qualitative indicators around the quality of indictments for the performance appraisal of prosecutors.

iv. The HJC should revise the performance indicator relating to the quality of judicial decisions in judge performance management systems, integrating these new guidelines into the evaluation process. Training the evaluation committee on the application of these new standards is also important.

The Project found that 22 out of 49 analysed verdicts lacked thorough analysis and were structurally flawed, particularly in addressing all defence claims and responding to their legal arguments.

The corroboration of evidence was not adequately described in relation to the criminal facts with which the defendants were charged. It was often difficult to see how each piece of evidence related to the offence and how it proved the charges against each defendant.

On the other hand, 31 out of 42 indictments analysed lacked a comprehensive structure, thus resulting in noncompliance with one or more elements required by the CPC.

Not all indictments contained a clear description of the facts, actions or omissions of the defendants and an analysis of the supporting evidence.

Indictments involving multiple defendants often failed to specify the mode of liability and clearly set out the evidence establishing each defendant's individual criminal contribution to each offence charged.

On this point, the judges of the SCCOC of Appeals acknowledged a general lack of a structured and consistent analytical approach to judgments but also suggested that the HJC should examine judgement quality more closely as part of the general evaluation of judges.

Templates for verdicts and indictments tailored to the requirements of the CPC could provide a comprehensive structure to facilitate the drafting work of judges and prosecutors while containing all elements required by the CPC provisions³⁷ and suggesting techniques and best practices for the drafting of acts in complex cases and be tailored to address the specific legal challenges of OCC cases.

The aim of these templates should be to make the legal acts easier for the defendants to read while not interfering with the freedom of judges or prosecutors to draft a legal act as per their best assessment. The practice of using verdict templates is also

supported by the CEPEJ Guidelines³⁸ because of its positive effects in improving the overall process of case management.

In addition, the project recommends that a group of judges and prosecutors be involved by the HJC and HPC, respectively, in drafting these templates in order to obtain the best possible knowledge, consequently leading to tangible results in well-structured templates.

Further, in contexts where professional support is lacking, standardised templates are an important aid in preparing comprehensive and well-structured judicial and prosecutorial acts.

³⁷ Article 383 of the CPC “Elements of the Decision” and Article 331/3 of the CPC “Request to Send the Case to Court”.

³⁸ European Commission for the Efficiency of Justice (CEPEJ), “Guidelines in the field of efficiency of justice”, Section V, point A, paragraph 3, [16809f007a \(coe.int\)](#).

VI. Bosnia and Herzegovina

Introduction

The improved processing of OCC cases remains imperative in strengthening the rule of law in BiH. Despite stated political and institutional aspirations, and significant dedication by certain judicial officeholders, the effective and efficient processing of high-level OCC cases remains elusive. At the institutional level, the processing and adjudication of such cases and the substance of ongoing judicial reform processes to strengthen integrity, transparency and accountability, many of which have faced political opposition, reflect serious deficiencies. In 2021, the HJPC BiH adopted a comprehensive reform agenda for the judiciary, although many of the measures were not implemented. In February 2024, a revised, and more limited, reform agenda was adopted. The new Law on the HJPC BiH has not yet been adopted. In 2023, integrity-related amendments to the existing Law on the HJPC BiH were adopted, although last-minute changes, as compared to the text endorsed by the Venice Commission, may undermine the intended impact of the amendments.³⁹ The new Law on the Courts of BiH has also not been adopted.

Concerns about undue external influence on judges and prosecutors processing high-level OCC cases persist. Consultations with stakeholders revealed significant concerns regarding the politicisation of judges and prosecutors. The Project observed similar concerns in some monitored cases involving high-ranking politicians. The issues described below, when placed in the broader context of political intimidation of the judiciary, may point to insufficient integrity and independence rather than mere capacity gaps or inefficiencies.

A lack of sufficient human resources and planning around existing human resources across all institutions remains problematic. Given the slow pace of the appointment process, judicial positions often remain unfulfilled for months and sometimes years. Judges also lack adequate support staff. As a sign of progress, the addition of economic advisors in prosecutor's offices provides invaluable support in working with financial data.

³⁹ European Commission for Democracy through Law (Venice Commission), Bosnia and Herzegovina Opinion on the Draft Law on Amendments to the Law on the High Judicial and Prosecutorial Council, no. 1015/2021 (Strasbourg: Council of Europe, CDL-AD(2021) 015, 23 March 2020.

Although the Project does not monitor the investigation stage, information gained during consultations as well as trial monitoring data indicate that proactive investigations are rare. However, in a positive development, some prosecutor's offices have adopted action plans to prioritise the investigation of certain cases together with law enforcement or other relevant institutions, such as anti-corruption bodies.

One potential indicator of incremental progress is the increase in the number of confirmed indictments in high-level cases since 2018.⁴⁰ For example, in 2023, as compared to 2022, confirmed indictments for high-level corruption increased from 14 to 16, and high-level organised crime confirmed indictments increased from six to 14. However, the results of these cases and how they will be processed remain to be seen. In 2023, eight final and binding verdicts were rendered in high-level OCC cases.⁴¹

The length of proceedings in OCC cases remains a significant concern. Judges, prosecutors and defence attorneys often show a high degree of tolerance for delays and even an overall complacent, if not indifferent, attitude towards inefficient proceedings.

As a positive development, the HJPC BiH adopted a conclusion aimed at increasing procedural discipline and requiring hearings to be held weekly; however, in many monitored cases, this is still not the norm. A significantly more proactive approach to trial management is required to overcome this current culture of inefficiency.

The next section, developed based on the Project's trial monitoring findings and consultations with judicial officeholders, presents ten recommendations to address these most pressing issues.

⁴⁰ The HJPC BiH developed a definition of high-level organised crime and corruption cases in 2019, and revised in 2021, which includes consideration of the status of the defendant and the gravity of the alleged offence.

⁴¹ Data from the HJPC BiH, March 2024, on file with the Project.

Fairness

1

Recommendation

Improve transparency and access to information on the processing of OCC cases; in particular:

i. The HJPC BiH should ensure uniformity of practice by developing or updating existing rule books on the organization of courts and prosecutor's offices, and guidelines that set forth minimum standards related to:

- The publication of judicial acts and other information related to criminal proceedings, including the schedule of hearings.
- Timely responding to requests for information.
- Communicating with the public during the investigation and in cases of public interest.

ii. The HJPC BiH should create a media advisory group and/or hold regular meetings with the media to discuss and resolve challenges in terms of access to information.

The Project identified a lack of transparency and insufficient access to information in relation to OCC, including inconsistent publication of hearing schedules by courts, inconsistent publication of judicial acts, and lengthy and cumbersome proceedings to obtain information using freedom of information laws. These challenges were confirmed through consultations with civil society representatives and judicial stakeholders. In fact, although

stakeholders broadly acknowledged steps taken by the judiciary to foster transparency, civil society and the media remain frustrated with a lack of timely information. Judicial officeholders expressed a range of approaches and viewpoints regarding sharing information on criminal proceedings with the public, reflecting the patchwork approach to transparency among the different judicial institutions.

Existing guidelines on the publication of judicial acts are not implemented in a uniform manner. While the HJPC BiH has held several *ad hoc* meetings with media representatives, a more

sustained modality, like a media advisory group, would create a more consistent avenue of two-way communication between the judiciary and the media.

2

Recommendation

Promote uniform application of the law to foster legal certainty and equality before the law. More specifically:

- i. The HJPC BiH, together with the appellate courts in BiH, should continue to refine the reporting and classification of judicial practice in the judicial legal position database and ensure that settled judicial positions are appropriately included.⁴²
- ii. All judicial officeholders should increase their reference to, and reliance on, judicial legal positions set by higher courts.
- iii. The HJPC BiH, harmonization panels and appellate courts in BiH should ensure that conflicting judicial positions are addressed.
- iv. The ministries of justice and legislative bodies should prioritise harmonising the material and procedural criminal legislation relevant for the processing of OCC cases.

The uniform application of the law is essential to legal certainty and equality before the law and contributes to justice and fairness and the public's perception thereof. Based on trial monitoring findings and consultations

with judicial officeholders, mechanisms to ensure consistent treatment of similar cases are weak. Furthermore, verdicts and decisions reviewed in monitored cases rarely include references to case law or legal

⁴² The database of judicial legal positions is available on the HJPC BiH website: [Baza sudske prakse \(pravosudje.ba\)](http://Baza.sudske.prakse.pravosudje.ba).

positions, indicating a lack of reliance thereon. Existing tools and mechanisms should be reinforced and promoted to ensure greater uniformity in the application of the law in criminal proceedings generally and particularly in OCC cases.

In addition, the harmonisation of criminal procedure and criminal law in relation to the processing of OCC cases should be pursued actively by the respective ministries of justice. *Ad hoc* efforts to harmonise legislation should be replaced by a standing body of experts with this mandate.

Efficiency

3

Recommendation

The HJPC BiH, court presidents and chief prosecutors should promote the efficient processing of OCC cases, particularly high-level cases. More specifically, they should:

- i. Enact trial management guidelines to address matters like identification of agreed-upon and disputed factual and legal issues, identification of agreed-upon and disputed evidence, availability of witnesses and expert witnesses, and delay tactics by all participants to the proceedings.
- ii. Ensure timely resolution of high-level corruption and organised crime cases by requiring a trial plan that includes the scheduling of daily hearings, or – at a minimum – multiple hearings per week, until the completion of the trial.
- iii. Leverage all available policy tools to require the prioritization of high-level OCC cases, including backlog reduction plans, annual plans, and action plans established with other institutions.
- iv. Court presidents and chief prosecutors should establish, within their respective institutions, a monitoring mechanism to ensure the efficient processing or investigation of OCC cases, with oversight by and reporting to the HJPC BiH.

The Project identified unnecessary and avoidable delays in proceedings and a lack of efficient trial management practices, including the infrequent scheduling of hearings, adjournments and delays due to the health of defendants or attorneys. Even in cases that were resolved in an adequate time frame, a closer inspection of the proceedings revealed inefficiencies, such as hearings frequently lasting under two hours, which fails to make effective use of scheduled hearings and the time of those in attendance, and witnesses failing to attend.

The infrequent scheduling of hearings is a significant challenge that is prevalent in both corruption and organised crime cases, regardless of the complexity of the case. Although pre-trial hearings were held frequently, they were not used to establish any realistic time frame for trial completion. On average, in monitored cases with a first instance or final and binding verdict following trial proceedings, hearings were held once a month in organised crime cases and once every two months in corruption cases (see Figure 6).

Average no. of hearings held monthly

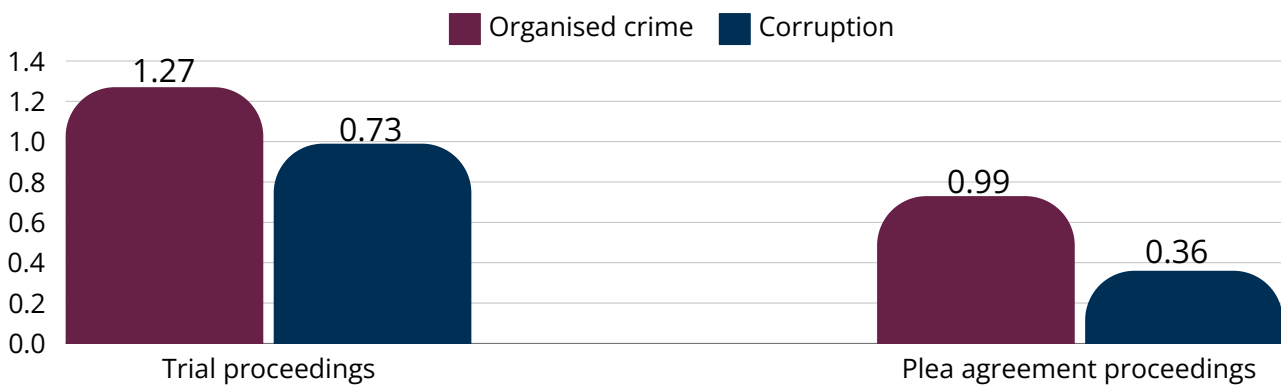


Figure 6 - Average no. of hearings held monthly in 33 monitored cases from July 2021 to March 2024.

Judicial authorities published limited information regarding the overall length of proceedings, a factor that serves as another indicator of efficiency. Among 17 monitored cases in which a first-instance verdict was issued, and which are now on appeal, the average length of proceedings until the first instance verdict was over three years, and on average, one hearing was held

per month. For the most part, these cases had some degree of complexity, with multiple defendants and charges. Notably, for organised crime cases, an average of 60 hearings were held until the first instance verdict, while 22 hearings were held for corruption cases. Further, as all of these cases are on appeal, the total length of proceedings will inevitably be much longer.

With respect to final verdicts following trial proceedings, while the average length of proceedings was 3.5 years, the sample size is small, with only nine cases. In addition, these were

straightforward cases, several of which had only one or two defendants. However, despite being relatively simple, on average, the courts still only held one hearing every two months.

Average length of proceedings in years

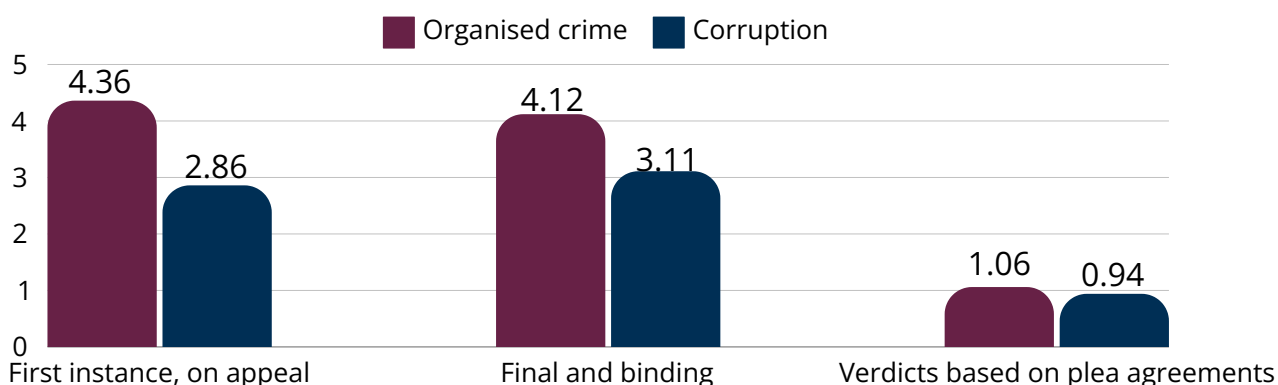


Figure 7 - Average length of proceedings in 33 monitored cases from July 2021 to March 2024.

In 16 monitored cases, the indictment was confirmed before 2018. Five of these cases are still in the main trial stage; three cases are at retrial; five cases are on appeal; and only three cases have been completed, one in September 2022, one in June 2023 and one in November 2023. Despite the need to conclude these proceedings urgently, given the lapse of time since the confirmation of the respective indictments, on average only one hearing a month was held in these cases.

Trial monitoring indicates that high-level OCC cases can be prolonged indefinitely, as the judicial system is unwilling or unable to take adequate measures to make progress and finalise

these cases. Addressing this problem requires better managerial skills, increased procedural discipline and a radical shift in institutional policy, along with institutional and individual commitment.

Although the HJPC BiH adopted the *Rulebook on Time Frames for Processing Cases in Courts and Prosecutor’s Offices in BiH* (Rulebook) in 2013, which establish optimal and foreseeable time frames for each type and stage of proceedings, this policy has had little impact on efficiency. Revision of the Rulebook was a measure foreseen by the 2021 HJPC BiH *Reform Agenda*. In May 2023, and as modified in September 2023, the HJPC BiH adopted a conclusion requiring hearings to be held weekly in OCC cases.

This, and other measures proposed by the HJPC BiH aimed at improving the efficiency of proceedings in high-level OCC cases should be implemented without delay.⁴³ Comprehensive trial management guidelines are needed to improve the efficient resolution of OCC cases. Such guidelines should help address delays in proceedings by

providing a framework to foster a culture of expediency. Furthermore, backlog reduction plans and strategic documents, such as annual work plans, should prioritize the completion of high-level OCC cases. The HJPC BiH, working with each chief prosecutor and court president, should establish an oversight mechanism to ensure the efficient processing of OCC cases.

Improving Performance

4

Recommendation

The HJPC BiH, together with court presidents and chief prosecutors, should continue to improve mechanisms for monitoring, analysing and reporting publicly on the processing of OCC cases as an entry point into effective and data-driven policymaking, especially with regard to overall institutional performance. More specifically, they should:

- i. Ensure meaningful collection and disaggregation of quantitative data, which may include the further definition of parameters to evaluate efficiency and effectiveness in both high-level and other OCC cases.

⁴³ HJPC BiH, Reform Agenda 2021-2023, Measure III.3.3: Further develop time management and case management skills of judges and prosecutors; Measure III.3.7: Analyze and propose measures to ensure efficiency and effectiveness in scheduling and holding hearings, including pre-trial hearings, especially in cases involving corruption, organised crime and war crimes; Measure IV.1.7: In the backlog reduction plans of courts and prosecutor's offices include as a priority high-profile corruption and organised crime cases.

ii. Enhance modalities to conduct qualitative analysis of specific issues affecting the processing of OCC cases, including by expanding internal and external research capacities.

iii. Define and enhance procedures to conduct, analyse, and use quantitative and qualitative analyses on a continuous basis, such that this data informs ongoing efforts to improve the processing of OCC cases, and publish these findings annually.

The HJPC BiH has improved institutional monitoring on the processing of OCC cases, along with related reporting. The prosecutorial case management system was modified to manage additional data and produce statistics on key aspects of these cases, such as asset confiscation. However, the availability of reliable and disaggregated data from courts on verdicts rendered in OCC cases, including the sentences against each defendant, remains limited.

As such, the collection, extraction and public reporting of data should be further modified to improve the availability of such information.

The HJPC BiH, working with court presidents and chief prosecutors, should conduct and publish qualitative analysis on the processing of OCC cases, particularly with a view to identify systemic issues and corresponding needed reforms. This would complement comprehensive and meaningful statistical data analysis. The HJPC BiH should further identify those with the technical capacity and objectivity to conduct such analyses, and once finalised, should define the stakeholders and modalities to implement and follow up on the findings. Co-operation with external research bodies, including academia or civil society, should be enhanced.

The HJPC BiH should ensure that judicial and prosecutorial performance evaluation and workload requirements reflect the effort required to process OCC cases. In particular, the HJPC BiH, together with judicial office holders involved in performance evaluation processes, should:

- i. Ensure that the quantitative and qualitative components of judicial performance evaluations properly account for the complexity of processing high-level OCC cases, along with the corresponding effort required.
- ii. Continue to monitor and evaluate the impact of changes to the quantitative and qualitative aspects of performance evaluations for prosecutors and judges to ensure that there are adequate incentives to process high-level OCC cases effectively.
- iii. Ensure that evaluators appropriately and uniformly apply all evaluation provisions that allow for adequate reflection of efficiency and quality of work.

To ensure fairness, evaluations of the performance of judges and prosecutors must accurately account for their respective workloads, taking into account the complexity of such cases as well as the time and resources required to prosecute and adjudicate them. Recognizing the specific challenges in processing high-level OCC cases, properly weighted evaluation criteria represent a powerful incentive to work on these cases.

Indictments

Since January 2022, most prosecutors have a reduced quota in high-level OCC cases to ensure a more balanced assessment of the quantitative component of the performance evaluation and to motivate prosecutors to take on these more difficult and time-consuming cases. It is still difficult to assess the impact of these changes. Data on the number of confirmed high-

level indictments from 2018 to 2023 shows a mixed picture. At first glance, it appears as though the revised quota, and possibly other factors, have

contributed to an increased number of confirmed indictments in high-level cases, however a causal relationship cannot be determined.

Number of confirmed OCC indictments

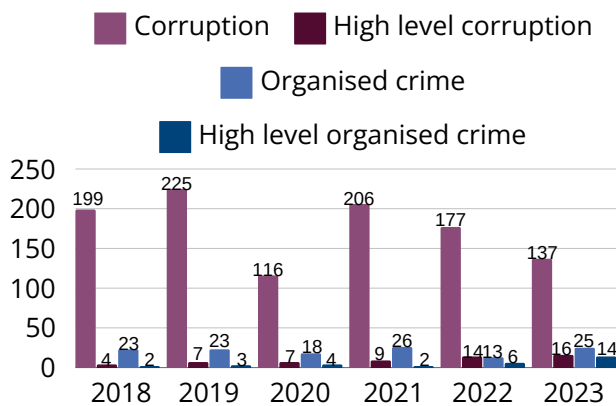


Figure 8 - Number of confirmed OCC indictments. Source: HJPC BiH, March 2024.

Number of defendants in OCC cases

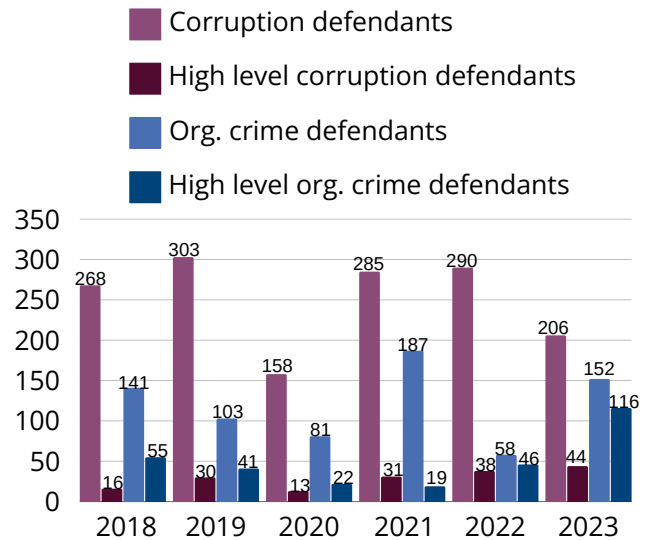


Figure 9 - Number of defendants in OCC cases. Source: HJPC BiH, March 2024.

Verdicts

Judicial outcomes in high-level OCC cases, measured by final and binding verdicts rendered, are limited (see Figure 10). Notably, the annual quota for

judges with respect to organised crime was reduced, similar to that for prosecutors, while similar changes for corruption, or high-level corruption cases, have not been instituted.

Number of final verdicts in high-level cases

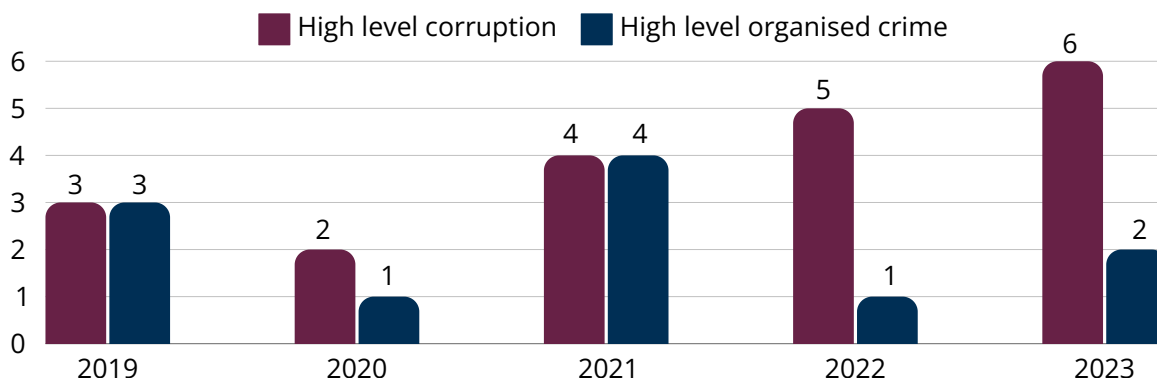


Figure 10 - High-level final and binding verdicts. Source: HJPC BiH internal memos on processing OCC from 2019-2023.

The HJPC BiH should take measures to ensure that the quantitative and qualitative components of the judicial performance evaluation reflect the level of complexity of high-level OCC cases.

Changes to the evaluation system should be aimed at incentivizing the processing and finalisation of these cases in an efficient and effective manner.

6

Recommendation

Strengthen the expertise of judges, prosecutors and legal staff to prosecute and adjudicate OCC cases effectively and efficiently, while ensuring that institutions are organised to support the resolution of these cases. The HJPC BiH, in cooperation with chief prosecutors and court presidents, and, where relevant, the Republika Srpska (RS) and Federation of Bosnia and Herzegovina (FBiH) judicial and prosecutorial training centres should:

- i. Further promote the specialisation of judges, prosecutors and legal associates in OCC and continue to offer specialised training.
- ii. Continually monitor, evaluate, and troubleshoot the functioning, efficiency and impact of specialised departments on the processing of OCC cases.

The BiH judicial system has established specialised departments for organised crime, corruption and economic crimes within some courts and prosecutor's offices. In the FBiH, the authorities are taking steps to establish specialised departments within the FBiH Supreme Court and the FBiH Prosecutor's Office for the processing of OCC cases.

However, establishing specialised structures is not a panacea; a number of other factors must be addressed, such as ensuring an adequate number of skilled judicial officeholders, specialised financial experts and legal support staff and facilitating strong co-operation with specialised law enforcement and other relevant bodies.

The HJPC BiH, the FBiH and RS judicial and prosecutorial training centres, chief prosecutors, and court presidents should ensure that courts and prosecutor's offices benefit from the expertise of specialised judges, prosecutors, legal associates and advisors, and interns, as well as financial experts.

Approaches to deepen subject-matter expertise in areas like public procurement, privatisation and money laundering should be examined. This could include continuous training and the creation of a team of specialised judicial officeholders available to mentor and advise their peers as required.

7

Recommendation

Improve procedures related to drafting, reviewing and confirming indictments to enhance their quality. More specifically:

- i. The provisions on the review of indictments in the prosecutor's offices rulebooks on internal organisation should be enhanced to define the process further, including the scope of the review and the applicable standards. Specific provisions related to certain types of crimes, such as OCC, should be included as needed.
- ii. Chief prosecutors, deputy chief prosecutors and heads of departments should apply the indictment review mechanism consistently and uniformly prior to finalisation of an OCC indictment.
- iii. Court presidents should ensure that the most experienced judges serve as preliminary hearing judges to decide on indictments in OCC cases.
- iv. The expert legal community, working together with the respective ministries of justice, should analyse current practices and consider developing legislative proposals to strengthen the procedure for confirmation of the indictment to ensure a comprehensive and effective judicial review process, while maintaining efficiency.

Issues in indictments reviewed by the Project included inter alia, 1) unclear factual descriptions; 2) supporting evidence not linked to the charge; 3) sufficient facts and evidence supporting the legal qualification not provided; and 4) information about the financial gain not included. Consultations with judicial officeholders confirmed these issues regarding the quality of indictments.

Rulebooks on the internal organisation of the prosecutor's offices envisage that chief prosecutors, deputy chief prosecutors and/or heads of departments review indictments prepared by the prosecutors they supervise. However, the scope of this review is not defined. It is unclear whether the review is confined solely to formal compliance with essential legal

requirements or if it also encompasses assessing the sufficiency of evidence for the charges, the legality of that evidence, and any other practical or strategic considerations. This results in divergent practices by different prosecutors and between prosecutor's offices. To strengthen and harmonise this process, across all prosecutor's offices, relevant procedures should be further defined.

In terms of judicial review of indictments, preliminary hearing judges almost always confirm indictments.⁴⁴ During consultations, practitioners expressed concern that the procedure for confirmation of the indictment is inadequate in several ways, including the lack of a sufficiently adversarial proceeding and insufficient time to examine the indictment properly, especially in complex cases.

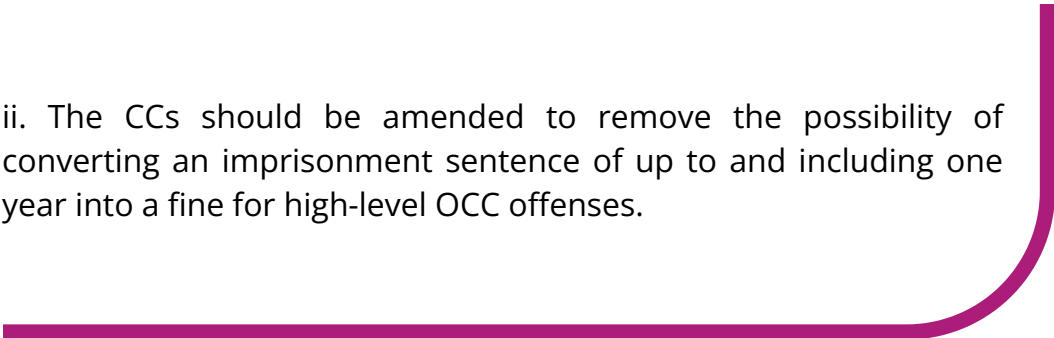
8

Recommendation

Improve the quality and practices related to imposing individualised and proportionate sanctions in OCC cases. More specifically:

i. Judges should ensure that verdicts provide clear and specific reasoning as to the sentencing decision, including the application of aggravating and mitigating factors and the use of suspended sentences. Such reasoning should also help ensure that sentences are individualised, proportionate and dissuasive.

⁴⁴ HJPC BiH, *Annual Report 2022*(Sarajevo: HJPC BiH), p. 57, confirming that in 2022, 98 per cent of submitted indictments were confirmed.

- 
- ii. The CCs should be amended to remove the possibility of converting an imprisonment sentence of up to and including one year into a fine for high-level OCC offenses.

In individualising sentences, sanctions should be proportionate to the gravity of the offence and the circumstances of the perpetrator. Judges should provide clear reasoning as to why certain criminal sanctions were used, what factors were considered to determine the sentence, and how the sanction fulfils the purpose of punishment. In verdicts reviewed by the Project, the quality of the reasoning with respect to the sentences meted out, including the use of aggravating and mitigating factors, was poor. Judges tended to use rote language for the aggravating and mitigating circumstances, without providing an individualised assessment of the circumstances of the case or of the perpetrator. Furthermore, verdicts made reference to “highly extenuating circumstances” as grounds for use of

the provision on reduction in punishment below the legally prescribed minimum without justifying how these mitigating circumstances met the highly extenuating standard.⁴⁵ Verdicts also failed to reference other case law related to sentencing practices.

Compounding the lack of adequate reasoning, sentences imposed were frequently on the lower end of the permitted sentencing range and suspended sentences. This is reflected in the Project’s findings and data obtained from the HJPC BiH. Figure 11, below, provides HJPC BiH data on sentences against perpetrators in OCC cases; this data includes both first instance and final and binding verdicts. In 2021, in sentences imposed on perpetrators in high-level corruption cases, almost half received a suspended sentence.

⁴⁵ See Reduction in Punishment in CC BiH Art. 49(1)(b); CC FBiH Art. 50(1)(b); CC RS Art. 53(3); and CC BD BiH Art. 50(1)(b).

Sentences imposed on perpetrators in OCC cases in BiH

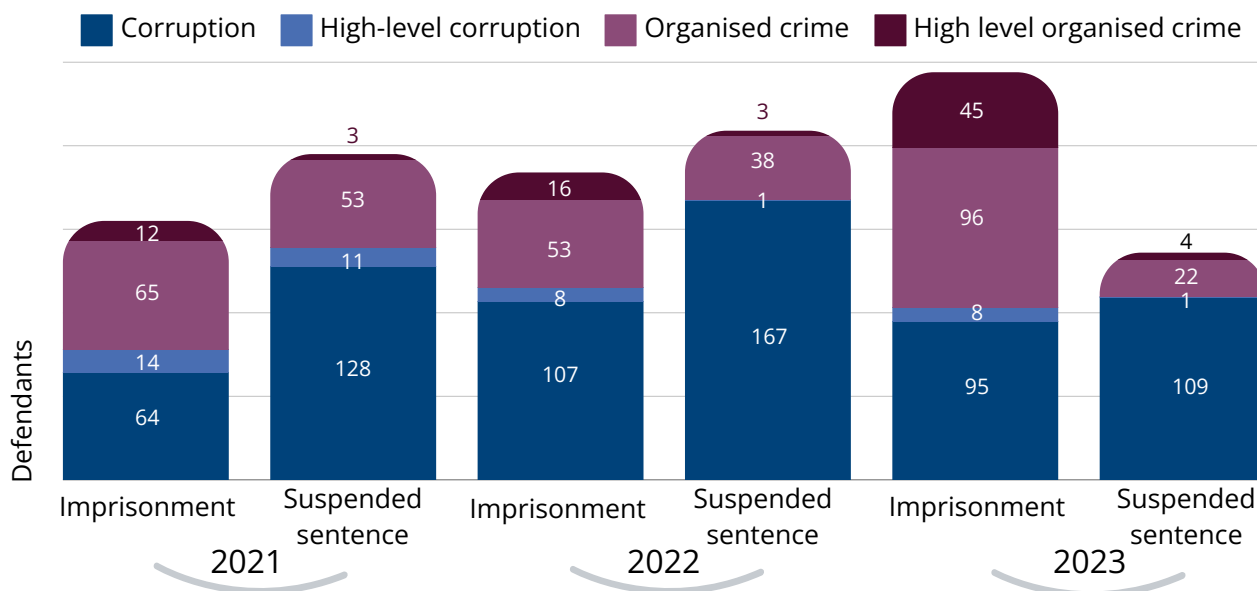


Figure 11 - Sentences imposed on perpetrators in OCC cases. Source: HJPC BiH, March 2024.

These trends can be seen even more visibly in the finalised cases monitored by the Project. Out of 65 convicted perpetrators, only 17 per cent received an imprisonment sentence of over 12 months; approximately 39 per cent received an imprisonment sentence of 12 months or less; and 41.5 per cent

received a suspended sentence (see Figure 12). The data also show the use of security measures of prohibition of a certain employment, activity or duty, and fines as additional elements of the sanction. Security measures were imposed against 14 per cent of the perpetrators.

Sanctions meted out against perpetrators in final cases

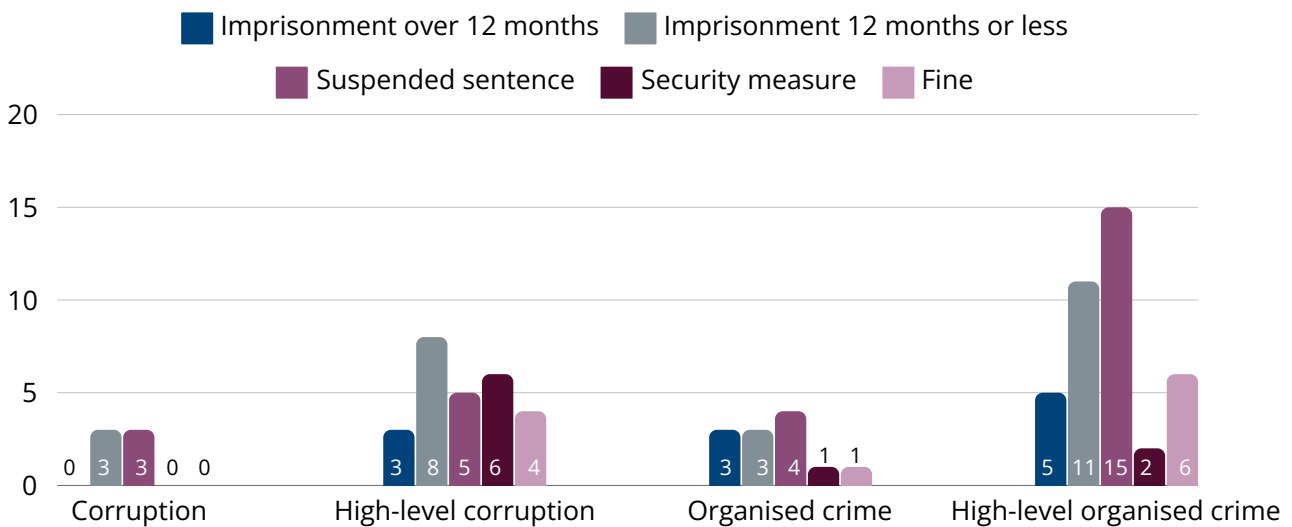


Figure 12 - Sanctions against 65 convicted perpetrators (including legal entities) in monitored, finalised cases, July 2021 to March 2024.

All four CCs have a provision whereby, if a convicted person sentenced to one year or less requests conversion of the imprisonment sentence to a fine, the court must grant the request.⁴⁶ The mandatory nature of this provision, which requires judges to grant the convicted person's request without considering the merits of amending the sentence, raises concerns. Only the BiH and RS CCs limit the use of this provision with respect to certain serious criminal offences, but OCC offenses are not included amongst these exceptions.⁴⁷ Given the extensive application of the provisions on reduction in punishment, frequently those convicted – even of serious OCC cases – have the opportunity to convert their prison sentence to a fine.

For offenses motivated by greed, often involving significant amounts of alleged economic damage or illegal gain, the use of these provisions may not serve as a deterrence and even may send a message of the profitability of such crimes. Given the above, the use and impact of these provisions in OCC cases, should be further assessed, with a view to remove this possibility in high-level OCC cases.

The provision on substitution of an imprisonment sentence with a fine appears to be used extensively. The graph below shows the sentences against 63 perpetrators in final cases who received an imprisonment sentence or a suspended imprisonment sentence.

⁴⁶ See Substitution of Imprisonment in CC BiH Art. 42a; CC FBiH Art. 43a; CC BD BiH Art. 43a and Exceptional Nature of Short-Term Prison Sentence in RS CC Art. 46(a)2.

⁴⁷ See Substitution of Imprisonment in CC BiH Art. 42a(4) and Exceptional Nature of Short-Term Prison Sentence in CC RS Art. 46(a)4.

Only 18 per cent of perpetrators received an imprisonment sentence of over 12 months, and nearly 38 per cent received a sentence of 12 months or less (see Figure 13).

Out of 25 perpetrators sentenced to imprisonment of 12 months or less, at the time of writing, 19 requested conversion to a fine, which was granted in each instance, including when it was not obligatory.

Sentences against 63 perpetrators

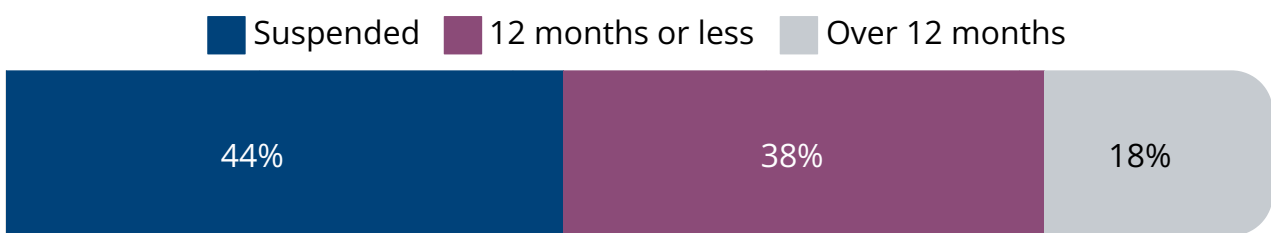


Figure 13 - Sentences against 63 perpetrators in final cases monitored.

Many of the verdicts reviewed by the Project did not reference specific factors or provide justification for the sentence imposed. Further noting that imprisonment of twelve months or less must be substituted with a fine if requested by the defendant, the sentences appear lenient. Thus, given

the totality of these circumstances – the poor reasoning and the frequent use of low sentences and suspended sentences – there is a risk that the sentences appear, or may, in fact be, arbitrary, as they lack elements that point to the proportionality and dissuasiveness of the sentence.

Ensure that plea agreements are used strategically and fairly in OCC cases, and when appropriate, ensure that illegal gain, payment of damages to injured parties and/or the co-operation of the defendant are part of plea agreements. More specifically:

i. The BiH, FBiH, RS and Brčko District (BD) BiH chief prosecutors should reassess the impact of the guidelines on plea agreements in OCC cases. This re-assessment should include a quantitative and qualitative review of verdicts rendered following plea agreements in OCC cases. The revised guidelines should address the internal review of plea agreements and modalities for co-operation of defendants.

ii. Chief prosecutors, deputy chief prosecutors and prosecutors should ensure that plea agreements are used strategically to gain the co-operation of defendants in terms of obtaining information and evidence, and should require asset forfeiture or payment of damages to the injured party, when relevant and viable.

iii. Judges should ensure that the presumption of innocence of third parties is respected in verdicts based on plea agreements.

iv. Legislators in BiH, FBiH, RS and BD BiH, based on the expert position agreed by the legal community, should adopt identical provisions in the respective CPCs to introduce the crown witness or collaborator of justice.

v. The expert legal community should identify a legislative solution to foresee the co-operation of the defendant within the respective CPC provisions on plea agreements, and propose that all ministries of justice endorse it.

Plea agreements are used extensively in cases monitored by the Project. In BiH, plea agreements take the form of sentence bargaining; namely, prosecutors submit the agreement to the court for consideration, resulting in a criminal verdict, with the possibility to appeal on limited grounds.⁴⁸ The court may reject the agreement but may not modify it.⁴⁹ In late 2019, the HJPC BiH issued guidelines to all chief prosecutors to issue binding instructions on additional criteria for plea agreements in corruption, organised crime and other cases.⁵⁰ The guidelines seek to ensure that prosecutors do not propose a penalty below the legally defined minimum, a

more lenient penalty or a sanction less than two-thirds of the expected sanction in criminal proceedings. As an exception, if the plea enables the discovery of other criminal offences or perpetrators, the confiscation of assets or the payment of damages to the injured party, the prosecutor may conclude a plea agreement below the legally prescribed minimum for the offence.

The following figure shows the outcomes against 80 defendants with respect to all finalised cases monitored by the Project, indicating that plea agreements were used to resolve proceedings for 67 per cent of all defendants (see Figure 14).

Outcomes in cases monitored

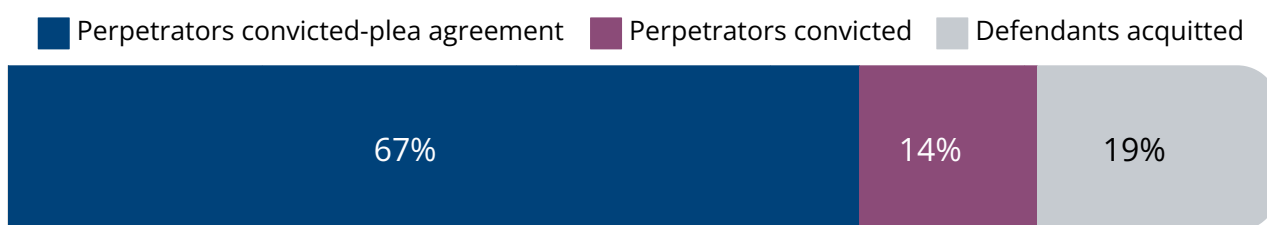


Figure 14 - Outcomes for 80 defendants in all cases monitored from July 2021 to March 2024.

While there are some exceptions, in many of the cases reviewed, the prosecution did not use plea agreements to confiscate illegal gain, pay damages to injured parties or to gain the substantive collaboration of the defendant in relation to uncovering other criminal activity. These data indicate a failure to use plea

agreements strategically. In particular, the lack of confiscation of illegal gain in verdicts based on plea agreements is notable; confiscation was only ordered against 33 per cent of all defendants who signed plea agreements, mainly in high-level organised crime cases (see Figure 15).

⁴⁸ See Plea Bargaining in CPC BiH Art. 231; CPC FBiH Art. 246; CPC RS Art. 246; and CPC BD BiH Art. 231.

⁴⁹ See Plea Bargaining in CPC BiH Art. 231(5); CPC FBiH Art. 246(5); CPC RS Art. 246(5); and CPC BD BiH Art. 231(5).

⁵⁰ See HJPC BiH, *Guidelines on binding instructions on additional criteria for plea agreements in high-profile corruption, organised crime and other types of cases*, 28 November 2019.

Convicted perpetrators in plea agreement cases



Figure 15 - Confiscation of assets against convicted perpetrators in cases resolved with plea agreements monitored by Project.

With respect to the resolution of claims submitted by injured parties, only one verdict rendered following the plea agreement addressed such a claim. The court ordered the nullification of an illegal property transaction that was part of the criminal offence. As an additional concern noted with respect to verdicts based on plea agreements, many verdicts fail to preserve the presumption of innocence of other alleged co-perpetrators, particularly in organised crime cases. The alleged criminal acts, as described in the indictment, are usually copied verbatim

into the verdict, with no particular exclusion of facts and/or references to defendants who are not the subject of the plea agreement verdict in question. Finally, the length of proceedings in cases finalised following a plea agreement indicate that these proceedings last more than a year, which is not particularly efficient for shortened proceedings. Use of plea agreements early in the proceedings secures the benefits of the plea agreement process, including efficiency, securing of illegal assets, resolution of compensation claims and the co-operation of the defendant.

Use of Judicial Tools

10

Recommendation

Take action to increase the use of financial investigations, as well as the freezing, confiscation and extended confiscation of illegally acquired gain. More specifically:

i. The HJPC BiH and all chief prosecutors should be proactive in determining modalities to improve access to financial and ownership information of suspects/defendants, including legal persons, while respecting the confidentiality of proceedings and privacy rights. Relevant institutions at all levels holding such information must be involved in this effort, per their scope of work and authority.

ii. The HJPC BiH, in collaboration with the respective ministries of justice and the BD BiH Judicial Commission, should ensure that prosecutor's offices have the necessary budgetary resources to employ or otherwise have ready access to specialised financial experts, as needed, to prosecute cases involving complex financial, property and business data effectively.

iii. The ministries of justice and the BD BiH Judicial Commission should:

- Review and, as necessary, amend all laws on expert witnesses to ensure compliance with international standards and provide the necessary quality assurance.
- Ensure that the roster of experts provides the needed expertise in OCC cases.

iv. The HJPC BiH, together with the BiH, FBiH, RS and BD BiH chief prosecutors, should update the binding instructions on conducting financial investigations to address other financial aspects of the crimes, including freezing and confiscating illegal gain, and use of extended confiscation.

In line with international standards, the BiH legal framework foresees a range of measures to freeze and confiscate illegal gain, including the use of interlocutory orders or security measures to freeze assets,⁵¹ the confiscation of illegal gain,⁵² and the use of extended confiscation.⁵³ Special laws in place in the FBiH, the RS and the BD BiH regulate this as well.⁵⁴ Despite a generally sufficient legal and policy framework, these important tools remain largely underutilised.

Some progress has been made to improve asset recovery in terms of improved data collection in the prosecutorial case management system, as well as in the classification of a financial investigation as a distinct element both for recordkeeping and as a part of the prosecutor's annual work quota. This, however, does not fully resolve the relevant issues. Consultations with stakeholders revealed challenges in obtaining timely and confidential financial information in a manner that does not threaten the investigation. While some progress has been made by signing memoranda of

understanding between relevant institutions, thereby easing access to data, more steps are needed to ensure that prosecutors in all jurisdictions have prompt access to this information with respect to all relevant sources of financial, property and business data.

Expert witnesses

While the respective ministries of justice and BD BiH Judicial Commission maintain rosters with a large number of financial experts, judicial officeholders expressed concern during Project consultations about a lack of qualified expert witnesses, delays in the submission of findings and the potential for bias among expert witnesses. Without improvements in the quality of expert witnesses or the procedures for their engagement, the results of the investigation may not result in the actual provision of effective expert testimony during trial.

Guidelines on financial investigations

The judiciary has taken steps to improve the freezing and confiscation of illegal gain. In January 2019, the HJPC BiH adopted guidelines requiring chief

⁵¹ See Interlocutory Orders in CPC BiH Arts. 202 and 395; CPC FBiH Arts. 216 and 416; CPC RS Arts. 112 and 389; and CPC BD BiH Arts. 202 and 395.

⁵² See Basis of the Forfeiture of the Proceeds of Crime and the Ways of Confiscating Material Gain Acquired through Perpetration of Criminal Offence, CC BiH Arts. 110 and 111; CC FBiH Arts. 114 and 115; CC RS Arts. 83 and 84; and CC BD BiH Arts. 114 and 115.

⁵³ See Extended Confiscation of Material Gain Acquired through Perpetration of a Criminal Offence in CC BiH Art. 110(a); CC FBiH Art. 114a; CC BD BiH Art. 114a and Art. 28 RS Law on Confiscation of Proceeds of Crime.

⁵⁴ See FBiH Law on Confiscation of Proceeds of Crime (Official Gazette of FBiH no. 71/14) and RS Law on Confiscation of Proceeds of Crime (RS Official Gazette no. 66/18) and BD BiH Law on Confiscation of Proceeds of Crime (Official Gazette BD BiH no. 29/16).

prosecutors to issue binding instructions for prosecutors to order financial investigations in cases of corruption, organised crime and money laundering.⁵⁵

These guidelines, which were to be subsequently embedded in binding instructions issued by the chief prosecutors, require the acting prosecutor to consider opening a financial investigation for a specified list of criminal offences. As such, while offering a useful starting point, the limited scope of these guidelines only addresses one aspect of a complex process. Furthermore, as a distinct component of the investigative process, financial investigations were defined as

a separate case in the prosecutorial case management system, and consequently, also as a separate case of the annual quota for prosecutors.⁵⁶ The new nomenclature allows the case management system to monitor the use of financial investigations and should incentivise prosecutors to conduct financial investigations, as doing so informs their quota. As seen in Figure 16, although financial investigations have increased since 2018, the use of such tools remains inconsistent, with the number of defendants under investigation varying from year to year. That said, as noted above, the inclusion of financial investigations in the annual quota for prosecutors appears to serve as an incentive.

Financial investigations

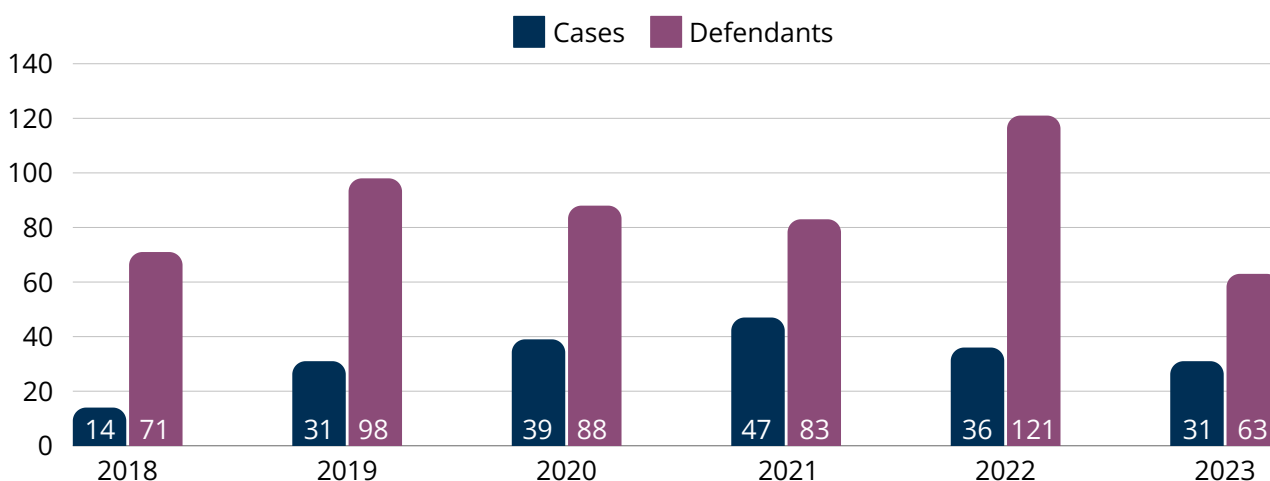


Figure 16 - Financial investigations, by defendant and by case, 2018 to 2023. Source: HJPC BiH, March 2024.

⁵⁵ HJPC BiH, *Annual Report 2019* (Sarajevo: HJPC BiH, 2019), p 55, which references the adoption of guidelines for chief prosecutors to issue binding instructions prescribing the obligation to conduct a financial investigation when carrying out an investigation in certain cases of corruption, organised crime and money laundering.

⁵⁶ HJPC BiH, *Rulebook on Performance Quotas for Prosecutors in the Prosecutor's Offices in BiH* (BiH Official Gazette no. 6/2022, 31 January 2022), *Službeni List- Pregled Dokumenta* (sluzbenilist.ba).

Nevertheless, data on the freezing and confiscation of illegal gain shows a mixed picture (see Figure 17).

Extended confiscation is rarely ordered, and security measures to freeze assets prior to the final verdict are limited.

Freezing, confiscation and extended confiscation

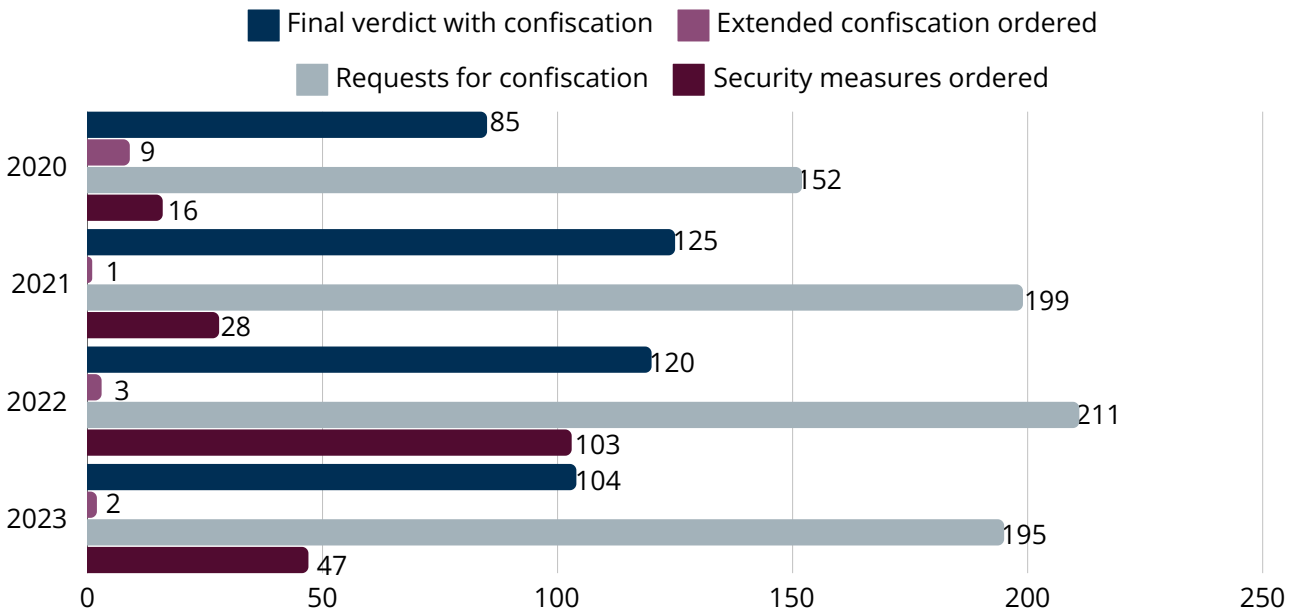


Figure 17 - Freezing (security measures), confiscation and extended confiscation in BiH, 2020 to 2023. Source: HJPC BiH, March 2024.

These findings are consistent with the outcomes in cases monitored by the Project as well. Among the finalised cases, only 32 per cent of all convicted

perpetrators were subject to asset confiscation, primarily in organised crime cases, and some of the amounts were for as little as 100 BAM (€50) (see Figures 18 and 19).

Confiscation

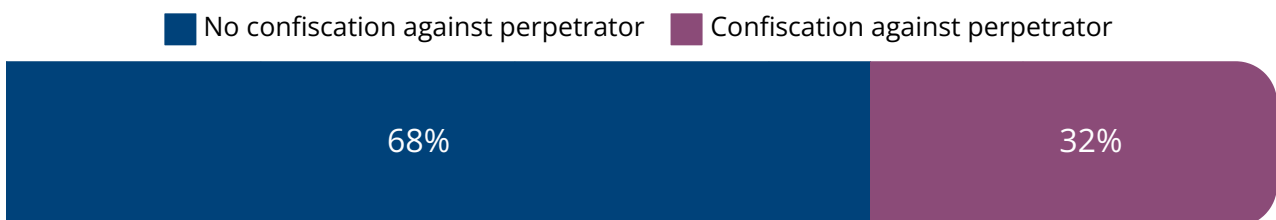


Figure 18 - Confiscation of assets against convicted perpetrators in all verdicts rendered, July 2021 to March 2024.

Types of cases with assets confiscated

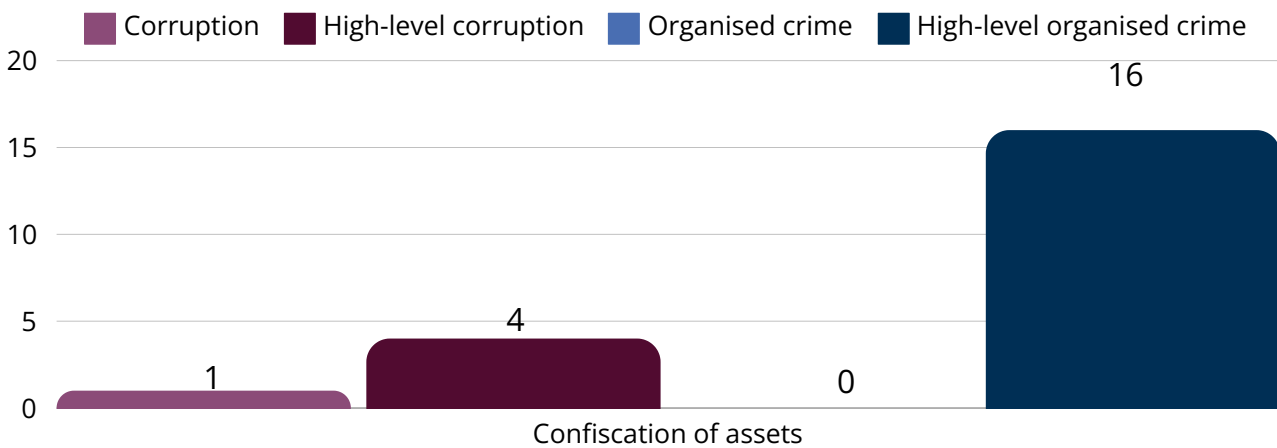


Figure 19 - Types of cases with assets confiscated, cases monitored, July 2021 to March 2024.

While further monitoring and analysis of asset seizure and confiscation outcomes are required, the data shows uneven results. The Project's monitoring findings, as described above, indicate a need for additional resources and capacity building to strengthen skills and expertise in this area. Although quality training materials and general guidelines on financial investigations and the procedures for freezing and confiscating illegal gain have been developed,⁵⁷ more practical,

binding guidelines have not been issued.⁵⁸

The HJPC BiH has committed to developing guidelines regarding the determination of the financial aspects of criminal acts.⁵⁹ This measure may be implemented by updating and expanding on the already existing binding instructions issued by chief prosecutors on financial investigations in cases of corruption, organised crime and money laundering.

⁵⁷ See Eldan Mujanović and Darko Datzer, eds., *Manual on Forfeiture of Illegal Gain* (Sarajevo: Centar za istraživanje politike suprotstavljanja kriminalitetu, 2016) [Oduzimanje imovinske koristi pribavljene krivičnim djelom Prirucnik.pdf \(fazuo.gov.ba\)](#); The Advice on Individual Rights in Europe (AIRE) Centre, *Priručnik o djelotvornom oduzimanju imovinske koristi pribavljene krivičnim djelom u skladu s evropskim i međunarodnim standardima* (The AIRE Centre, Regional Anti-Corruption Initiative).

⁵⁸ Eldan Mujanović, ed., *Smjernice za postupanje nadležnih institucija u postupku za oduzimanje imovinske koristi pribavljene krivičnim djelom* (Sarajevo: Centar za istraživanje politike suprotstavljanja kriminalitetu, 2017).

⁵⁹ HJPC BiH, Reform Agenda 2021-2023, Measure IV.1.13: Specific guidelines should be developed with regard to establishing the financial aspects of the crimes ... and the use of factual circumstances to prove these elements.

VII. Kosovo

Introduction

Kosovo's administration of justice in Organized Crime and Corruption ("OCC") cases shows both progress and challenges. Positive developments include the adoption of the Strategy on Rule of Law 2021–2026⁶⁰ and the approval of the Strategic Plan for the Effective Solution of Cases of Corruption and Organised Crime 2022–2024.⁶¹ Furthermore, the signing of a joint declaration (the "Joint Statement of Commitment") by key stakeholders in March 2023 underscored their commitment to justice sector reform and the strengthening of the rule of law.⁶²

While the signatories appear genuinely committed to judicial reform, there continue to be disagreements regarding the exact laws that should be amended, and the necessary content of changes (including the system of integrity checks).

However, ongoing challenges perpetuate a perception of impunity

and undermine public trust in the justice system. Judges and practitioners have difficulty interpreting and implementing new provisions of the Criminal Procedure Code ("CPC"), and a high number of OCC cases continue to be returned for retrial. This prolongs proceedings and drains resources.

There is a lack of transparency and access to public information. There is a need for improved notification systems for court hearings and more accurate statistics on the function of the justice system. Inconsistent responses to information requests also persist. While communication strategies have been adopted, binding instructions and monitoring mechanisms are needed to ensure their effectiveness. Additionally, inconsistencies in judicial practice, a lack of guidance from the Supreme Court, and limited electronic platforms for accessing judgments jeopardise equality before the law.

⁶⁰ The Strategy on Rule of Law 2021–2026 is available at: <https://md.rks.gov.net/desk/inc/media/8EF86336-E250-4EA2-9780-D4B8F7E853B5.pdf> [accessed on 21 March 2024]

⁶¹ Available at: https://www.gjyqesori-rks.org/wp-content/uploads/2022/11/KGJK_Plani_Strategjik_per_zgjidhjen_efikase_te_lendeve_te_korrupsionit_dhe_krimit_te_organizuar_20_22_2024.pdf (in Albanian). [accessed on 21 March 2024]

⁶² The Ministry of Justice (MoJ), Kosovo Judicial Council (KJC), and Kosovo Prosecutorial Council (KPC), acting Chief Prosecutor and Supreme Court President were initial signatories to the "Joint Statement of Commitment" on judicial reform in March 2023. The parties identified key objectives for judicial reform related to improving judge and prosecutor performance evaluations, integrity checks, disciplinary liability of judges, and the status of and professional development of judges and prosecutors. A consolidated report was drafted in 2023 and shared with relevant stakeholders and international organisations.

Concerns also remain regarding witness examination procedures, defendants' rights, and translation delays, which affect the fairness of proceedings. The efficiency of proceedings also remains an issue, with a high number of rescheduled and unproductive hearings and long adjournments, in part due to a lack of clear deadlines on scheduling trial hearings and retrials. Inconsistent use of the Case Management and Information System ("CMIS") and reliance on paper records also hinder case management.

The quality of indictments in OCC cases tends to be low, resulting in high acquittal rates. There is an emphasis on quantitative criteria in performance evaluations for prosecutors and judges,

which may prioritize speed and volume over quality in order to meet performance requirements.

Additionally, ineffective processing of OCC cases is exacerbated by low levels of asset confiscation. Despite significant alleged illegal gains in many cases, confiscation is minimal, partly due to a lack of understanding among law enforcement and prosecutors on the utility of effective financial investigations.

To tackle these systemic issues, this report presents recommendations that aim to strengthen Kosovo's capacity to effectively prosecute and adjudicate high-level OCC cases, thereby enhancing the integrity and credibility of its justice system.

Fairness

1

Recommendation

Strengthen transparency and access to information in OCC cases

- i. The Kosovo Judicial Council (“KJC”) should ensure regular publication and updating of accurate and timely information on OCC cases, including court schedules and judgements.
- ii. The KJC, Kosovo Prosecutorial Council (“KPC”), judges and prosecutors should enhance communication with civil society by promptly, consistently, and comprehensively responding to requests for information. This should involve:
 - conducting regular press conferences and addressing cases of high public interest, particularly those related to OCC cases.
 - monitoring the implementation of the respective communication strategies.
 - establish binding instructions outlining minimum standards for the publication of information on cases.
- iii. The KPC should establish mechanisms to ensure a consistent approach to the publication of indictments. These mechanisms should include sufficient safeguards to uphold privacy rights and protect sensitive information.

Trial monitoring, along with consultations with media and civil society, revealed issues with public access to information, including the lack

of a reliable court hearing notification system,⁶³ inconsistent publication of judicial decisions and poor responses to civil society information requests.⁶⁴

⁶³ Concerns regarding notification systems included the publication of hearing schedules without defendant names and incorrect or missing entries on the platform.

⁶⁴ As stated during a discussion forum with media and civil society on 10 April 2023.

Ensuring transparency in the justice process, particularly in OCC cases, requires a careful balance between the public interest in proceedings and protecting sensitive information. Adherence to legal frameworks and ethical standards to avoid compromising privacy or prejudicing proceedings is, therefore, essential, and it is important that there are strategies and guidance for courts and prosecution offices on communication with the public.

The Project observed that in 2023, there was a marked improvement in the publication of judgements by the Court of Appeals, compared with 2021 and 2022. However, ongoing delays have been identified in the publication of judgments by Basic Courts.

At the institutional level, the publication of regulations, budgets, plans, reports and statistics, together with holding regular press conferences, enhances transparency and accountability, and builds public trust. The KJC and KPC have comprehensive communication strategies to increase transparency and co-operation with the media and civil society.⁶⁵ However, it is also important that the councils proactively monitor the implementation of these strategies.

The European Commission for the Efficiency of Justice (“CEPEJ”) Guide on Communication with Media and the Public for Courts and Prosecutorial Authorities provides useful guidance that can serve as a benchmark for access to information.⁶⁶ Utilising CMIS for data collection is also vital and will ensure that reliable and up-to-date information is available to the public via the “Judicial Performance Dashboard”.⁶⁷

⁶⁵ The Prosecutorial Council Strategy for Communication of the Prosecutorial System 2021 – 2023 available at <https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/KPK/Dokumente%20Strategjike/Strategy%20for%20communication%20of%20the%20prosecutorial%20system%202021-2023.pdf> and the Judicial Council Communication Strategy 2022 - 2024 available at https://www.gjyqesori-rks.org/wp-content/uploads/2022/03/KGJK_Strategjia_Komunikimit_2022-2024.pdf. [both accessed on 21 March 2024].

⁶⁶ Available at <https://rm.coe.int/cepej-2018-15-en-communication-manual-with-media/16809025fe>. For an additional comparative reference see the England and Wales guidance on media access to the courts available at <https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/jurisdictional-guidance-to-support-media-access-to-courts-and-tribunals-criminal-courts-guide-accessible-version>. [accessed on 21 March 2024].

⁶⁷ Available at: <https://www.gjyqesori-rks.org/performance-dashboard/?lang=en> [accessed on 21 March 2024].

Increase the capacity of courts to function effectively in both official languages

- i. The KJC and KPC should assess the needs of all Basic Courts and Prosecution Offices and determine how many interpreters and translators to deploy at each. In this process, they should prioritize the allocation of resources for urgent and backlogged cases.
- ii. The KJC and KPC should review qualification requirements and ongoing training needs to ensure that interpreters and translators have the necessary skills and experience to work effectively within the justice system.
- iii. In the longer term, the KJC and KPC should ensure that the employment conditions are adequate to facilitate the recruitment and retention of professional interpreters and translators.

Highly trained interpreters and translators are crucial to facilitate effective participation in proceedings and to realise defendants' language rights. This principle is reflected in the Constitution, CPC and European Convention of Human Rights ("ECHR"), which all provide the right to free assistance from an interpreter if the defendant cannot understand the language of the proceedings.⁶⁸

One of the most prevalent concerns regarding the functioning of the Kosovo justice system relates to persistent poor translation and interpretation. The Project observed concerns in all of the 15 monitored cases where interpretation or translation was required. Assigned interpreters were found to lack familiarity with legal terminology or essential interpretation

⁶⁸ See: Constitution, Article 30 ; CPC, Article 14 ; and European Convention on Human Rights, Article 6. Moreover, the European Court of Human Rights has stated that the obligation to provide interpretation "is not limited to the mere appointment of an interpreter but also to exercising a degree of control over the adequacy of the interpretation". ECtHR, *Cusani v. the United Kingdom*, 24 September 2002, available at <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22002-5182%22%7D> [accessed on 21 March 2024].

skills. The Project observed at least 25 instances of delays due to interpreters not being available. In addition, delays and disruptions caused by a lack of equipment for simultaneous interpretation in court rooms, or technical issues with existing equipment were noted on at least 28 occasions.

The Project observed challenges in the provision of translated indictments and case files, causing delays of between two and six months in five high-level OCC cases.

The adopted KJC regulations, code of ethics and handbook for interpreters and translators are welcome developments that could potentially address some of the challenges mentioned above.⁶⁹ However, during consultations, it was often reported that low salaries represent a barrier to recruiting and retaining well-qualified interpreters and translators. This suggests a need for measures to create an environment that attracts and retains skilled professionals in the field of interpretation and translation.

3

Recommendation

Ensure effective legal assistance for defendants at all stages of criminal proceedings

- i. The KJC, KPC and Kosovo Bar Association (“KBA”) should collaborate to establish binding instructions, including detailed timelines, to ensure that the defence has access to evidence and material during the pre-trial phase in accordance with the CPC.
- ii. Courts should ensure that facilities are available for private lawyer-client consultations prior to hearings and allow sufficient time for such consultations.
- iii. The KBA should draft guidelines for defence lawyers that include minimum standards on case preparation, advice and representation.

⁶⁹ On 21 June 2023, the KJC adopted the following documents: i) Regulation No. 07/2023 on the Certification Procedure, Appointment, Conditions, Rights, Obligations, Remuneration and Discipline of Court Translators and Interpreters; ii) the Handbook on the Work of Translators and Interpreters in the Judiciary of Kosovo; and iii) the Code of Ethics for Court Translators and/or Translators and Interpreters both Certified and Appointed. At the time of drafting, only Regulation 07/2023 is available online: https://www.gjyqesori-rks.org/wp-content/uploads/lgs/29119_KGJK_Rregullore_07_2023_per_perkthyes_dhe_interpret_gjyqesore.pdf [accessed on 21 March 2024]

Recommendation

- iv. The KBA should establish a mechanism for addressing complaints received from courts regarding member conduct and ensure that disciplinary findings are publicly available, while also upholding privacy rights.

According to the CPC, the defence is entitled to a copy of the indictment and to review the case file before the initial hearing.⁷⁰ The Project observed instances where the prosecutor did not provide the defence with access to these essential documents. Consequently, hearings were adjourned in 16 monitored cases for service of the indictment and/or case file,⁷¹ causing delays of between two and 24 weeks.⁷²

In eight monitored, multi-defendant cases, the Project observed limited courtroom space and the late arrival of defendants from detention centres hampered the ability of the defence counsel to consult with their clients.

The Project observed 24 cases in which defence counsel provided poor-quality representation due to inadequate preparation. It was noted that trial panels generally did not intervene in these circumstances. To ensure effective legal representation, courts should

exercise oversight using the powers defined in the CPC. However, consultations with judges confirmed that the only measure to address concerns regarding the performance of privately instructed defence counsel is reporting counsel to the KBA for disciplinary measures. This would only be appropriate in severe cases. However, it should be implemented when necessary. Unfortunately, judges and prosecutors reported that the KBA rarely responds to requests for disciplinary measures and/or they were not informed of the outcome of complaints. If accurate, this suggests a concerning lack of respect towards court requests and could contribute to a sense of impunity among lawyers who fail to adhere to professional standards. During consultations, the KJC, KPC and KBA reported that there is no mechanism to resolve this issue, as there are no regular meetings or platforms to discuss issues between the institutions.

⁷⁰ CPC, Article 239, "Materials Provided to Defendant upon Indictment".

⁷¹ The provisions of this Article are subject to the measures protecting injured parties and witnesses. Article 239, para. 5 of the recently adopted CPC, states: "[w]hen the state prosecutor fails to comply with obligations from paragraph 1. of this Article, the chief prosecutor of the office is notified."

⁷² In two cases, delays were exacerbated due to the need to translate the case file.

The KBA should consider more effective guidelines for defence counsel. These guidelines should include minimum standards for case preparation, advice and representation.

Such guidance would assist in setting the standard for criminal defence

representation and provide a benchmark against which to determine when intervention may be warranted.

Implementation of the guidelines should be supported through comprehensive trainings to improve the level of representation.

4

Recommendation

Ensure consistent application of the law in accordance with international standards, particularly those set by the Consultative Council of European Judges (CCJE).

- i. Encourage lower courts to refer to the case law of higher courts, particularly when dealing with issues of interpretation. The Supreme Court should provide guidance on difficult matters of law/interpretation.
- ii. Increase the number of meetings between judges from different court instances and develop a summary of selected decisions on handling high-level and complex OCC cases.
- iii. The KJC should ensure the publication of judgements, particularly those from higher courts, in a consistent and timely manner.

Judges reported unsatisfactory vertical relations within the judicial system. In particular, there are insufficient meetings between judges from the

Supreme Court and Court of Appeal with Basic and Branch Court judges to promote good and consistent judicial practice. Moreover, consultations indicated that lower instance courts

often hesitate to seek legal opinions from the Supreme Court.⁷³ It was also reported that lower instance judges were not proactive in researching and applying the jurisprudence of higher courts. This restricts the ability of higher courts to address challenges in interpreting the law and promote harmonisation, leading to growing inconsistency.

In December 2023, the Supreme Court adopted two guidelines. The first, entitled “Selected Decisions of the Supreme Court of Kosovo,”⁷⁴ contains a summary of key decisions in the field of criminal and civil cases aimed at the unification of judicial practice. The second, entitled “Summary of the Practice of the Supreme Court in criminal and civil cases,”⁷⁵ offers solutions to challenges faced by judges in criminal and civil cases, including guidance on the application of European Court of Human Rights (“ECtHR”) jurisprudence. The OSCE welcomes these publications and will continue to monitor their impact. The adoption of similar guidance to address challenging issues in complex, multi-defendant OCC cases is encouraged.

Despite the volume of new laws entering into force, including a new Criminal Code (“CC”) in 2019 and amended CPC in 2023, the Project noted a decline in the issuance of opinions by the Supreme Court since 2016.⁷⁶ Furthermore, when there are judgments, KJC decisions, or other new guidance affecting judicial practice, it is essential that judges are informed. In this respect, regular professional updates or warning-type notifications in CMIS could serve to alert the judiciary to important professional developments.

The Project also noted that courts rarely refer to existing jurisprudence. In fact, there were only two monitored cases where the Court of Appeals referred to case law – in both cases, judges cited ECtHR decisions.⁷⁷ During consultations, some judges expressed concerns about the potential selective use of jurisprudence to favour a preferred interpretation. This underscores the need for clear guidance on when and how courts can appropriately refer to the jurisprudence of higher courts.

⁷³ According to Article 26(1.4), Law No. 06/L-054 on Courts, the Supreme Court is competent “to define principled attitudes and issues legal opinions and guidelines for unique application of laws by the courts in the territory of Kosovo”.

⁷⁴ Available at: https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/26927_Permbledhje%20me%20vendime%20t%C3%AB%20p%C3%ABrzgjedhura%20t%C3%AB%20Gjykat%C3%ABs%20Supreme%202023.PDF [accessed on 21 March 2024]

⁷⁵ Available at: https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/76246_Permbledhje%20nga%20praktika%20e%20Gjykates%20Supreme,%20ne%20ceshtjet%20penale%20dhe%20civile%202023.pdf [accessed on 21 March 2024]

⁷⁶ In 2016, the Supreme Court issued 15 legal opinions (with similar numbers issued in previous years). However, between 2017 and 2023 a total of just ten legal opinions were issued. See, <https://supreme.gjyqesori-rks.org/mendimet-juridike/?cYear=2023>. [accessed on 21 March 2024]

⁷⁷ The applicability of ECtHR jurisprudence is arguably clearer because it is defined in Article 53, Constitution, which states, “[h]uman rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”

A significant shift in practice is required to encourage reference to existing jurisprudence and clarify parties' obligations in this respect. This practice should not be considered a threat to judicial independence. Rather, it should be seen as a tool to ensure uniform application of the law. Substantial steps

have been taken to increase publication of judgments.⁷⁸ In 2023, the majority of judgments were published on the KJC website, making it possible to search jurisprudence.⁷⁹ However, the website could be more user-friendly, and search features must be refined to enable accurate identification of cases.

5

Recommendation

Ensure court impartiality and perceptions thereof

- i. Provide practical training sessions for judges on courtroom management and conducting proceedings in a professional and impartial manner in accordance with international standards.

In 15 monitored cases, the Project observed inappropriate comments by judges and prosecutors that undermined the perception of impartiality and presumption of innocence. For example, in a high-level corruption case, after a witness referred to the defendant as a "good person", one of the trial panel members replied: "If the defendant is a good person, then why do you think he is accused?"

Even though this statement undermined the perception of court impartiality and infringed the presumption of innocence of the defendant, the defence did not seek the judge's disqualification.⁸⁰

In another high-level corruption case, after a witness made a positive comment on the defendant's character, the presiding judge said: "We are not hanging him".

⁷⁸ According to the FOL Movement report on monitoring the publication of court decisions (January - December 2022), there has been an increase of publication of court decisions of 41% in 2022 compared to 2021 (2021: 24,593 judgments published; in 2022: 34,694 published). The KJC has called for even greater commitment in publishing court's decision to increase the level of transparency. See, <https://levizjafol.org/wp-content/uploads/2023/03/Monitorimi-i-publikimit-te-vendimeve-gjygesore.pdf>. [accessed on 21 March 2024]

⁷⁹ eKosova is a portal where public services are offered online. Available at <https://ekosova.rks.gov.net/Service/10> [accessed on 21 March 2024]

⁸⁰ Article 38(3), CPC, "[a] judge may also be excluded from the exercise of judicial functions in a particular case if [...] circumstances that render his or her impartiality doubtful are presented."

The same judge commented on notes that the witness had drafted to aid his memory by saying: “Yes, we know how prepared you are”. Also, during the examination of this witness, who had previously been detained in relation to the same case, the prosecutor commented: “It is unbelievable that you were released”.

In most multi-defendant cases, trial panels struggled to maintain order, occasionally resorting to measures that could be perceived as partial. Trial monitors observed issues like inconsistent application of witness examination rules, again undermining the perception of impartiality.

For example, in several cases, judges allowed the parties to cross-examine witnesses multiple times, although the CPC only permits direct, cross and redirect examination.⁸¹ In addition, on at least 16 occasions, judges summarily dismissed parties’ proposals and objections without providing well-reasoned justifications.

Many of the concerns observed were linked to poor and/or inappropriate courtroom management. The Kosovo Academy of Justice (KAJ) should provide practical, high-quality training for prosecutors on examination techniques and for judges on maintaining order and presiding impartially. This would enhance the quality of justice being delivered and public trust in the judiciary.

Efficiency

6

Recommendation

Enhance case monitoring to identify the root causes of delays and proactively follow up on lengthy trials.

i. The KJC should establish a mechanism to report cases that encounter severe delays, identify the cause of the delays and determine remedial measures.

⁸¹ CPC, Articles 328-331. There is no provision on providing parties with an opportunity for another round of cross examinations or re-redirect examination. Moreover, the European Court of Human Rights has emphasised the importance of impartiality for fair access to justice in *García Ruiz v. Spain*, 24 January 1999, available at: [GARCÍA RUIZ v. SPAIN \(coe.int\)](#), *Piersack v. Belgium*, 1 October 1982, available at [PIERSACK v. BELGIUM \(coe.int\)](#), and *Findlay v. the United Kingdom*, 25 February 1997, available at: [FINDLAY v. THE UNITED KINGDOM \(coe.int\)](#) [all accessed on 25 March 2024]

Recommendation

ii. The KJC should review internal rules and regulations affecting the progress of cases. This should include assessing the practical application of rules on promotion, retirement and reassignment to ensure that the availability of jurists does not delay proceedings.

Since July 2021, the OSCE monitored 16 cases that have concluded. The length of proceedings, from the filing of the indictment to the issuance of the final

judgement, varied between one and 120 months. Notably, 12 cases (75 per cent) took more than 24 months to reach a final judgement.

Length of proceedings from indictment to final judgement in months

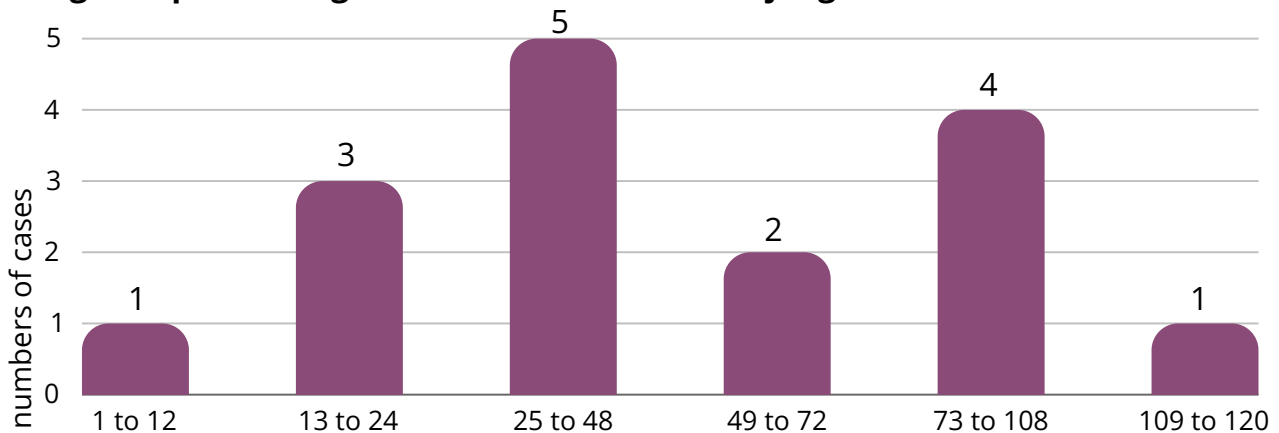


Figure 20 - Length of proceedings from indictment to final judgement in months

Unproductive hearings were found to be the prevalent reason for proceedings delays in high—and medium-level OCC cases. In total, 30 per cent of all monitored hearings were either

“unproductive” or “rescheduled”.⁸² It is crucial to emphasize, looking at the graph below, that progress in terms of efficiency of court proceedings, follow a sporadic and unpredictable pattern.

⁸² Hearings are defined as ‘unproductive’ if nothing of substance occurs during the hearing and/or the case is not progressed. Hearings are described as rescheduled when the date of hearing is changed in advance and parties are informed, avoiding the need to attend court.

Productive vs. unproductive and rescheduled hearings during monitoring phase

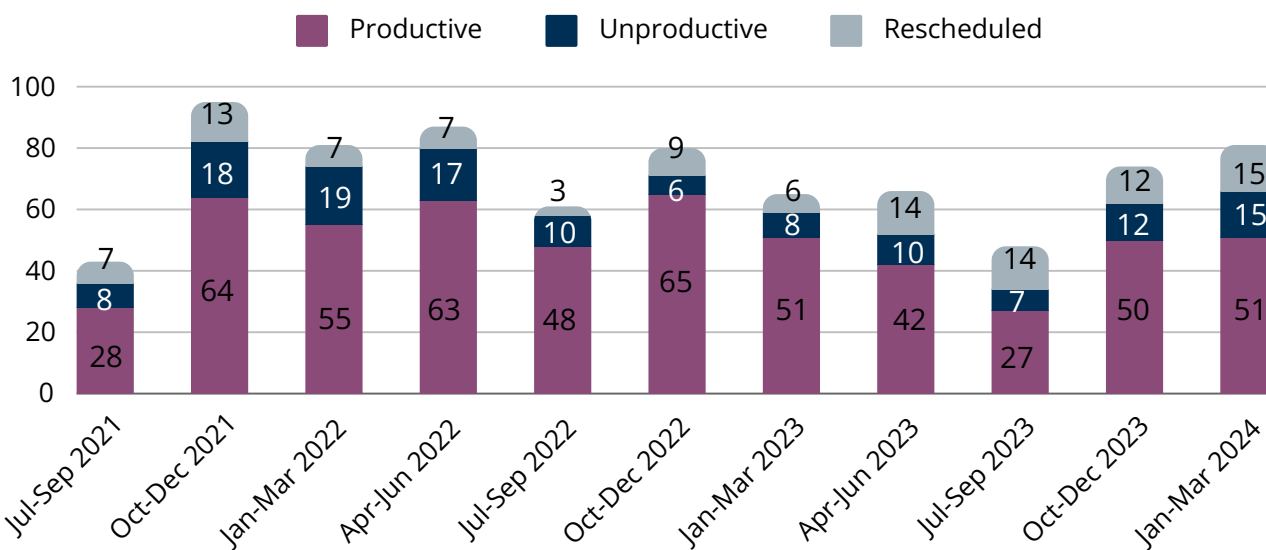


Figure 21 - Productive Hearings versus Unproductive Hearings and Rescheduled Hearings

The most common reason for unproductive hearings was the absence of one or more of the parties, i.e., absence of the defendant, witness,

defence counsel or prosecutor. This was the main cause in 88 out of 126 unproductive hearings (70 per cent).

Reasons for Unproductive Hearings

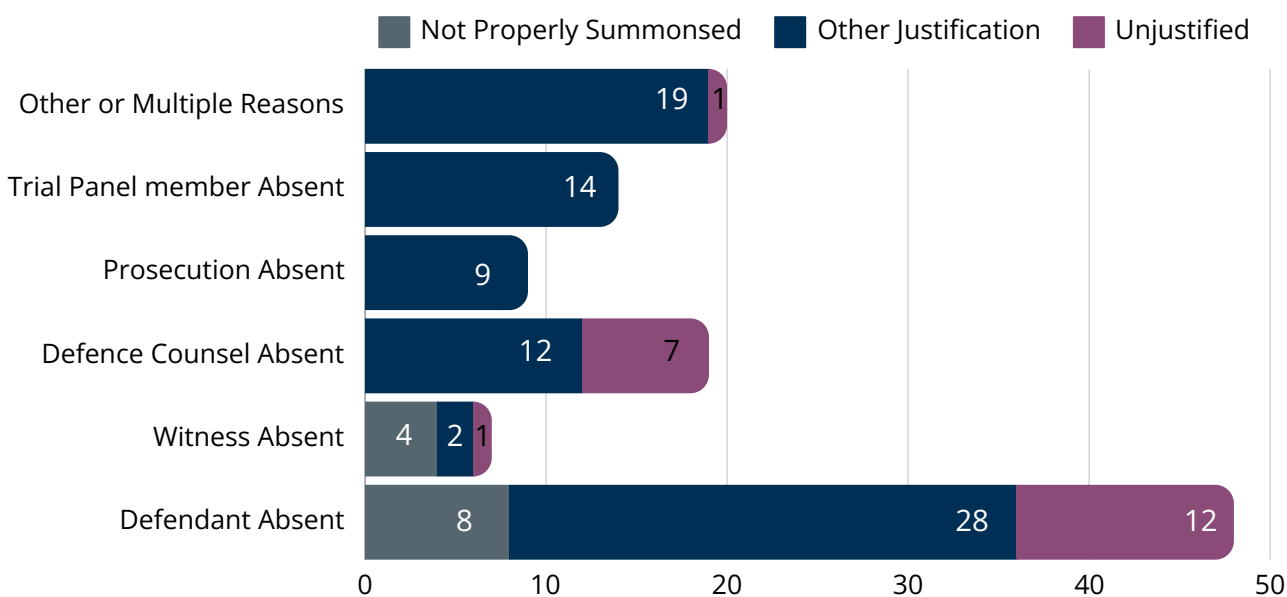


Figure 22 - Reasons for Unproductive Hearings

Cases with three consecutive unproductive hearings or cases adjourned for over three months should trigger a mechanism for analysis and remedial measures.

Another factor causing delay is the use of retrials. For example, monitors observed a case in which the Court of Appeals quashed the defendants' convictions at the Basic Court (first instance) on three separate occasions and returned the case for retrial each time. At the third retrial, the Basic Court acquitted the defendants.⁸³ There is no deadline for starting a retrial after a case has been returned from the Court of Appeals, and no limit on the number of times a case can be returned for retrial.

During consultations, judges expressed concerns about excessive workloads, particularly at the Special Department, Prishtinë/Priština Basic Court.

The deployment of three additional judges to this department was a positive development. However, an additional two vacant posts have since opened.⁸⁴ The Special Prosecution Office (SPRK) will recruit an additional nine prosecutors in 2024.⁸⁵ However, for this to result in improved efficiency, there must be sufficient judges within the Special Department.

Judges also complained that a shortage of legal officers and administrative staff poses obstacles to more effective processing of cases. Many judges lack legal officers or trainees to support their work. The KJC and KPC should ensure ongoing assessment of the needs of different courts and departments, considering not just case numbers but also their nature and complexity.

⁸³ The indictment was filed in 2014. Basic Court judgements were issued in 2017, 2018 and 2020 with some or all defendants convicted. The final Basic Court judgement in 2023 saw all defendants being acquitted.

⁸⁴ Due to the death of one judge and retirement of another. In addition, the Project has been informed that a third Special Department judge will retire in July 2024.

⁸⁵ Since 2019, the Special Department has had jurisdiction over all cases prosecuted by the SPRK.

7

Recommendation

Improve practices related to the use of regular and negotiated guilty pleas

- i. Encourage judges and prosecutors to use regular and negotiated guilty pleas in appropriate cases.
- ii. The Chief Prosecutor's Office should update the Instruction on Negotiated Guilty Plea Agreements and monitor its implementation.
- iii. The Supreme Court should draft guidelines on guilty pleas, including when courts should accept a guilty plea and the correct approach to sentencing.

Guilty pleas, whether negotiated or regular, and voluntary, conserve limited judicial resources. In cases where the evidence is sufficient and the defendant accepts responsibility voluntarily, pleas can provide an effective resolution to the case aiding efficient case management and use of resources, particularly in complex OCC cases.⁸⁶

In Kosovo, the Project (confirmed by stakeholders) observed a low use of guilty pleas, especially in high-level cases.

Kosovo law allows reduced sentences following a guilty plea.⁸⁷ This is appropriate given that the acceptance of responsibility and consequences for

⁸⁶ The United Nations Convention against Transnational Organized Crime suggests that punishment can be mitigated against persons "who provide substantial co-operation in the investigation or prosecution" of organised crime and related offences. United Nations Transnational Organized Crime Convention, Art. 26(2). The ECtHR has affirmed that "plea bargaining" does not per se violate the right to a fair trial and can contribute to efficient proceedings, reduction in judicial workload, and serve as "a successful tool in combating corruption and organized crime". *Natsvlishvili and Togonidze v. Georgia*, No. 9043/05, 29 April 2014, para. 90.

⁸⁷ 2023 CPC, Article 230

the efficient administration of justice are important mitigating factors. Nonetheless, sentencing should remain proportionate and must not enable impunity. Defendants' rights, including access to effective legal advice outlining all consequences of a guilty plea, should be protected.

In four monitored cases, defendants expressed an intention to plead guilty. However, the court rejected their guilty pleas. In two cases, the pleas were rejected because co-defendants were contesting the case, and the court reasoned that they should, therefore, all stand trial.⁸⁸

In the other two cases, the court found that the basis of the guilty plea did not correspond with the alleged facts.⁸⁹ These cases illustrate some of the challenges for courts in interpreting the provisions of both regular and negotiated guilty pleas (NGP).

In 2021, the Office of the Chief Prosecutor issued instructions on the use of NGPs.⁹⁰

Of note, failure to comply with the instructions is considered a violation of the Code of Ethics of Prosecutors.⁹¹ However, the guidance should be updated to reflect recent legislative changes and to monitor implementation, particularly the provisions on confiscation and compensation following a NGP.

Similar guidance from the Supreme Court could help to harmonise judicial practice in this area.

In three judgements following guilty pleas,⁹² the court failed to preserve the presumption of innocence for co-defendants who had not entered guilty pleas. In these judgements, the prosecution case was copied into the judgement without excluding reference to the defendants who continued to contest the allegations. The ECtHR has stated that judgements rendered based on guilty pleas must safeguard the presumption of innocence for other alleged co-perpetrators.⁹³

⁸⁸ In both cases the offences were alleged to have been committed in "co-perpetration".

⁸⁹ CPC, Article 242 (2.3)

⁹⁰ The guidelines detail procedures related to NGPs, including: content of the agreement, incentives, co-operative defendants, and duties with regard to confiscation and compensation. Available at: https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/PSH/Legjislacioni/Udhezim%20nr.%20160_2021%20per%20Negocim%20e%20marreshjes%20mbi%20pranimin%20e%20fajesise.pdf. [accessed on 21 March 2024]

⁹¹ Available at https://prokuroria-rks.org/assets/cms/uploads/files/Dokumente%20Publikime/PSH/Legjislacioni/ANKodet/2019_02_08_082355_Shqip.pdf [accessed on 21 March 2024]

⁹² All corruption cases.

⁹³ *Mucha v. Slovakia*, no. 63703/19, 25 November 2021, para. 66. Specifically, the ECtHR stated that, "judicial decisions must be worded so as to avoid any potential pre-judgement about the third party's guilt in order not to jeopardize the fair examination of the charges in the separate proceedings."

Ensure effective case management in OCC cases

- i. The KJC and Supreme Court should develop guidelines on trial management. The guidelines should outline the appropriate use of sanctions and other measures to ensure the presence of parties at hearings.
- ii. The KJC and Supreme Court should encourage case management hearings in serious/complex cases to enable:
 - Development of a realistic timetable for the case.
 - Identification of agreed and disputed factual and legal issues.
 - Identification of agreed and disputed evidence.
 - Directions on the disclosure of evidence.
 - Identification of the need for expert evidence.
- iii. The KJC should develop and further promote use e-summons and online notifications to inform parties of hearing dates.

During consultations, there was general support for the development of case management guidelines and the use of pre-trial hearings to actively manage cases. These guidelines should follow primary legislation and allow judicial discretion when appropriate. But they should also provide a clear benchmark for expected standards on how cases will progress. The KJC should consider the development and piloting of case management forms.⁹⁴

The aforementioned guidelines should address the appropriate use of sanctions and procedural tools to ensure parties' attendance at hearings. Kosovo law grants judges the authority to take punitive or disciplinary measures, but judges rarely apply these measures in the hearings monitored. Judges frequently cite a lack of clear instructions on the application of sanctions for not applying these punitive measures, highlighting the

⁹⁴ Good examples of case management forms used in England and Wales are available at: [cm001eng.docx \(live.com\)](#); [PTPH 1 defendant.docx \(live.com\)](#); with other forms available at: [Criminal Procedure Rules: Forms - GOV.UK \(www.gov.uk\)](#) [accessed on 21.03.2024]

need for guidance on this issue.

The KJC should further develop existing databases and promote digitalisation, including the development of a notification system to inform parties and public when cases are scheduled.⁹⁵

Steps towards realising this recommendation should include:

i. Implementing a digital notification system to send automated emails or text messages to parties, providing them with timely updates on case dates and any changes to scheduling.

ii. Ensuring court websites are maintained and updated with accurate daily hearing schedules and rescheduling notices.

iii. Continuing to develop and promote the use of CMIS to centralise case

information, facilitate communication, and provide access to relevant documents.

iv. Providing regular training to court personnel on the effective utilisation of relevant technologies and the importance of timely notification systems.

These measures would improve the efficiency of court proceedings, keep parties informed, and enhance the public's access to information.

In June 2023, the KJC approved the "Work Plan of the Special Department at the Basic Court in Prishtinë/Priština for 2023" (WP). In February 2024, the plan was updated and renewed. The objective of the WP is to increase the efficiency and prioritization of cases within the Special Department. The adoption of the WP is commendable, and the development of similar WPs for other court departments is encouraged.

⁹⁵ Regional Trial Monitoring Project "Combatting Organised Crime and Corruption in the Western Balkans", Interim Findings and Recommendations Report, Review year July 2021–June 2022, page 42

Ensure implementation of provisions in the new CPC aimed at reducing delay.

- i. The Supreme Court should issue guidance on the proper interpretation of amendments to the provisions on retrials in Article 402, CPC.
- ii. The KJC to consider analysing the continued use of retrials in OCC cases.
- iii. The Supreme Court should issue guidance on new in absentia provisions in Article 303, CPC.
- iv. The KBA should issue guidance on the role of defence counsel during in absentia proceedings and provide training for members on these provisions.

On 17 February 2023, a revised CPC entered into force, bringing several changes aimed at addressing shortcomings in criminal proceedings.⁹⁶ These include making trials in absentia possible in relation to all criminal offences and introduction of a more stringent test for returning cases from the Court of Appeals for retrial. While there was a six-month period between publication of the new CPC and its entry into force, the Project has observed that there is still a significant

misunderstanding of new and amended provisions. Arguably, sufficient, comprehensive trainings for practitioners were not implemented during the transitional period and that has led to issues with implementation.

During five monitored hearings, judges suggested proceeding in absentia, but the defence successfully objected because they had not received the necessary training. Accordingly, it is recommended that the KBA consider issuing guidance on in absentia

⁹⁶ Official Gazette, available at <https://gzk.rks.gov.net/ActDocumentDetail.aspx?ActID=61759> [accessed on 21 March 2024]

proceedings for defence counsel. The guidance should be reinforced through practical trainings. This is important as the provisions create particular ethical and legal challenges for defence counsel.

Excessive reliance on retrials has been identified by the Project as a key cause of delay in the adjudication of cases. To address this issue, the 2023 CPC introduced a more stringent test for returning cases for retrial. Under the new CPC, retrials are only permissible in "exceptional circumstances", and the Court of Appeals is obliged to include in the ruling the reasons for not modifying the judgement instead of a retrial.⁹⁷

However, "exceptional circumstances" are not defined, and there is scope for differing interpretations. Guidance should be provided to ensure that courts give effect to these provisions.

Currently, retrials are heard by the same trial panel that adjudicated the case in the first instance. Arguably, the Supreme Court should also consider this practice and include an opinion on the appropriate constitution of trial panels for retrials.

Given the significance of the CPC for improving criminal justice, it is recommended that the Ministry of Justice participates in an "ex post evaluation" of the implementation of the new law.⁹⁸

Capacity

10

Recommendation

Improve the standard of indictments and other legal acts.

- i. The Office of Chief Prosecutor should enhance internal mechanisms to review indictments before finalisation, while ensuring a proper balance between individual prosecutors' autonomy and supervisors' power to issue instructions in specific cases.

⁹⁷ Article 402, Criminal Procedure Code 2013 ... states: "1. The Court of Appeals shall, in certain cases, annul by a ruling the judgment of the Basic Court and return the case for retrial [...]". Under Article 402, Criminal Procedure Code 2023, this has been replaced with "1. The Court of Appeals, in exceptional cases, annuls by a ruling the judgment of the Basic Court and returns the case for retrial [...]". In addition, under the 2023 Code, paragraph 2 "[t]he ruling shall contain clearly the reasons and grounds for which the Court of Appeals cannot proceed under Article 403 of the present Code".

⁹⁸ Available at: the 'Manual on Ex Post Evaluation of Legal Acts'; available at <https://kryeministri.rks-gov.net/wp-content/uploads/2023/07/Manual-on-Ex-Post-Evaluation-of-Legal-Acts.pdf> [accessed on 21 March 2024]

Recommendation

- ii. The Office of Chief Prosecutor should develop a mechanism to ensure internal review of high-level OCC cases resulting in acquittals or where indictments are dismissed/rejected.
- iii. The Kosovo Academy of Justice (“KAJ”) should increase the number of targeted trainings to prosecutors and judges to improve the quality of indictments in OCC cases.

Deficiencies have been observed in the majority of indictments filed in monitored cases. Common concerns include writing style, unsubstantiated charges, unclear factual descriptions, inadequate explanation of the relevance of evidence and verbatim repetition of witness testimony. Indictments also often lacked detail on financial gain or damage and omitted to request forfeiture of assets. Particularly in organised crime cases, indictments often failed to detail the elements of the alleged offence in accordance with the Criminal Code. Despite these flaws, in most cases, judges did not dismiss charges or request amendments to the indictments.⁹⁹

During discussion forums and consultations, there was disagreement on the role of the judiciary in reviewing indictments – and particularly their power to do so *ex officio* (i.e., when

there is no application from the parties), given the strongly adversarial nature of Kosovo’s court system. Many judges reported that they prefer to rely on defence applications to dismiss the indictment, otherwise fearing accusations of bias. Of note, in all 52 monitored cases, the defence made applications to dismiss the indictment.¹⁰⁰ However, none of those applications were successful.

In one high-level corruption case, the enacting clause of the indictment made no reference to one of the defendants. In this case, the court returned the indictment to the prosecutor and requested amendment. This contributed to the efficient administration of justice and was therefore highlighted as a good practice.

⁹⁹ Article 235(4), CPC

¹⁰⁰ In some cases, the refusal of these applications was appealed (unsuccessfully). The fact that such a high number of challenges are made to the sufficiency of indictments has significant implications for court resources and efficient case management.

In trying to identify the cause of inadequate drafting skills, consultations revealed that prosecutors sometimes focus on quantitative over qualitative results; i.e., to focus on the number of indictments filed over the standard of those indictments. This may be attributable to the emphasis on quantitative indicators in prosecutors' performance evaluations.

Another identified issue is that indictments frequently lack key information. This might indicate a need for prosecutors to be more proactive in overseeing investigations by law enforcement to ensure that all relevant evidence has been obtained before the indictment is filed.

Shortcomings observed in indictments contributed to the acquittal of defendants in at least four monitored cases. Consequently, efforts to enhance the quality of indictments in terms of content and drafting should be pursued. Recognising that prosecutors receive training on drafting of indictments, during the initial training programme and continuous professional development,¹⁰¹ it is recommended that an effective internal review mechanism should be established to:

- Maintain prosecutor decision-making autonomy while ensuring consistency, accountability and adherence to legal standards through a supervisory system.
- Promote consistent decision-making and guard against biases or conflicts of interest, thereby fostering a fair and impartial justice system.
- Provide prosecutors with expertise and guidance from supervisors.
- Enable early identification of errors, omissions or weaknesses thereby strengthening prosecutions.

There is no common standard in Europe. In some jurisdictions, senior prosecutors have broad powers to supervise work of junior colleagues. In others, the autonomy of individual prosecutors is prioritised. However, it is generally accepted that when senior prosecutors have broad powers to intervene in cases, checks are required to ensure that that power is not abused

In addition, there should be a formal process to address disagreements between the prosecutor handling the case and their supervisor or mentor.¹⁰²

¹⁰¹ Both training programmes are implemented by the Kosovo Academy of Justice.

¹⁰² Available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804be55a [accessed on 21 March 2024]

It was reported that there is no review mechanism for cases where there have been acquittals or indictments have been rejected or dismissed. The

establishment of such a review mechanism would enable lessons to be learned and to inform future practice. This is arguably particularly important in high-level OCC cases.

11

Recommendation

The KJC and KPC should ensure that performance evaluation criteria and workload expectations for judges and prosecutors accurately reflect the level of effort necessary to handle OCC cases.

- i. The councils should consider the weight given to qualitative indicators in the performance evaluation of judges and prosecutors.
- ii. Both quantitative and qualitative elements of evaluating performance should adequately consider the complexity and effort involved in handling high-level OCC cases.
- iii. The councils should continuously review performance evaluation criteria in OCC cases to ensure that they incentivise good practice and appropriate prioritisation of cases.

Performance evaluations aim to ensure accountability and maintain judicial and prosecutorial standards, thereby fostering public trust in the justice system. While quantitative performance indicators, such as caseload management and clearance rates, provide some insight, they must be combined with qualitative indicators that assess the standard of judge and prosecutor work.

In Kosovo, performance evaluation systems currently emphasise quantitative indicators. To strike a better balance, greater attention should be paid to qualitative factors. This should mitigate against judges and prosecutors prioritising “quantity over quality” and allow for a comprehensive evaluation of overall competence and professionalism.

The ongoing implementation of this recommendation is part of the aforementioned “Joint Statement of Commitment”.¹⁰³

The consolidated report detailing progress made under the “Joint Statement of Commitment” reflects the finding that both judges and prosecutors should be evaluated on a range of qualitative, as well as quantitative, indicators.¹⁰⁴

In 2023, the KJC adopted the Regulation on Work Rate of Judges (“Judges’ Norm”). The “weighted” point system that reflects the additional work involved in mid and high-level OCC cases is commendable.¹⁰⁵ It is recommended that implementation of the Judges’ Norm be assessed to measure the effect on judicial performance and ensure that it is not creating unintended consequences such as the “cherry picking” of cases to meet the norm, rather than objective prioritisation of cases.

12

Recommendation

Judicial institutions should better co-ordinate activities among stakeholders and donors to avoid duplication and maximise synergies.

- i. Institutions should convene regular co-ordination meetings for international partners, civil society organisations and others involved in implementation of projects and activities in the field of rule of law.
- ii. Institutions should conduct periodic “mapping” exercises to maintain an up-to-date record of activities that can be used to support co-ordination and assess implementation and impact.

¹⁰³ The Council of Europe has conducted detailed assessments of the evaluation systems for both judges and prosecutors against CCJE standards, which should inform the review of the existing systems as part of this initiative. See also CCJE Opinion No. 17 (2014) ‘on the evaluation of judges’ work, the quality of justice and respect for judicial independence’; available at: <https://rm.coe.int/16807481ea> [accessed on 21.03.2024]. The CCJE recommends considering the following qualitative indicators: professional competence, including knowledge of the law, ability to conduct court proceedings, and capacity to write reasoned decisions; personal competence, including ability to cope with the workload, ability to make decisions, and openness to new technologies; and social competences, including the ability to mediate, respect the parties, and perform in leadership positions.

¹⁰⁴ Joint Statement of Commitment, Judicial reform, Summary of reports of the working groups (December 2023), page 12. The reports are not available online.

¹⁰⁵ Regulation on work rate of judges, Article 14 (1); Available at: <https://www.gjyqesori-rks.org/regulloret/?r=M&legId=295> [accessed at 21 March 2024]

Several donors, international partners and CSOs in Kosovo implement rule of law projects and activities in support of justice sector institutions. Activities include delivery of trainings and workshops, mentoring, and the provision of expertise and resources. To ensure sustainability and avoid overlap, judicial institutions should take responsibility for co-ordinating these diverse international and local efforts.

Local institutions are better positioned to build and preserve initiatives tailored to their specific needs, strategies and action plans, resulting in interventions that are more sustainable and effective.

Local institutions should take steps to better co-ordinate projects and activities related to the justice system.

At a minimum, this should include convening “donor co-ordination meetings” on a regular basis and mapping the support and activities being implemented using the good model provided through KJC regular meetings with donors.

Ultimately, judicial institutions taking the lead on co-ordination will lead to more relevant, efficient, and impactful support, thereby fostering a stronger rule of law infrastructure.

13

Recommendation

Assess the needs and performance of specialised units dealing with high-level OCC cases.

i. The KJC and KPC should continuously oversee, assess, and address the performance and efficiency of specialized departments responsible for high-level OCC cases.

The Special Department, Prishtinë/Priština Basic Court and Special Prosecution Office (SPRK) are responsible for the majority of high-level, OCC cases. However, case outcomes remain inconsistent. The councils should continuously assess the needs of these specialized departments

and ensure proportionate allocation of resources. This includes ensuring adequate skilled judges and prosecutors to manage cases, availability of forensic expertise and legal support staff; as well as fostering stronger co-operation with specialized law enforcement agencies and other relevant institutions.

Training needs to ensure specialised knowledge on topics such as public procurement, criminal liability of legal entities, financial investigations, special investigative measures, and money laundering should also be assessed. Strengthening expertise could also be achieved through the establishment of focal points to provide mentoring, guidance and peer-to-peer learning on key topics using the model provided

through the Chief Prosecution Office's network of co-ordinators on asset confiscation.

Ensuring adequate resources and enhanced skills would result in more accurate legal analysis, and better decision-making, ultimately leading to more just outcomes.

14

Recommendation

Improve the quality of judgements in high-level OCC cases.

- i. The Supreme Court should amend the 2018 Sentencing Guidelines to align them with the new CPC. These revised guidelines should also address the issue of sanctions in complex OCC cases involving multiple defendants.
- ii. Judges should provide clear, well-reasoned judgements. Where defendants are acquitted, specific reasoning should be provided. Sentencing decisions should address aggravating and mitigating features as they pertain to each defendant.

Since the start of the Project, the team has monitored 16 cases that have reached final and binding judgements (12 corruption and four organised crime).

A high proportion of finalised cases have resulted in acquittals. Specifically, 21 out of 26 defendants (81 per cent) facing corruption-related charges were acquitted or the indictment was rejected.¹⁰⁶

¹⁰⁶ Acquittals were recorded in nine out of 12 monitored cases (75 per cent)

Thirty-six out of 48 defendants (75 per cent) charged with organised crime-related offences were acquitted. Three out of four organised crime cases, involved charges related to drug trafficking, resulted in convictions.

Of note, one out of four finalised organised crime cases ended with the acquittal of all defendants (36

defendants). Therefore, the low number of cases monitored needs to be considered when assessing the significance of the acquittal rate in organised crime cases. Overall, the acquittal rate in monitored OCC cases stands at 76 per cent. However, it is important to emphasise that these preliminary statistics have been obtained from relatively few cases (16).

Active vs Finalised cases

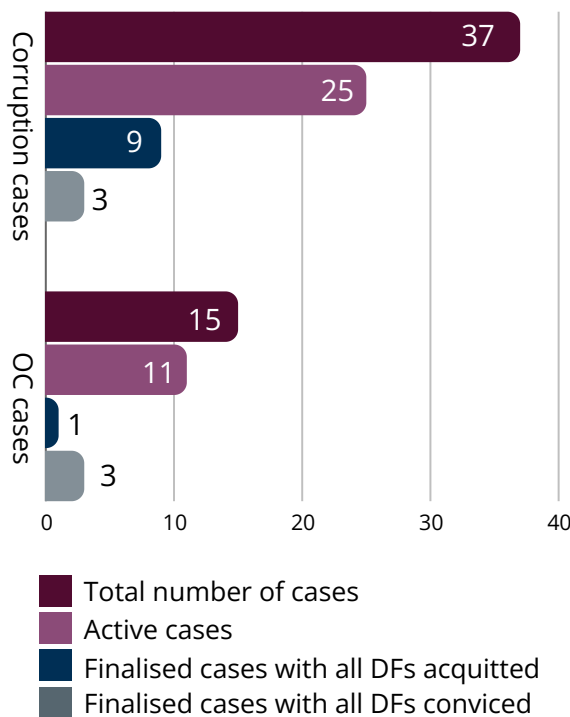


Figure 23 - Active vs. finalised cases

Out of the 16 finalised cases, one concluded with a final judgment at the first instance after the defendant pleaded guilty, one case concluded at retrial, nine cases reached a final judgment at the Court of Appeals, and five cases were finalised at the Supreme Court following applications for protection of legality.

Outcome of Finalised cases

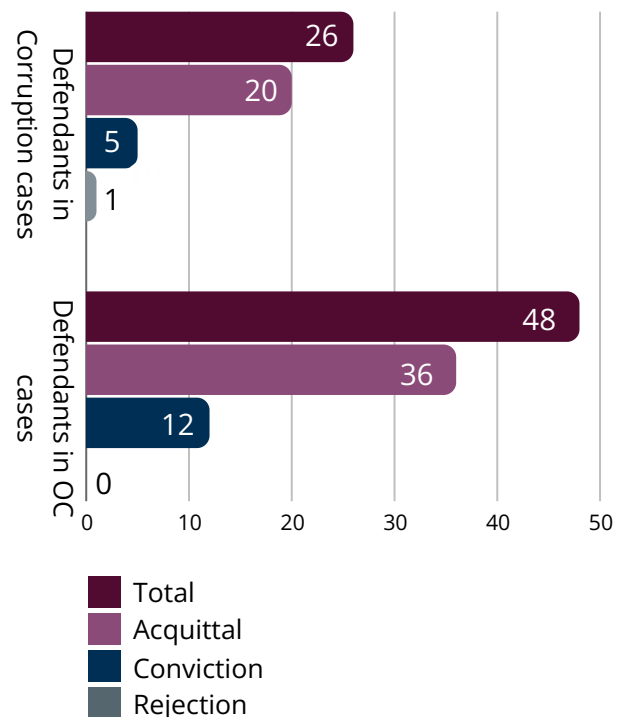


Figure 24 - Outcome of finalised cases

In total, 17 defendants were convicted (one following a guilty plea, 16 following contested trials). The breakdown of sentences is shown in the figure below. Of note, 16 out of 17 defendants received sentences of immediate imprisonment. All 17 defendants also received financial penalties.

Sentences in finalised OCC cases

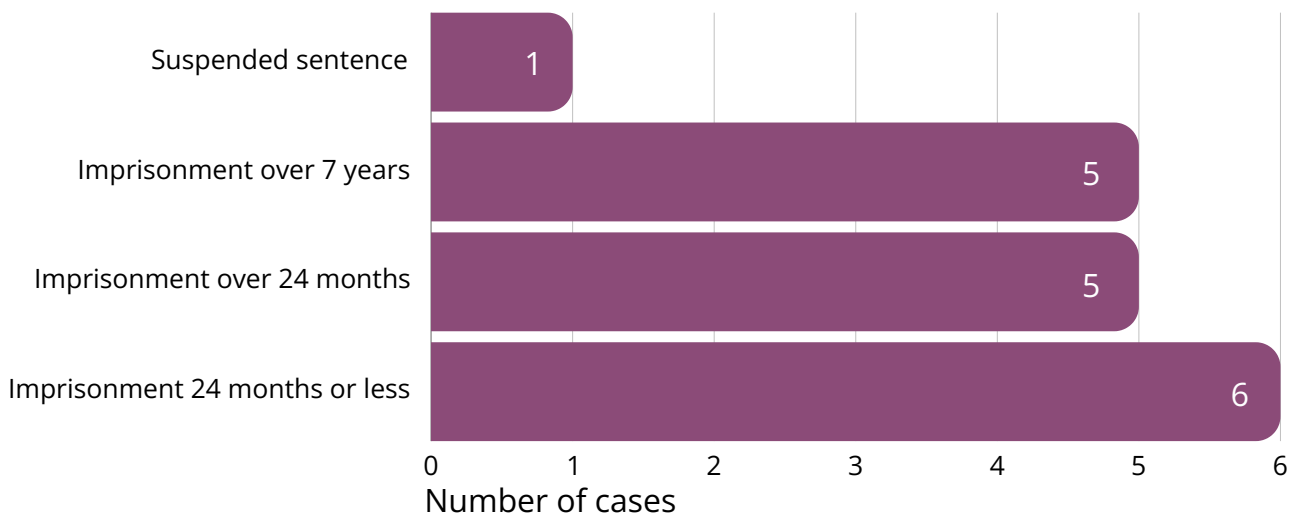


Figure 25 - Sentences in finalised OCC cases

The Project observed that the Basic Court judgements often lacked clear and comprehensive reasoning for decisions, for both acquittals and convictions. In some judgments, the findings of fact were vague and needed further substantiation. Some sentencing judgements summarised the aggravating and mitigating features without specifying how they pertained to each defendant. This resulted in exceptionally short judgements given the complexity of the case and the number of defendants.

Judges should ensure that judgments meet the requirements of the CPC. Sentencing decisions must be fully reasoned and individualized, with an explanation of aggravating and mitigating features and why the

sentence is considered proportionate for each defendant.

In 2018, the Supreme Court published comprehensive sentencing guidelines aimed at unifying sentencing practice across all courts.¹⁰⁷ In 2021, the “Specific Guideline for Official Corruption and Criminal Offences Against Official Duty” was also published.¹⁰⁸ While a committee was established to monitor the 2018 guidelines, there has been insufficient monitoring and evaluation of the implementation of the guidelines. Courts often do not consistently adhere to the sentencing guidelines. The guidelines are not mandatory and trial panels therefore retain significant discretion when sentencing defendants. However, the application of the guidelines can

¹⁰⁷ Supreme Court, Sentencing Guidelines, 1st Edition, 2018, also available at: https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/Sentencing%20Guidelines_February%202018.pdf [accessed on 21 March 2024]

¹⁰⁸ Kosovo Supreme Court, Official Corruption and criminal offences against official duty, Specific Guideline, June 2021, also available at: https://supreme.gjyqesori-rks.org/wp-content/uploads/legalOpinions/5884_Corruption%20Specific%20Guidelines-%20June%202010.pdf [accessed on 21 March 2024]

improve consistency in sentencing decisions and reduce the number of appeals against sentences. Therefore, judges should be encouraged to refer to the guidelines in their judgements.¹⁰⁹

Given that there have been significant legislative amendments since 2018,¹¹⁰ the Supreme Court should update the current guidelines to account for these changes.

Judicial tools

15

Recommendation

Ensure that financial investigations and asset confiscation are systemically implemented in OCC cases.

- i. Promote effective use of investigative tools including Special Investigative Measures (SIMs) and mutual legal assistance.
- ii. Apply the guidelines on seizure and confiscation for prosecutors published in 2023 and consider whether additional guidance is needed on financial investigations.
- iii. The KJC and KPC should ensure that judicial and prosecutorial performance evaluations and workloads reflect the effort required for confiscation proceedings.
- iv. The KAJ should ensure that capacity building on financial investigations and asset forfeiture is sufficient, effective and targeted at those to whom it is most relevant.

The Project examined data on financial investigations in monitored cases and observed that prosecutors conducted financial investigations in only 32 of 52

monitored cases (62 per cent). Despite the monitored cases involving significant alleged sums in damage or gain, confiscation of assets was rare.

¹⁰⁹ An option could be to obligate judges to provide reasoning if they depart from the guidelines.

¹¹⁰ Including the 2019 Criminal Code and 2023 Criminal Procedure Code.

Several factors contribute to the low use of financial investigations and asset confiscation in Kosovo. First, there is a lack of appreciation and skill among both police and prosecutors regarding the importance of confiscation and how to conduct effective financial investigations. Additionally, monitors observed insufficient use of tools such as Special Investigative Measures (SIMs) and mutual legal assistance (MLA) to trace the proceeds of crime.

Once a high-level OCC case leads to a conviction, prosecutors tend to shift their focus to other cases instead of initiating the prescribed extended confiscation procedure. This shift may stem from resource constraints, competing priorities, or a lack of emphasis on post-conviction asset recovery in performance evaluations.

An increase in final asset confiscation in 2023, compared to previous years, is a positive development.¹¹¹ However, the increase is attributable to a small number of cases where high-value assets were seized and therefore does not indicate wider/systematic use of post-conviction confiscation.

Confiscation proceedings require significant effort and expertise from judicial and prosecutorial authorities.

KJC and KPC should factor in the complexity of such cases in performance evaluations and workloads. This approach would ensure that judges and prosecutors are provided with the adequate resources and time to conduct comprehensive financial investigations and handle asset confiscation proceedings effectively.

The adoption of guidelines on assets confiscation issued by the Chief Prosecutor's Office in October 2023 is another positive change.¹¹² Efforts should now focus on raising awareness of the guidelines and promotion and monitoring of their use. Reportedly, significant misunderstanding about the Law on Extended Powers for Confiscation of Assets has hindered use of seizure and confiscation. These issues persist despite the high number of trainings provided on these topics.

To successfully address these challenges requires a multi-pronged approach. At a minimum, relevant authorities should address gaps in the knowledge and skills of law enforcement officials and jurists, provide incentives for use of asset recovery by revising performance evaluation criteria.

¹¹¹ Reported during consultations

¹¹² This followed earlier recommendations to provide additional guidance on this topic.

Improve access to financial information for law enforcement and prosecutors while respecting privacy rights

- i. Provide the Special Prosecution Office with access to data from official registries at the same level as the Kosovo Financial Intelligence Unit (e.g., police databases, the cadastre, and tax administration).
- ii. Provide guidance to the private sector on responding to information/ disclosure requests from judicial authorities.
- iii. Ensure that forensic financial experts have sufficient skills and expertise and their work can be properly evaluated.

Ensuring effective investigation and prosecution of OCC cases, particularly money laundering, requires enhanced access to financial information for law enforcement and prosecutors while respecting privacy rights. The Special Prosecution Office currently relies on the Financial Intelligence Unit (FIU) for financial investigations, but faces obstacles accessing crucial data from existing databases. In addition, prosecutors often lack a clear understanding of the data collected, which hampers factual and legal analysis.

Granting the Special Prosecution Office access to data from official registries equivalent to the FIU would significantly enhance their capacity to investigate

and prosecute cases. However, robust safeguards must be established to protect privacy rights, including stringent data protection protocols, access controls, and the use of anonymised or aggregated data where possible.

Regarding the private sector, providing clear guidance to key private financial institutions, such as banks and insurance companies, on their obligations when responding to requests from judicial authorities is crucial. This guidance should cover the legal framework, types of requests, handling procedures, and confidentiality measures, emphasizing co-operation and compliance while safeguarding privacy rights.

Regarding the skills and expertise of forensic financial experts, a comprehensive evaluation mechanism should be established to assess the qualifications, competence, and integrity of financial experts. This evaluation mechanism should encompass stringent selection criteria, regular assessments of performance, and ongoing requirements for professional development. By ensuring that forensic financial experts adhere to rigorous standards, the efficiency and reliability of financial investigations can be preserved.

In implementing these measures, there should be proper balance between facilitating access to financial information for law enforcement and prosecutors, and protecting individuals' privacy rights. Robust data protection measures, clear guidelines, and stringent evaluation mechanisms can help achieve this balance and ensure that access to financial information is both effective and lawful.

17

Recommendation

Strengthen regional co-operation in processing OCC cases

- i. Use existing informal networks and regional groups, such as CARIN,¹¹³ to exchange information.
- ii. Encourage prompt responses to requests for mutual legal assistance, including:
 - Clear guidelines and standard operating procedures for timely and efficient handling of mutual legal assistance requests by the authorities.
 - Designate points of contact within judicial authorities to expedite the processing of requests.
 - Provide training programs to enhance the understanding of international legal frameworks.

¹¹³ CARIN is an informal network of law enforcement and judicial practitioners in the field of asset tracing, freezing, seizure and confiscation. It is an inter-agency network. Each member state is represented by a law enforcement officer and a judicial expert (prosecutor, investigating judge, etc. depending on the legal system). CARIN currently has 54 registered member jurisdictions, including Kosovo, 27 EU Member States and nine international organisations. Available at <https://www.carin.network/> [accessed on 21 March 2024]

The Project has monitored four cases where proceedings were prolonged due to delays in obtaining mutual legal assistance. The shortest period observed for receiving assistance was two months.¹¹⁴ Kosovo legal practitioners confirmed that formal mutual legal assistance requests may take up to 12 months, and in some cases, requests are unanswered.

To minimise the impact of these delays and further enhance regional and international judicial co-operation, existing informal networks and regional

groups should be used. Informal networks, like CARIN (Camden Asset Recovery Inter-agency Network¹¹⁵), can facilitate information exchange among judicial authorities and enhance mutual trust and co-operation in the provision of mutual legal assistance.

Implementation of guidelines and standard operating procedures is recommended, along with practical training on the application of MLA and international legal frameworks to increase practitioner confidence in applying these measures.

¹¹⁴ Witness examination of a person detained in a neighbouring jurisdiction.

¹¹⁵ <https://www.carin.network/>

VIII. Montenegro

Introduction

Over the past three years, the judicial processing of serious OCC cases in Montenegro has demonstrated limited progress. The overall functioning of the judicial system has been adversely affected by the incomplete composition of important judicial bodies and crucial posts being occupied on an ad interim basis. However, Montenegro has taken some positive steps to resolve the judicial crisis.

In March 2022, the new Chief Special Prosecutor was appointed. Since he took office, there has been significant progress in the number of indictments filed against high-profile defendants that are of particular public interest.

Furthermore, the Parliament appointed the remaining judge of the Constitutional Court in November 2023, the three remaining lay members of the Judicial Council in December 2023 and the Supreme State Prosecutor in January 2024. At the time of writing, the President of the Supreme Court had not been appointed yet, even though the position has been filled on an ad interim basis since December 2020.

Considering that high-level cases – also as per the Project’s Methodology – usually have political implications, screening the independence of the judiciary has been part of the Project team’s analysis.

The Project has continuously observed politicians commenting inappropriately on ongoing criminal proceedings in the cases undergoing monitoring.

Through its media monitoring, the Project has also found evidence of media outlets exacerbating and amplifying the aforementioned effect by re-publishing and broadly circulating the problematic statements.

Furthermore, some recent charges against high-level former or acting representatives of the judiciary and public administration are suggestive of the fact that organised crime attempted to exert influence on key institutions, including law enforcement agencies and the judiciary, to an extent and consequences that will still have to be determined.

On the other hand, the Project also acknowledges that the courts have started to increase the transparency of their work by adopting some good practices like publishing hearing schedules more regularly on their websites.

Zooming in on the issue of expediency, the Project notes lack of efficiency in proceedings as one of the largest deficiencies in processing OCC in Montenegro.

Out of the 59 cases under monitoring, only two have been finalised. One resulted in an acquittal, while the other was finalised at the pre-trial stage as the indictment was not confirmed. Only eight cases were completed in the first instance trial during the Project's implementation period.

The Project also observed that judicial acts – including verdicts, indictments and decisions on detention – often lacked clear and sufficient reasoning.

Furthermore, detention during proceedings did not seem to be treated as a measure of last resort, while decisions ordering detention were often characterised by inadequate reasoning, as established by the Constitutional Court, which found that defendants' right to liberty had been violated in those instances.

In addition, excessive leniency in the sanctioning practice represents a concern. In cases under monitoring, the court applied the minimum punishment or above the minimum punishment foreseen by the respective offence in the Criminal Code for five defendants and

applied sanctions below the statutory minimum for 55 defendants.

Considering that these figures are based mostly on sentences resulting from verdicts based on plea-bargaining agreements (PBAs), it is positive that the Supreme Court and Supreme State Prosecutor's Office (SSPO) issued guidelines on the use of PBAs. It is hoped that the leniency problem in PBAs will be addressed through the proper application of these guidelines.

Significant shortcomings were also noted regarding asset forfeiture in OCC cases. The inability to find assets to be seized or frozen for the purpose of direct or extended confiscation of the proceeds of crime indicates that the financial investigation methods currently in use are not effective.

Towards remedying challenges related to the independence of judiciary, trial management, sanctioning policy, quality of judicial acts, financial investigations and asset forfeiture, a comprehensive set of 19 targeted and actionable recommendations based on the Project's trial monitoring findings is presented in the following chapter.

Fairness

1

Recommendation

Make information on the processing of OCC cases publicly available in a timely, accurate and consistent manner, including the publication of trial schedules, indictments, and verdicts. In particular:

- i. The presidents of courts and heads of state prosecutor's offices should ensure uniformity of practice in the publication of judicial acts and other information related to criminal proceedings, including the schedule of hearings.
- ii. The Centre for Training in Judiciary and State Prosecution Service should develop and deliver specialised training courses on public relations (PR) for all prosecutors and judges dealing with OCC cases, especially the heads of institutions and PR representatives, taking into account international standards and best practices in reporting on OCC cases and cases of high public interest.
- iii. The Supreme Court and the SSPO should update their communication strategies with clear instructions on how judges and prosecutors should report on OCC cases of high public interest.
- iv. The Judicial Council and the Supreme Court should launch outreach programmes to facilitate a better understanding of the judiciary's role in upholding the rule of law.

The Project team observed that the schedules of hearings, as well as relevant judicial acts, were not regularly published on the websites of the High Court in Podgorica and the Special Prosecutor's Office (SPO).

Data on at least 229 hearings in 42 cases under monitoring was missing from the court's website. The majority of unannounced hearings were for the control of indictment and for deliberation on PBAs.

Regarding judicial acts, at least 24 indictments were not published in 21 cases, and 71 PBA verdicts in 11 cases.

During the consultations, several interlocutors emphasised the importance of having a specific tool for communicating with the public about OCC cases, as the culture of public relations within the judiciary, especially the courts, had room for improvement.

In addition, training remained necessary to aid judicial actors in identifying the cases worth reporting on and learn about the standards of transparency and reporting in criminal cases. The development of communication

strategies and the involvement of public relations officers and heads of institutions is an effective way to strike a balance between transparency and the protection of judicial actors.

The Project team also proposes the development of outreach programmes to strengthen the connection between the courts and their communities. These programmes could include activities such as open court events, public debates, presentations, and the dissemination of information materials or other content that would foster relations between the judiciary and the public.¹¹⁶

2

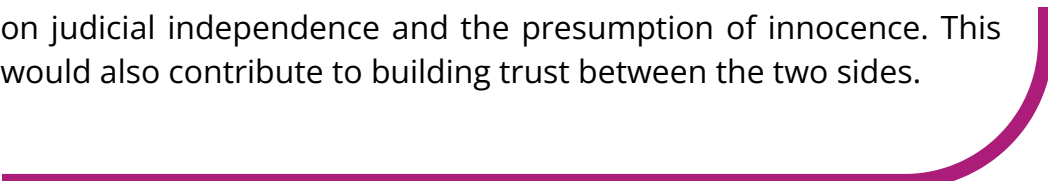
Recommendation

Strengthen the media's capacities to adhere to international standards and the Code of Conduct of Journalists in reporting on OCC cases:

- i. The media self-regulatory bodies should develop a glossary of legal terminology for journalists covering OCC cases to enable adequate reporting and adherence to human rights, including with regard to the presumption of innocence.
- ii. The Judicial and Prosecutorial Councils should offer training for journalists on legal terminology and procedures to build journalists' capacities to cover OCC cases appropriately, including

¹¹⁶ CCJE, Opinion no. 23(2020) on the role of associations of judges in supporting judicial independence, page 9, available at https://www.coe.int/t/e/treaties/23_2020_0000.asp

on judicial independence and the presumption of innocence. This would also contribute to building trust between the two sides.



The Project team identified at least 42 media articles with content that undermined the independence of the judiciary and the presumption of innocence of defendants.

The most common examples included inappropriate use of legal terminology that portrayed defendants as having already been convicted; the publication of photographs of defendants in handcuffs; the promotion of prejudicial statements of politicians or other influential persons on their social media accounts or elsewhere; and the publication of articles inappropriately criticising the conduct of judges in ongoing criminal cases. Some evidence from criminal cases under investigation, including transcripts of encrypted messages were also leaked and published.

According to the feedback received from all judicial actors, how the media in Montenegro reports on criminal cases is often inappropriate and may be designed to put pressure on judges and prosecutors, and undermine public confidence in the judiciary. Some of the

journalists who participated in the CSO event organised by the Project agreed, noting that the media granted too much visibility to politicians' inappropriate statements, especially those in the executive who should be particularly mindful not to undermine defendants' rights and the independence of judges.

In order to help journalists to report in a more professional and ethical way, a glossary of legal terminology to be developed by the media self-regulatory bodies with the help of the Supreme Court or the Judicial Council, would represent a valuable first step. It would provide the necessary legal knowledge to journalists when reporting on criminal matters. In addition, in co-operation with judicial bodies, training could be offered that could be tailored to the needs of reporters and made attractive to attend by involving mock, real-case examples.

Consulted members of the Judicial and Prosecutorial Councils also opined that journalists would benefit from the training organised by members of the judicial system.

The Judicial and Prosecutorial Councils should strengthen trust of judges and prosecutors by:

- i. Ensuring that existing mechanisms to protect the independence of judges and autonomy of prosecutors are used, and subsequently addressing any concerns regarding the personal safety of prosecutors and judges.
- ii. The Judicial Council forming an internal body to address issues related to judges' independence and safety in a more thorough manner.
- iii. Organising regular meetings and forums where judges and prosecutors could raise concerns and ask questions.

As previously noted, the Project team's media monitoring recorded instances in which politicians, influential persons, and journalists commented inappropriately on ongoing cases.

In four high-level corruption cases and three high-level organised crime cases, public officials commented inappropriately on ongoing criminal proceedings.

For instance, in one of these cases, politicians harshly criticised a non-final acquittal by the first instance court. In three cases, undue remarks were made in relation to the release of some defendants from prison, some of them with a High+ status in terms of the

Project's trial monitoring methodology. Both judges and prosecutors agreed with the Project's conclusion and expressed similar concerns during consultations.

The consultations also confirmed that the existing mechanisms to protect independence and autonomy were underused. According to Article 27 (6) of the Law on the Judicial Council and Judges, and Article 37 (9) of the Law on the State Prosecutor's Office, both judges and prosecutors may launch complaints with their respective councils if they consider that their independence has been undermined, while the Councils are obliged to take a position on these complaints.

However, although some members of the judiciary complained to the Project team about the pressure put on them by the reporting of the media and commenting of politicians, consulted members of the Councils stated that judges and prosecutors had never filed

these types of complaints.

They also agreed with the Project that these mechanisms should be strengthened, as adequate reactions to inappropriate comments could deter undue comments in the future.

Efficiency

4

Recommendation

The Supreme Court should create a working group to develop a case-weighting system in order to ensure adequate resources and efficient adjudication of OCC cases:

- i. The working group should develop the criteria necessary to establish a case-weighting system. This would involve considering several factors, including the type of criminal offences, number of defendants, specific circumstances of each case, time needed to study each case, workload of judges, and available resources, such as court staff.
- ii. The case-weighting system should be integrated into decision-making processes by the Judicial Council and Ministry of Justice. This is particularly important when deciding on the allocation of resources, including human and budgetary resources, for the High Court in Podgorica. The system should be flexible enough to adapt to the ongoing process of deploying a revised electronic case-management system in courts.
- iii. To foster continuous evaluation and improvement, once the system is operational there should be regular assessments and updates to ensure its continued relevance and effectiveness.

This should include maintaining the system in line with the development of an appropriate information system in the judiciary.

The Project team's findings indicate that the length of court proceedings is one of the key issues undermining the efficiency of justice. One of the reasons for lengthy proceedings, as confirmed by consulted judges, is excessive workload per judge in the Specialised Department of the High Court in Podgorica, exacerbated by the complexity of cases. As per the standards of the European Commission for the Efficiency of Justice (CEPEJ), case-weighting is a system that enables judicial actors to assess the complexity of different case types.¹¹⁷

This assessment is based on the understanding that each case type differs in terms of the amount of judicial time and effort required to process it. Therefore, the working group should consider all "case-related events" to determine the actual work time required to complete a case rather than the disposition time.

In this respect, it should adopt the Delphi method¹¹⁸ to gather real-time estimates of the time spent on a case. This would involve a self-assessment of the time needed to work on a case by the judges participating in the working

group. Based on these criteria, each case should be categorised appropriately upon its formation in the court.

The case-weighting system would better facilitate an equal distribution of cases, and contribute to a fairer evaluation of judges. It would also serve a number of other purposes, including as an aid in more effectively determining the required number of judges and judicial assistants in the Specialised Department in the High Court in Podgorica.

The working group should consider the lessons learned from Montenegro's previous attempts at case-weighting in 2015 to avoid past mistakes and improve on previous efforts. Furthermore, the Project strongly recommends conducting a comprehensive review of the use of case-weighting systems in other countries, such as Austria, Denmark, Estonia, Germany, the Netherlands and Romania¹¹⁹, in order to benchmark effectively and ensure ownership of the way forward.

¹¹⁷ CEPEJ, Case weighting in judicial systems, page 4, available at: [16809ede97 \(coe.int\)](#).

¹¹⁸ The Delphi method is one of the case-weighting models used to collect estimations of the average amount of work time required per case based on the self-reporting of judges.

¹¹⁹ CEPEJ, Case weighting in judicial systems, page 18, available at: [16809ede97 \(coe.int\)](#).

Ensure timely proceedings through the establishment of predictable timeframes for the processing of OCC cases and strengthening the managerial role of court presidents:

- i. The Supreme Court should establish a working group to create optimal length standards for judicial proceedings in OCC cases. These standards should incorporate a monitoring mechanism, which would enable the collection of data on the length of proceedings for policymaking and re-evaluation purposes. This would be crucial for policymaking and re-evaluating the standards over time.
- ii. The court presidents, as suggested by the Consultative Council of European Judges (CCJE) and the CEPEJ, should monitor the length of proceedings and collect data on important steps in the judicial process.

At the time of writing, the average length of ongoing cases being monitored by the Project was 39 months, starting from confirmation of the indictment. Out of the total number of ongoing cases, 10 are at the pre-trial stage, 39 are in the main trial stage, six are in the appeal stage and two are in the retrial stage. In one case, the main trial has been ongoing for 121 months.

The average length of completed first instance trials is 37 months. The same working group tasked with establishing

the case-weighting system could also determine the acceptable duration of proceedings in OCC cases.

In doing so, the working group should take into account the weight of a given category of cases, as well as the standards of the ECtHR regarding the right to a trial within a reasonable time. The group could learn from other jurisdictions with similar judicial systems in this respect, such as Finland, Latvia, Norway and Slovenia.¹²⁰

¹²⁰ CEPEJ, Compendium of best practices on time management of judicial proceedings, 2006, available at [Compendium \(coe.int\)](http://compendium.coe.int).

The Project considers that the presidents of courts have an important role in improving the efficiency of proceedings. This is in line with international standards, as both the CCJE and CEPEJ encourage court presidents to monitor the length of proceeding, collect related information on the most important steps and record the length of every individual stage of the judicial process.¹²¹

However, findings gathered through the monitoring of cases, as well as through consultations with the relevant stakeholders, suggest that court presidents do not seem to use available data on the length of proceedings for

analytical and decision-making purposes.

Court presidents or relevant case management administrators should also monitor workload allocation data for judicial advisers. This would help to measure efficiency by assessing the ratio between staff employed and cases processed.

Additionally, court presidents could appoint a person responsible for collecting and reporting data related to case flow. This designated administrator would provide updates to the court president at specific stages of proceedings.

6

Recommendation

Enact trial management standards to assist judges in the preparation and conduct of OCC cases:

- i. The Supreme Court should develop guidelines on trial management best practices to assist judges in preparing and conducting OCC cases. These should cover all aspects of trial management by judges, with a particular focus on instructing judges how to conduct a status conference, reach an agreement with parties on the procedural calendar of the trial and minimise deviations from the agreed calendar. The guidelines should include instructions on how to proceed when some of the most frequent procedural impediments arise, including, for example, the absence

¹²¹ CCJE, Opinion on the Role of Court Presidents, page 4, available at [CCJE\(2016\)2REV2 \(coe.int\)](#); CEPEJ, Revised Saturn Guidelines for Judicial Time Management, page 7, available at [TE0801648 \(coe.int\)](#).

Recommendation

of defendants and defence lawyers, requests for postponements, other dilatory tactics, and lack of courtrooms.

ii. The Judicial Council and its bodies should ensure that the evaluation process of judges adequately includes and assesses the ability of judges to prepare and plan trials, taking into account the Supreme Court's guidelines.

As noted in recommendations 4 and 5, the Project team observed frequent adjournments of hearings in OCC cases. For example, from September 2021 to March 2024 there were only seven productive hearings on average per month across all cases under monitoring. The main reasons for adjournments included the absence of defendants in 152 hearings, out of which 72 hearings were postponed due to health reasons, the absence of defence counsels in 78 hearings and the absence of judges in 51 hearings.

In addition to the lack of human and material resources, including courtrooms, judges' passive approaches also contributed to many adjournments. This could be mitigated by planning the conduct of proceedings, particularly by setting up a trial schedule, timeframe and list of procedural actions that need to be taken.

However, the Project team concluded that judges do not take these actions. Indeed, status conferences were not organised in any of the cases under monitoring, even though the CPC foresees it as a tool for trial planning.

The Project team observed several instances in which judges could have avoided adjournments had they taken a proactive approach and planned the course of the trial. For example, in at least five cases, the judge was not prepared to proceed with the examination of other pieces of evidence even though the time allocated for the hearing would have allowed for this.

In two cases, the hearing had to be postponed because the court failed to deliver the indictment to the defendants, despite several months having passed since the indictment was filed. In at least two cases, the judges postponed the hearing at the lawyers'

request, even though procedural requirements for holding the hearing had been met.

Elsewhere, the Project also noticed that the continuous illness of defendants in three different cases prevented trials from even commencing, yet the judges did not take effective measures to resolve this issue. Under such circumstances, judges can ensure the presence of defendants via videoconference.¹²²

During the reporting period, defence lawyers filed at least 18 motions for the recusal of judges and prosecutors, causing adjournments of hearings.

For this reason, the aforementioned guidelines on trial management should address how judges can deal with this issue more efficiently, thereby preventing unnecessary postponements and dilatory tactics of the defence lawyers.

Unnecessary delays are contributing to excessively long trials, having major

implications on the administration of justice.

In one monitored case, the trial was conducted inefficiently, resulting in the dismissal of charges due to the absolute statute of limitations.

In another case, the defendant was released from detention after spending the legally prescribed maximum of three years in detention. Since their release, they have been absent from the trial.

In view of these factors, the Project recommends standardising the scheduling of hearings in OCC cases to ensure parties' commitment and the expediency of proceedings.

As recommendation 6 complements the efforts recommended under recommendation 4, the Supreme Court may consider delegating the drafting of the guidelines to the working group created with the purpose of establishing the case-weighting system.

¹²² ECtHR decision in *Marcello Viola v. Italy*, application 45106/04, para.67, available at [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-77246%22\]%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-77246%22]%7D), Guidelines on videoconferencing in judicial proceedings, available at <https://edoc.coe.int/en/efficiency-of-justice/10706-guidelines-on-videoconferencing-in-judicial-proceedings.html>

To increase efficiency, the subject matter jurisdiction of the SPO and the Specialised Department of the High Court in Podgorica should be narrowed down. In particular:

- i. The Ministry of Justice should identify how to limit the subject-matter jurisdiction related to corruption cases. To this end, this working group should consider revising the current legal definition of “public official” to identify and understand its deficiencies. It should also consider introducing a new term (e.g., high-level public official) in the Law on the Special Prosecutor’s Office.

During the Project team’s consultations, most of the judges and prosecutors identified caseload as one of the major causes of delays in trial proceedings. In this respect, they agreed that narrowing the subject matter jurisdiction of the SPO and the Specialised Department of the High Court in Podgorica could increase the efficiency of their work.

One clear way to reduce the number of cases under the jurisdiction of the specialised bodies would be to revise the definition of public official, as that term is linked to the subject matter jurisdiction in corruption cases of the SPO and the Specialised Department of the High Court in Podgorica.

The definition as it currently stands is too broad and vague, especially as it appears to include a wide range of persons working in the public sector.

At present, it is not possible to determine with precision which category of public officials falls under the definition of high corruption in Article 3 (2) of the Law on the Special Prosecutor’s Office and Article 16 (2) point 2 of the Law on Courts.

Conversely, it is difficult to assess if the case should be under the jurisdiction of the SPO and the Specialised Department of the High Court of Podgorica.

This ambiguity creates two issues. Firstly, it sometimes leads to conflicts between the courts’ jurisdictions, as observed in two cases under monitoring. Secondly, it causes a high influx of cases for these specialised bodies, which have limited human resources, especially as not all of these cases require high qualification and

specialisation to be prosecuted and adjudicated.

By reducing the number of cases that prosecutors and judges must deal with

in their respective specialised bodies, the quality of their work would increase, as they could focus on a few selected cases instead of multiple cases of varying complexity and “urgency”.

8

Recommendation

The Government of Montenegro should provide suitable premises for the SPO and the High Court in Podgorica, and adequately secure and equip them.

During consultations with judges, they identified the lack of courtrooms as one of the main reasons for not being able to meet the deadlines of the Criminal Procedure Code.

The Project team also found that the lack of courtrooms was undermining the efficiency of the judiciary regarding OCC cases. Very frequently, the team observed that judges were forced to schedule hearings well beyond the procedural deadlines because they could not find an available courtroom earlier. There are only two courtrooms available, both of which are used by the Specialised Department and the regular

Criminal Department of the High Court in Podgorica.

In addition, the SPO should also be provided with adequate, secure premises in order to ensure that prosecutors are safe when investigating and prosecuting organised criminal groups.

As building new premises will take time, the Project urges the Government to remedy these issues as swiftly as possible by coming up with a temporary but immediate solution to address the needs of the SPO and the High Court in Podgorica.

National authorities should define and prioritise high-level OCC cases, namely:

- i. The Ministry of Justice should adopt by-laws to define OCC cases for statistical and policy-making purposes. For the same purposes, they should adopt additional criteria to differentiate high-level corruption and organised crime cases from “standard” corruption and organised cases.
- ii. Based on this categorisation system, the SPO and the High Court in Podgorica should consider:
 - Prioritising the prosecution and adjudication of high-level OCC cases, including through the adoption of work plans for the processing of such cases.
 - Mapping high-level OCC cases in order to allocate adequate resources to the SPO and the High Court, which are more involved in their processing.
 - Making sure that the criteria for evaluating the performance of judges and prosecutors adequately reflect the specific challenges posed by the processing of high-level OCC cases.

In its 2018 Western Balkan Strategy, the European Commission underlined that the path to enlargement requires the establishment, as a matter of urgency, of “a concrete and sustained track record in tackling corruption, money laundering and organised crime”.¹²³

The pre-condition for establishing this track record is the establishment of a well-tailored and reliable categorisation

system to identify OCC cases and high-level OCC cases.

Categorising OCC cases and high-level OCC cases would, at a minimum, enable domestic institutions to produce solid statistics on the processing of such cases, thereby facilitating the measuring of progress or regression in establishing the above-mentioned track record.

¹²³ [Balkans BorchureA5 V7.indd \(europa.eu\)](#), page 5.

The laws defining the subject matter jurisdiction of the SPO and Specialised Department of the High Court in Podgorica do not offer adequate definitions of what should be considered as high-level organised crime or corruption.

In fact, that jurisdiction covers any type of organised crime case, regardless of its seriousness, as well as corruption-related offences committed by any public official, regardless of the rank of the perpetrator and the amount of undue gain or damage.

As a result, statistics based on the number of cases processed by the special bodies do not reflect the real number of high-level OCC cases processed in Montenegro. For these reasons, national authorities should adopt ad-hoc criteria for defining such cases independently from the criminal law framework and specifically for policy-making purposes.

The criteria in question should capture the essential features of a high-level case in terms of its seriousness and complexity, while at the same time being sufficiently clear and easy to apply.¹²⁴

This categorisation system could be used to prioritise the prosecution and adjudication of high-level OCC cases and to re-allocate human and material resources where they are needed more.

Specific goals regarding the processing of this type of cases could be envisaged in the annual work plans of the High Court in Podgorica and the SPO.

Finally, the performance evaluation criteria for judges and prosecutors should reflect the additional work and challenges required by high-level OCC cases, considering that these cases put judges under greater pressure, require specialised knowledge and are often complex and include large number of defendants.

¹²⁴ The criteria adopted by the judiciary in Bosnia and Herzegovina for this purpose could constitute a good model from the Western Balkans; see UasXoWOPUpr7dDuta69ZNpWy9RHHOZvfFMN4glwl.pdf (usaidjaca.ba)

Capacity

10

Recommendation

Strengthen the capacities of prosecutors and judges to process money laundering cases in line with international standards. In particular:

- i. The Supreme Court and SSPO should set up a working group to develop guidelines on investigating, prosecuting and adjudicating money laundering offences. The guidelines should clarify any ambiguity in the application of provisions, particularly whether money laundering can be prosecuted as a stand-alone offence (i.e., without prosecuting the predicate offence), also taking into account the eventual legal stance of the Supreme Court suggested under recommendation 14 below.
- ii. The Centre for Training in Judiciary and State Prosecution Service, in co-operation with the SPO and Specialised Department of the High Court in Podgorica, should develop a specialised programme for prosecutors involved in processing money laundering cases.
- iii. The SPO, together with the Financial Intelligence Unit (FIU), should introduce an up-to-date registry on money-laundering typologies. The registry should keep track of money-laundering typologies and case reports, aiding in better understanding and detecting activities indicative of money laundering. It could be inspired by best practices developed by the OSCE Mission to Serbia. International assistance could be sought in this respect as well.
- iv. National authorities should leverage their membership in regional and international co-operation networks. For example, Montenegro's FIU should make full use of its Egmont Group of Financial Intelligence Units (EGMONT) membership for an effective exchange of information with other countries' FIUs.

Also, establishment of Joint Investigation Teams (JITs), supported by Eurojust and/or Europol, should be used more frequently.

The Project team observed that the majority of monitored cases with money laundering charges were prosecuted simultaneously with a predicate offence. During consultations, prosecutors confirmed that they did not prosecute stand-alone money laundering offences, as they needed to know precisely what predicate offence generated the profit. They also recognised that there was no common understanding of the meaning of the term “criminal activity” in Article 268 of the Criminal Code. It should be noted that, according to relevant international standards, particularly Financial Action Task Force (FATF) recommendations and the Warsaw Convention, a prior or simultaneous conviction for the predicate should not be a prerequisite for a money laundering conviction. Hence, to prove that property represents the proceeds of crime, it is not necessary for prosecutors to establish precisely which criminal offence generated the property.¹²⁵ Accordingly, the Supreme Court of Spain determined that it is not necessary to establish all factual

elements of the predicate offence in money laundering cases, allowing proof via indirect or circumstantial evidence.¹²⁶ Three requirements for this evidence were established: unexplained wealth increases or unusual transactions, the absence of legal activities explaining such increases, and links to criminal activity (such as a connection to criminal investigations or unusual accounting records). Similarly, the Amsterdam Court of Appeal created a step-by-step plan for proving money laundering if the predicate offence is unknown, supported by a typology from the FIU containing activities indicative of money laundering.¹²⁷ So far, the Project identified one single case with stand-alone money laundering charges – and no predicate offence – to monitor. Although still pioneering in terms of Montenegrin judicial practice, the indictment was confirmed and thus will provide an opportunity to consider the prosecution and adjudication of this offence in Montenegro with relevant international standards and best practices from abroad.

¹²⁵ The ECtHR ruled in the *Zschüschen v. Belgium* case (application 23572/0723572/0723572/07, available <https://hudoc.echr.coe.int/eng?i=002-11638>) that conviction for money laundering without a known predicate offence is acceptable under the Warsaw Convention. The Court found it fair that suspects are obliged to provide credible explanations about their assets and maintained that the burden of proof was not shifted to the accused, and thus no violation of Article 6 ECHR occurred.

¹²⁶ Supreme Court of Spain, STS 1509/2016 - ECLI:ES:TS:2016:1509, 29.03.2016., available at [Consejo General del Poder Judicial: Buscador de contenidos](http://www.consejojudicial.es/Buscador-de-contenidos).

¹²⁷ Amsterdam Court of Appeal, ECLI:NL:GHAMS:2013:BY8481, 11.03. 2013, available at Rechtspraak.nl - Search in rulings (uitspraken-rechtspraak-nl.translate.google.com).

Enhance the quality of indictments, in particular:

- i. The SSPO should create a working group to develop guidelines on the quality of indictments. The guidelines should be instructive, contain good examples or best practices, and provide a recommended structure or template to guide prosecutors in presenting their cases in the indictment. In addition, the SSPO should create an Indictment Repository of well-written indictments to serve as examples for future reference, which would be regularly updated.
- ii. The Panel for the Control of Indictment should ensure that indictments that do not comply with the necessary legal requirements are not confirmed.
- iii. The Centre for Training in Judiciary and State Prosecution Service should deploy a programme of effective training on legal writing for prosecutors. Particular attention should be paid to the form and reasoning of indictments.
- iv. The Prosecutorial Council should revise the performance indicator relating to the quality of written decisions in the performance management systems for prosecutors in order to create additional incentives for high quality indictments.

The Project team observed various deficiencies with examined indictments in at least 26 instances. These included uncorroborated charges, insufficient explanation of the link between evidence and charges, deficient reasoning regarding each element of the criminal offence and lack of

readability and conciseness, for example. In addition, the level of reasoning and writing style varied considerably, while the reasoning also often lacked an analytical overview of the charges and the prosecutor's conclusion.

During main-trial hearings, the court frequently struggled to establish some of the key facts of the case, while the prosecution regularly failed to demonstrate how those facts related to the charges set out in the indictment.

Efforts to elaborate on specific elements of the offence, its mental element in particular, also proved challenging in corruption cases. In terms of indictments with organised crime charges, the Project team noticed in at least ten indictments that prosecutors neglected to reason how an alleged criminal group met the requirements from Article 401a CPC.

Some of the judges consulted by the Project confirmed this, and stated that particular attention should be placed on the qualification of the criminal offence from Article 401a CPC because neglecting to prove all of its elements might result in the withdrawal of charges or acquittals. In three cases with first-instance acquittal verdicts, the Project observed the deficiencies listed above, which may have contributed to the outcome.

For these reasons, guidelines on the quality of indictments could help prosecutors draft better quality indictments. The guidelines should emphasise the importance of the statement of reasons as a core element of an indictment and provide advice on how best to achieve it.

They should also predominantly aid the prosecutor in linking pieces of evidence with particular charges in order to enable the presentation of charges to be as accurate as possible.¹²⁸

Furthermore, the panel for the control of indictment should be more effective in its judicial review. During the reporting period, the panel did not rule on the admissibility of certain evidence on a number of occasions in cases under monitoring, despite the defence pointing out their inadmissibility.

This problem was particularly evident in cases in which the indictment was largely based on data obtained from encrypted messaging applications. In some cases, a piece of evidence was declared inadmissible at a late stage during trial, even though the defence had pointed to its inadmissibility during the control of the indictment stage.

This issue was also raised by the prosecutors and lawyers consulted by the Project team. Both claimed that it was of paramount importance that judges checked the legality of evidence at the control of the indictment stage to avoid the confirmation of faulty indictments.

To clarify that this is the duty of the panel for the control of indictment, the Supreme Court should issue a stance, as proposed in recommendation 14.

¹²⁸ See an example here: <https://www.osce.org/files/f/documents/f/d/528222.pdf>, pages 93-94.

Higher quality indictments could also be achieved by amending the criteria for evaluating the quality of prosecutors' work. In this regard, the Project team observed that all existing indicators are of a quantitative nature, meaning that prosecutors are evaluated based on the percentage of confirmed indictments and judgements of conviction.

To achieve a more substantive evaluation of their work, the Prosecutorial Council should develop objective criteria based on which it would assess the quality of reasoning in indictments and other acts. The necessity for such a change was also recognised by prosecutors and members of the Prosecutorial Council during consultations.

12

Recommendation

Enhance the quality of reasoning of judicial decisions, particularly verdicts and decisions ordering and extending detention:

- i. The Supreme Court should create a working group to develop guidelines on the quality of verdicts and other judicial decisions, particularly detention-related or alternative measures. The guidelines should be instructive, contain good examples or best practices and provide a recommended structure or template to guide judges in presenting their reasoning in verdicts/judicial decisions.
- ii. The Judicial Council should revise the performance indicator relating to the quality of judicial decisions in performance management for judges, integrating the new guidelines into the evaluation process in doing so. In addition, ensuring adequate training of the evaluation committee on the application of these new standards is also important.
- iii. The Centre for Training in Judiciary and State Prosecution Service should deploy a programme of effective training on legal writing for judges. Particular attention should be paid to the form and reasoning of verdicts.

The Project observed insufficient reasoning in judicial decisions across a number of cases under monitoring. In at least three analysed verdicts, judges mostly transcribed the written evidence, statements of witnesses, or expert opinions without providing an adequate, analytical overview of the evidence.¹²⁹

In addition, it often remained unclear why the court had chosen to rely on certain evidence at the expense of the other. So too, in at least four verdicts examined during the reporting period, the court encountered challenges in reasoning the mens rea (the mental element) as one of the mandatory elements of a criminal offence. In at least 61 verdicts rendered upon PBAs, the court relied excessively on the particularly mitigating circumstances, as declared by the prosecution, without engaging in critical reflection. The courts confirmed the PBAs with mild sanctions without reasoning how they found them to be in line with the “interest of fairness”, as requested by Article 302 (8) point 5 CPC.

The shortcomings observed in reasoning decisions were not limited to verdicts. Courts also faced challenges when reasoning decisions related to ordering or extending detention, decisions on bail, and decisions on trial in absence. Detention-related decisions lacked critical questioning of each of the

grounds for detention, especially when it came to its extension. During the reporting period, the Project team observed an increase in the decisions of the Constitutional Court of Montenegro establishing violations of defendants’ right to liberty. At least 12 decisions of this kind were identified in seven cases.

In all, violations were found because decisions on detention and refusal of bail had not been adequately reasoned. In the majority of instances, the Constitutional Court considered the reasoning insufficient because the regular courts failed to specify the concrete circumstances that indicated a risk of defendants absconding. Additionally, violations were identified because the regular courts had not adequately reasoned the existence of reasonable doubt. Particularly alarming was the finding that the Constitutional Court established violations of at least five defendants’ right to liberty in four cases more than once.

One of the proposed measures to remedy this issue is assessing judges’ skills to reason their decisions. Currently, there are no clear standards or guidelines to evaluate the comprehensiveness of argumentation in judicial decisions. Hence, the Judicial Council should develop reliable and precise indicators to assess the quality of reasoning during the performance evaluation of judges.

¹²⁹ Article 379 (7) CPC requires the court to indicate clearly, and thoroughly which facts are considered proven or not, and why, with a special emphasis on the credibility of contradictory evidence.

Enhance court capacities by strengthening the capabilities of judicial advisers. In particular:

- i. The Centre for Training in Judiciary and State Prosecution Service should expand its programmes for judicial advisers and include specialised OCC training for the judicial advisers working with judges in the Specialised Department to build their capacities and provide effective assistance to these judges.
- ii. The High Court in Podgorica should gather and analyse data on the work of each judicial adviser. Additionally, it should reassess its organisational needs and consider the workload-related requirements of individual judges. Based on this assessment, the court could determine the required number of advisers, incorporating this information into its early work plan.

The Project team learnt during its consultations that there was a pressing need to increase the number of judicial advisers in the Specialised Department of the High Court in Podgorica.

According to the published decisions of the High Court in Podgorica on staff reallocation, no judicial advisors were transferred to its Specialised Department in 2023, despite the judges during consultations confirming that the Department's workload was at its highest level at the time. To address this issue, measures such as the appointment and reallocation of court

staff in accordance with assessed needs could be effective.

Steps should also be taken to strengthen the expertise of court associates, as only one benefitted from specialised (OCC) training in 2022.¹³⁰

In addition, judges' ability to organise and co-ordinate court employees is one of the criteria in their performance evaluation. This ability is assessed based on data collected from the case-management system (PRIS), which tracks the workload delegated to advisors.

¹³⁰ Yearly report of the Centre for Training in Judiciary and Prosecutorial Service for 2022, page 15, available at: [Godisnji-izvjestaj-o-radu-Centra-za-obuku-u-sudstvu-i-drzavnom-tuzilastvu-za-2022.-godinu.pdf \(cosdt.me\)](https://www.cosdt.me/Godisnji-izvjestaj-o-radu-Centra-za-obuku-u-sudstvu-i-drzavnom-tuzilastvu-za-2022.-godinu.pdf).

This assessment should inform the performance management of advisors using the same data, as it would allow

for more adequate input from judges and better reflection of this data in PRIS.

14

Recommendation

The Supreme Court should harmonise the interpretation of criminal provisions where conflicting practices undermine legal certainty; this is the case with:

- i. Provisions on the scope of judicial control of indictments.
- ii. Provisions on trials “in absentia”.
- iii. The term “criminal activity” in the criminal offence of money laundering.
- iv. The term and criteria for “particularly mitigating circumstances” allowing sentences below the statutory minimum.

According to Article 124 of the Constitution of Montenegro, the Supreme Court shall secure unified enforcement of laws by the courts.

Article 26 of the Law on Courts envisages that the Supreme Court issues stances on contentious legal issues that have arisen from the case law, either ex officio or upon a request of lower instance courts.

During the reporting period, the Project team observed that some legal norms

were inconsistently interpreted and applied by prosecutors and judges, leading to legal uncertainty.

For example, it found that judges did not have a unified understanding of the conditions for trials in absentia. This issue was particularly evident in cases where the extradition of the accused person was pending, as judges had different approaches to determining whether the conditions for trial in absentia had been met in respect of such accused persons.

During consultations, judges acknowledged the challenge and stressed that clarification in this regard would be important and necessary. The same applies to the issue of discontinuing investigations against defendants who have fled the country. The Project noted that while some prosecutors discontinued investigations against defendants who were on the run, others filed the indictment and proposed trials in absentia. This inconsistent approach was confirmed during consultations, with some prosecutors admitting that they had not discontinued investigations despite the provision of Article 286 CPC.

They stressed that the above provision was not clear and could put the case at risk because of the statute of limitations.

For the rationale behind the inconsistent legal reading of the provisions on the scope of judicial control of indictments, please refer to recommendation 11. For the rationale behind the inconsistent legal reading of the term “criminal activity” in the Criminal Code, please refer to recommendation 10 above.

For the rationale behind the inconsistent legal reading of the terms “particularly mitigating circumstances”, please refer to recommendation 16.

15

Recommendation

Revise the concept and use of plea bargaining in OCC cases. In particular:

- i. Judges and prosecutors should adhere to the guidelines issued by the Supreme Court and the SSPO on the use of PBAs.
- ii. The Ministry of Justice should analyse and consider a procedural instrument that would facilitate co-operation between prosecutors and defendants or convicted persons. This should be established in accordance with international standards and best practices, for example the Agreement on Testifying by a Convicted Person in Serbia, to provide prosecutors with a reliable tool for collecting evidence from defendants.

The Project team noted that one advantage of PBAs is to speed up the judicial processing of OCC.

On the other hand, it also observed cases in which defendants with key roles in organised criminal groups were given very light sentences by accepting PBAs, whereas other defendants who played minor roles in criminal groups continued trials and often remained in detention for long periods of time.

This was also recognised by some judges during consultations, who, in fact, argued against the efficiency benefits.

The lenient sanctioning effect and very low rate of direct or indirect confiscation as a result of PBAs were highlighted as

another concern arising from plea bargaining.

For these reasons, it is positive that guidelines on the use of this practice have been adopted, and it is hoped that their implementation will result in a more effective use of PBAs.

The Project team also considers that prosecutors would benefit from having a procedural instrument that would allow them to obtain relevant information on the case from other defendants or convicted persons.

Consulted prosecutors agreed that introducing a mechanism akin to the Agreement on Testifying by a Convicted Person would prove beneficial in detecting, proving and preventing OCC cases.

16

Recommendation

Create a more robust deterrent policy and practice for OCC. Towards this end:

- i. The Supreme Court should pass guidelines on sentencing practices and the individualisation of penalties, offering guidance on what would be considered a standard medium range of penalty for OCC offences and in which circumstances that range may be decreased down to the minimum or increased up to the maximum of the statutory penalty envisaged in the Criminal Code.
- ii. State prosecutors should always propose the type and severity of penalty in the closing remarks and present the reasons that led them to determine that specific penalty in front of the court.

The Project team observed the trend of a more lenient sanctioning practice in Montenegro, which was confirmed by judges and prosecutors during consultations. The conclusion of a lenient sanctioning policy mostly derives from PBA verdicts. However, as this is stated in the reasoning of these verdicts and was confirmed by judges during consultations, the lenient sanctioning policy in PBAs is guided by the overall lenient sanctioning policy in regular criminal proceedings.

The Project also noted that courts tend to overemphasise the significance of mitigating circumstances on the punishment, while diminishing the influence of aggravating circumstances, without providing sufficient reasoning in both cases. This was also confirmed during consultations with civil society representatives monitoring the work of the judiciary.

The recommended guidelines should incorporate deterrence in sanctions for OCC.¹³¹ Additionally, the guidelines should instruct judges to provide

specific reasoning for both mitigating and aggravating circumstances,¹³² especially in cases where the circumstances are particularly mitigating. In addition, the legal stance may guide judges on the relevant security measures imposed ex-officio alongside the sanctions.

Prosecutors also have an important role to play in the creation of sanctioning practices. During the reporting period the Project observed that prosecutors regularly neglected to propose the specific type and severity of the sentence in their concluding remarks. In addition, they failed to explain the aggravating and mitigating circumstances the court should consider when determining the sentence, which is their duty as foreseen in Article 362 CPC.¹³³

Instead, prosecutors left it up to the court to assess what the appropriate sentence was, potentially contributing to the existing lenient sanctioning policy. Some consulted prosecutors admitted that they rarely proposed the severity of the sentence and acknowledged that this practice needed to be changed.

¹³¹ See the UN Convention against Transnational Organised Crime, Article 11, and the Legislative Guide for the Implementation of the Convention, para. 304-310, available at:

https://www.unodc.org/documents/treaties/Legislative_Guide_2017/Legislative_Guide_E.pdf

¹³² "The major aggravating and mitigating factors should be clarified in law or legal practice. Wherever possible, the law or practice should also attempt to define those factors which should not be considered relevant in respect of certain offences", Council of Europe Rec. No (92) 17 concerning consistency in sentencing, 1992, available at: <https://rm.coe.int/16804d6ac8>

¹³³ Article 362 (2) stipulates that the prosecutor in their closing remarks proposes the type and severity of the sentence.

The Judicial and Prosecutorial Councils should reassess the performance management system for judges and prosecutors. The goal should be to ensure that the qualitative Key Performance Indicators (KPIs) accurately reflect the substance of prosecutorial/judicial work and provide clarity during assessment. Specifically:

- i. Indicators for evaluating judges and prosecutors' quality of work should be amended to include qualitative criteria, in addition to the existing quantitative ones.
- ii. The clarity of the evaluation process should be enhanced by clearly defining how criteria and indicators should be assessed in practice.

To ensure an effective judicial response in complex cases, performance evaluation and promotion should rely on a merit-based approach and cultivate creativity and agility to stimulate judicial actors to be at their best. The performance-management system of judges and prosecutors in Montenegro mostly relies on quantitative (statistical) indicators of work (e.g., a percentage of confirmed indictments for prosecutors, or a percentage of confirmed verdicts for judges). There is no substantial qualitative assessment of the content of these decisions, i.e., the quality of the reasoning in the indictment or verdict is not examined, as explained under recommendations 11, 12 and 15.

All interlocutors agreed on the importance of introducing specific qualitative performance indicators to facilitate a more effective evaluation process and incentivise judges and prosecutors.

On the other hand, the suitability of quantitative criteria based on rate of reversed decisions for judges, or of rejected appeals for prosecutors, should be carefully assessed with a view to ensuring that they do not undermine the internal independence of judges and the prosecution's role in ensuring accountability for crimes.

Furthermore, the evaluation process does not seem to be sufficiently clear. During consultations, members of the Judicial and Prosecutorial Councils, as well as judges and prosecutors, were uncertain about how they were being individually assessed against each indicator.

To overcome any ambiguities, both the Judicial and Prosecutorial Councils should develop concrete standards on how to evaluate each indicator in practice.

Use of Judicial Tools

18

Recommendation

The Government of Montenegro should ensure accessibility of data from all state registries for the SPO.

Currently, the data necessary for effective financial investigations and money laundering prosecution is fragmented in Montenegro, with different state bodies having exclusive access to certain databases.

Prosecutors only have direct access to some state institutions' databases. Even then, they sometimes still have to file formal requests to receive data in the form of evidence, regardless of their direct access.

The Project team's consultations underlined that prosecutors face multiple related challenges and are often unable to obtain or analyse important information.

Since the existing databases are scattered across different electronic platforms, and the unification of all data into one single database does not seem

to be feasible in the short term, the Government of Montenegro should provide access to needed information to all prosecutors from the SPO, as well as to their financial investigators.

That access should be full, exhaustive, and unlimited, enabling a comprehensive investigation and analysis of data.

In the long term, the Government of Montenegro should unify the existing databases into one system. During consultations, stakeholders informed the Project that initial steps towards achieving that objective had been taken; however, the public procurement of such services had failed to produce results. International assistance could be requested in this regard, as the SPO must be provided with access to the unified databases.

Strengthen the capacities of prosecutors to conduct financial investigations in OCC cases.

- i. The Centre for Training in Judiciary and State Prosecution Service should develop and deliver effective training for specialised prosecutors on carrying out financial investigations.
- ii. The Prosecutorial Council should develop a strategic plan to ensure that expert staff capable of carrying out complex financial investigations are available to the Prosecutorial Service, in particular in the SPO.
- iii. The Prosecutorial Council should consider including results related to extended confiscation among the criteria for the evaluation of prosecutors.

The Project team analysed statistical data on financial investigations and their results in the cases under monitoring and found that financial investigations had been launched in the majority of cases. However, instances of assets being frozen or seized were very limited, even though the damage or gain in some monitored cases amounted to millions of euros.

Considering the high rates of financial investigations on one side, and the low number of cases with seized assets on

the other, concerns exist regarding prosecutors' capacities to effectively initiate and conduct financial investigations, with the final aim of applying extended confiscation.

Following consultations with prosecutors and financial investigators, the Project team concluded that the reason behind the low rate of asset forfeiture was the poor quality of financial investigations, and very limited amount of qualified financial investigators at the SPO, whereas the

alleged perpetrators seem often much skilled in disguising their illegal gains. For example, the prosecutors repeatedly stated that qualified financial experts could not be motivated by current salaries to join the prosecutorial service or deliver their services for a long period.

Thus, the Prosecutorial Council should consider creating more favourable and attractive work conditions for financial investigators.

During consultations, prosecutors also acknowledged that training they had undergone on financial investigations and asset forfeiture had limited utility in uncovering criminals' well-disguised illegal property. Therefore, future training should take the form of a mock exercise and be adapted to include the implementation of best practices in the Montenegrin context.

In addition, the SPO should consider organising an internal working group to map the shortcomings in financial

investigations and asset forfeiture and develop a standardised scheme for the course of financial investigations, namely a step-by-step guide to confiscation, starting from the moment an asset is identified during the financial investigations.

Elaborating on all available means and tools to identify the last (illegal) source of assets (including analysing the chain of conversions and transfers backwards) would contribute to ensuring an eventual effective confiscation. The SPO should start actively using the existing informal networks to exchange on financial investigations and asset recovery.

The Project also considers that prosecutors would be more incentivised to pursue extended confiscation if the achieved results were taken into account during their evaluation. Some consulted members of the Prosecutorial Council agreed that such an amendment to the evaluation criteria could prove beneficial.

IX. North Macedonia

Introduction

North Macedonia has made some progress in investigating and prosecuting OCC cases. Necessary legal amendments that would remedy the practical problems arising in court proceedings are crucial for effective adjudication of OCC cases.

The OSCE Mission to Skopje supports the Working Group established by the Ministry of Justice drafting much needed legal amendments to the CPC that should help in better processing OCC cases. These draft amendments align with the Project's findings and will aid in remedying some of the issues discussed in the recommendations below. Similarly, recent positive developments in the regulatory framework related to asset recovery should encourage all competent institutions to make more serious efforts to increase confiscation rates.

Nevertheless, low public trust in the judiciary persists, among other, due to prolonged trials, judicial actors' lack of accountability, and limited confiscations of the proceeds of crime.

The key areas of concern are systemic issues like limited capacities and resources, inefficient case management, delays in judicial elections or promotions, gaps in inter-institutional information sharing, and inadequate performance management.

These challenges significantly impact the overall effectiveness of the judiciary, slow down high-level OCC cases, and contribute to perceived independence and impartiality issues.

Moreover, most of those issues intersect and reinforce each other. For example, poor case management, which leads to prolonged trials, raises questions about trial fairness. Capacity issues with public prosecutors – especially poor-quality indictments, insufficient financial investigations, and low confiscation rates – may raise concerns about impartiality. In addition, the Basic Public Prosecution Office for Prosecuting OCC (BPPO OCC) lacks human and financial resources – especially administrative staff and financial experts– as well as integrated software for case flow management, thereby hindering accountability in high-level OCC cases.

While lack of efficiency – especially the length of trials – remains a concern, the Project did note some improvements, such as more frequent hearings and improved documentary evidence presentations by both parties. In addition, the Basic Criminal Court Skopje (BCC Skopje) continues to foster transparency by publishing regular announcements on its website and providing easy access to relevant information for high-level OCC cases.

The Supreme Court of the Republic of North Macedonia (Supreme Court) also issued a principled legal stance that courts should publish non-final verdicts and decisions, especially in cases of public interest.

This in turn prompted the BCC Skopje and Appellate Court Skopje to begin anonymising and publishing non-final verdicts in high-level OCC cases.

However, recent CC amendments led to the termination of many of the high-level OCC cases, which exacerbated society's perception of impunity.

Therefore, all institutions involved in the

processing of OCC cases should continue their efforts to ensure accountability and the effective administration of justice.

Real progress requires a long-term commitment from stakeholders to address the systemic inefficiencies that are currently rendering the processing of serious OCC cases ineffective.

Against this backdrop, the Project proposes 12 recommendations regarding fairness, efficiency, capacity and confiscation, to serve as a basis for immediate action and support institutional policies.

Fairness

1

Recommendation

Enhance the level of transparency in the judiciary, especially in the administration of justice for high-level OCC cases:

- i. The Ministry of Justice should initiate amendments to align the Law on Case Flow Management with the CPC, specifically regarding the possibility of publishing non-final court decisions.
- ii. The public prosecution offices should publish confirmed indictments in high-level OCC cases with all personal data anonymised.
- iii. The Judicial Budget Council and the State Public Prosecution Office should support the development of a sustainable and systematic solution for promptly anonymising judicial acts.
- iv. The Ministry of Justice and the Supreme Court, in coordination with the court presidents, should improve the technical capabilities of the existing court's hearing schedule system to ensure timely updates and provide accurate information to the public.
- v. The presidents of courts, in cooperation with relevant CSOs and the Judicial Media Council, should publish regular newsletters containing information about cases of public interest, as well as thematic and analytical papers.
- vi. The presidents of courts and the chiefs of public prosecution offices should ensure the timely and transparent dissemination of information by maintaining well-functioning public relations offices.

Recommendation

vii. The Academy for Judges and Public Prosecutors and the Judicial Media Council should continue with the effective implementation of continuous training for judges, prosecutors, and other judicial staff on how to communicate effectively with the public regarding their cases.

The Project noted impediments hindering transparency, specifically related to the publicity of judicial acts, hearings, and data-based sharing of information.

Obtaining written verdicts is challenging due to conflicting legal provisions. Specifically, according to the Law on Courts and Law on Case Flow Management, courts are prohibited from disclosing written verdicts publicly unless they are final.

This is in contrast to the CPC, which mandates that all court verdicts should be made publicly available in electronic or printed form.¹³⁴

The inconsistency between the two laws was partially addressed by the Supreme Court's principled legal stance from December 2022, allowing for the publication of non-final verdicts and decisions, especially in cases of public interest.¹³⁵

However, it refers to cases of public interest as a category that is not defined by law or other legal acts of the judicial institutions. This allows the courts to interpret and apply the decision according to their understanding of public interest, which does not always coincide with the actual interest of the public.

Regarding the prosecution, it is important to note that it regularly informs the public about indictments filed in cases of public interest by publishing a summary of the charges on its website. However, this information is not sufficient for journalists, CSO representatives, and legal experts to conduct a thorough analysis, or to provide the media with a basis for objective reporting.

Considering that the public prosecution acknowledges the importance of informing the public by providing details immediately after the indictment

¹³⁴ Article 126 of the CPC (Official Gazette of the Republic of North Macedonia No.150/10, 100/12, 142/16 and 198/18).

¹³⁵ According to the Law on Courts (Official Gazette of the Republic of North Macedonia No.58/06, 62/06, 35/08, 150/10, 83/18, 198/18 and 96/19), one of the competences of the Supreme Court is to define general views and legal opinions on issues of significance for ensuring uniform application of the laws by the courts, adopted by its General Session. See: [Начелен+став+-+објавување+на+неправосилни+одлуки.pdf \(vsrm.mk\)](#)

is filed, the Project recommends publishing the full text of confirmed indictments in high-level OCC cases. This measure aims to prevent misinterpretation and abuse of information. Since the trials are public, followed by significant media attention, and subject to monitoring by CSOs, it cannot be argued that this would violate the right to presumption of innocence.

The courts and public prosecution offices also face difficulties in processing judicial acts to make them publicly available due to insufficient staff resources needed for their anonymisation.

This situation arises from compliance with legal regulations aimed at protecting personal data. The Project received indictments following requests to the prosecution, but only after they had been anonymised, which took a considerable amount of time. Of note, the BCC Skopje depended on partially outsourced anonymisation through a Project supported by the OSCE Mission to Skopje in co-operation with the CSO "Coalition All for Fair Trials".

For these reasons, it is clear that the Judicial Budget Council and the State Public Prosecution Office – in accordance with their competences – should reassess the allocation of resources for adequate staffing for anonymisation in order to ensure sustainability.

Current court hearing schedules are published in a dedicated part of the courts' websites. However, the information only contains the case number and presiding judge, which makes it difficult for the public to learn about a specific case without knowing the case number. This could be solved easily if the name(s) of the defendant(s), their initials, and criminal offence(s) were indicated on the timetable of hearings. In addition, the Project noted that subsequent changes in schedules were not updated.

Although both issues only require minor technical adjustments in the court information system, they would significantly contribute to the transparency of the judiciary.

The Ministry of Justice and the Supreme Court are responsible for providing the necessary technical conditions for enhancing the court schedule publishing system and for the overall functionality of the judicial portal. Additionally, they should ensure that the platform used for publishing verdicts has the necessary technical capacity to accommodate them.

While the BCC Skopje regularly publishes important information with updates on court proceedings of public interest, the Appellate Court Skopje publishes a limited number of announcements with vague content.

The role of court presidents is also crucial in this regard and should be further strengthened, according to CCJE Opinion No.19 (2016).¹³⁶

Moreover, enhancing co-operation with CSOs regarding the preparation and publication of analytical data about cases of public interest, including decisions in these cases, would significantly contribute to increasing trust in the courts.

This could be done without significant resources, including through the publication of periodic newsletters and

short analytical reports and graphs, whereas the Judicial Media Council can play a role in their promotion.

During the Project's consultations, judges emphasised the need to further develop public relations skills.

Although the Academy for Judges and Public Prosecutors offers basic training in this field as part of its regular training programme, there is a significant opportunity to further enhance knowledge on these topics through established cooperation with the Judicial Media Council.

2

Recommendation

The Judicial Council and Council of Public Prosecutors should shield judges and public prosecutors from all forms of political pressure and other interference, thereby protecting the independence of the judiciary, while assuring its accountability. They should do so by:

- i. Developing standard procedures for monitoring, reporting, and publicly condemning any infringements or attempted interference with the independence of judges and public prosecutors.
- ii. Drawing self-evaluated conclusions to improve fairness and increase transparency regarding elections, promotions, and the outcomes of disciplinary procedures against judges and public prosecutors. Additionally, they should publish decisions that provide detailed reasoning.

¹³⁶ The [CCJE \(2016\)2REV2 \(coe.int\)](#) states that "...in their relations with the media, court presidents should keep in mind that the interests of society require that the media be provided with the necessary information to inform the public on the functioning of the justice system".

iii. Promptly informing the public about upcoming council sessions and all conclusions and decisions.

The Project has observed several instances of prominent political figures expressing dissatisfaction publicly and criticising court decisions in cases involving high-ranking officials, signalling potential political interference; however, the Judicial Council did not condemn these verbal attacks on the judiciary by issuing official statements or taking other concrete steps to shield the judges. Following CCJE Opinion No.24 (2021), “the Council must counter decisively any attempt to attack or put pressure on individual judges or the judiciary as a whole.”¹³⁷

The Project observed an instance where a prosecutor publicly criticised the Council of Public Prosecutors and emphasised the need to reform it. This resulted in the Council of Public Prosecutors asking the Ethical Council of Public Prosecutors to determine whether this statement was a violation

of the Code of Ethics of Public Prosecutors.¹³⁸ To this date, no publicly available information on the outcome of the initiative can be found. The CSOs monitoring the work of the Councils criticised both the substance of this initiative, as well as the lack of transparency at the Council of Public Prosecutors’ session during which the need for such a request was determined. When assuming its role of safeguarding the autonomy of prosecutors, the Council of Public Prosecutors should respect the recently adopted Opinion No.18 (2023) of the Consultative Council of Public Prosecutors.¹³⁹

The Constitution, law(s), and other legislation guarantee the Councils’ independence and position them as responsible bodies for ensuring the independence of judges and autonomy of public prosecutors, as well as for upholding their reputation and maintaining public trust.¹⁴⁰

¹³⁷ [1680a47604 \(coe.int\)](#)

¹³⁸ In July 2021, the Council of Public Prosecutors adopted a new Code of Ethics for Public Prosecutors which included an article according to which the public prosecutors shall not comment in public the decisions of the Council of Public Prosecutors. See: [eticcki-kodeks-na-javnite-obviniteli-2021.pdf \(jorm.gov.mk\)](#).

This Article was amended in November 2023 and now reads that the public prosecutors should make sure that they would not violate the reputation of the public prosecution office and the Council of Public Prosecutors in their public appearances. See: [Етички-кодекс-за-изменување-и-дополнување-на-Етичкиот-кодекс-на-јавните-обвинители-на-Република-Северна-Македонија-1.doc \(live.com\)](#)

¹³⁹ [1680ad1b36 \(coe.int\)](#)

¹⁴⁰ Article 104 of the Constitution, Article 2, 36 (1) i.16 of the Law on Judicial Council (Official Gazette of the Republic of North Macedonia No.102/19), Ethical Code of the Members of Judicial Council, Program for work of the Judicial Council for 2024, Article 2 of the Law on Council of Public Prosecutors (Official Gazette of the Republic of North Macedonia No.150/07, 100/11 and 42/20).

Nevertheless, the Councils currently lack standardised procedures on how to accomplish this objective, as it appears that the legislation primarily emphasises their role in sanctioning misconduct. It was noted by the Project that the Judicial Council took some individual actions to address the efficiency of the proceedings but failed to adopt a systemic approach in identifying and resolving the ongoing issues. During the Project's consultations and discussion forums, judges and public prosecutors expressed their dissatisfaction with the work of the Councils openly. They also emphasised the need for more transparent procedures for elections and promotions, including more detailed and comprehensive explanations for decisions. By re-evaluating their voting practices, the Councils could try to ensure equal treatment of all candidates, as well as transparent application of the merit-based system. Regarding the outcomes of disciplinary procedures, the violation and brief rationale of decisions should always be made public without fear of interfering with privacy rights.

As noted in the "Corruption Risk Assessment of the Judiciary in North Macedonia", published with the support of the OSCE Mission to Skopje, "almost three-quarters of judges do not believe that the Judicial Council successfully

protects judicial independence, and they do not believe that the promotion of judges is conducted according to objective, measurable, and fair criteria." Similarly, more than half of public prosecutors "do not believe that the Council of Public Prosecutors takes decisions autonomously and independently, and they do not believe that the promotion of public prosecutors is conducted according to the existing legislative criteria."¹⁴¹ In a positive step, however, the Judicial Council has also detected some of these shortcomings and in its Strategic Plan for the period 2023 to 2024 has envisioned activities that would lead to enhanced protection of judges' reputations and increased transparency.¹⁴² The same has been reflected in the Program and Action Plan for Prevention and Assessment of the Corruption in the Judiciary for the period 2022-2025¹⁴³ and in the Work Plan of the Judicial Council for 2024, in which the protection of judges from undue influence is one of the priorities.¹⁴⁴ Improving the process of elections, appointments, and disciplinary proceedings, as well as enhancing transparency is a crucial part of the Action Plan for Implementation of the Recommendations from the EU Peer-review Mission to the Judicial Council, adopted in March 2024.¹⁴⁵ The level of implementation of these documents remains to be seen.

¹⁴¹ osce.org/files/f/documents/9/d/545929_0.pdf, p.38.

¹⁴² [Y2023-SDN-\(GD\)0455.pdf \(sud.mk\)](#)

¹⁴³ [Програма и акционен план за превенција и следење на корупцијата во судството 2022 - 2025 \(sud.mk\)](#)

¹⁴⁴ [Y2024-SDN-\(GD\)2600.pdf \(sud.mk\)](#)

¹⁴⁵ [Y2024-SDN-\(GD\)0545.pdf \(sud.mk\)](#)

3

Recommendation

Improve the fairness standards for adjudicating OCC cases to emphasise judicial impartiality in tandem with equality of arms.

- i. Judges and court presidents should fully respect their responsibility not only to remain impartial but also to appear impartial throughout trial proceedings and apply the highest standards to the decisions they take and the processes through which these decisions are reached.
- ii. The heads of criminal departments in the courts should facilitate regular discussions and share best practices among judges.
- iii. The Academy for Judges and Public Prosecutors should ensure that issues of fairness are central in the training curriculum, and present achieved results in a measurable manner.

In several instances, the Project noted issues concerning fairness, with certain judges' behaviour raising concerns about their impartiality and commitment to the principle of equality of arms.

For instance, in at least two cases – and on a couple of occasions – the Project observed the following: the second professional judges as members of the trial panel exited the courtroom during a hearing without giving a recess, judges took over the questioning of the witness from the parties, demonstrated impatience or criticised the witnesses who testified.

Such behaviour should be addressed and corrected to maintain public trust in judicial impartiality. Ultimately, judges should always respect their responsibility not only to act impartially but also to appear impartial.

Concerning the right to a public trial, the Project noted in a few instances that judges failed to announce the verdicts publicly, instead simply instructing the defendants that they would be notified of their decision in written form in due course. The public announcement of the judgements is especially important in cases where the written reasoning of the verdicts is not publicly available in due time.

Regarding equality of arms, the Project observed in a few instances that judges limited the rights of the parties. Specifically, they limited the parties' ability to: object to opposing evidence; challenge witnesses by referring to previously given statements during the investigation, or before the hearing started anew; and present their own evidence, which was sometimes rejected without sufficient justification.

It should be stressed that the initially observed issues by the Project concerning the sharing of the prosecution's evidence with the defence are currently very rarely detected in the OCC trials. The Project notes that this issue would be further resolved with the planned amendments to the CPC, as

they impose obligatory and timely disclosure of evidence by the prosecution.

The court presidents and heads of criminal departments could play a crucial role in organising meetings, facilitating communication among judges, and encouraging them to be self-critical and share best practices in order to improve the overall image of courts.

Furthermore, the Academy for Judges and Public Prosecutors should address these issues concerning fairness in both initial and continuous training. It should also conduct a data-based evaluation of the results achieved, report on them, and reflect them in future activities.

Efficiency

4

Recommendation

The Judicial Council and the State Public Prosecution Office should differentiate and categorise high-level OCC cases with the aim of increasing efficiency in their processing. They should do so by:

- i. Adopting methodologies to differentiate between OCC cases for statistical and policy-making purposes, in coordination with the courts and public prosecution offices.
- ii. For the same purposes, adopting additional criteria to differentiate and categorise high-level cases from "standard" OCC cases.

Recommendation

- iii. Tracking the efficient processing of high-level OCC cases, including through the adoption of work plans and methodologies for the processing of such cases by public prosecution offices and courts.
- iv. Mapping high-level OCC cases to allocate adequate resources to public prosecution offices and courts that are more involved in their processing.
- v. Ensuring that the criteria for evaluating the performance of judges and public prosecutors adequately reflect the specific challenges encountered in processing high-level OCC cases.

To establish a robust track record in addressing OCC, it is essential to create a tailored and reliable differentiation and categorization system. This system would aid in identifying both OCC cases and high-level OCC cases. By doing so, domestic institutions could generate reliable statistics on case processing, facilitating the measurement of progress or regression over time.

Notably, in November 2023, the Project received information from the Ministry of Justice regarding a Methodology for Relevant Statistical System for Monitoring of the Anti-corruption Policy adopted by the Government in 2013. According to the Ministry, the Methodology is integrated in the AKstats System, which collects and processes statistical data on the prevention and repression of corruption and money laundering. AKstats has been operational since April 2019.

Criteria for determining high-profile corruption cases were developed by a Working Group for overview and update of the above-mentioned Methodology and they were accepted by the State Public Prosecution Office in 2015, as emphasized by the Ministry.

Considering the above, the Project believes this to be a solid basis for the Judicial Council and the State Public Prosecution Office to collaboratively develop their own synchronised criteria for identifying and categorising OCC cases for their purposes.

Furthermore, these criteria, along with analysis of statistical data, could serve as valuable tools for developing sustainable policies, methodologies, and strategies, and for prioritising case processing and work planning. They could also aid in the efficient allocation of necessary resources.

An adequate categorization system for statistical and policy-making purposes, if properly devised, could be an essential tool in shaping and implementing key measures aimed at improving the judicial response to OCC, especially with regard to high-level cases.

In addition to the creation of reliable quantitative data on the processing of such cases, this system could be used to prioritise the prosecution and adjudication of high-level OCC cases by public prosecution offices and courts respectively; namely, specific goals regarding the processing of these cases could be envisaged in the annual work plans of courts and public prosecution offices.

Furthermore, the mapping of current and upcoming high-level cases across the various public prosecution offices and courts in the domestic system could be used to reallocate human and material resources where they are most needed.

Finally, the performance evaluation criteria for judges and public prosecutors should reflect the additional work and challenges required by OCC cases, particularly high-level ones. Rewarding judges and public prosecutors who work on those cases with extra evaluation points would be an effective tool to incentivise a more effective judicial response to OCC.

5

Recommendation

The judges in the Department for OCC in the Basic Criminal Court Skopje should adopt and further develop standards and techniques for the trial management of complex cases, based on good practices, in order to improve the efficiency of trials. They should do so by:

- i. Strategically approaching each specific case by developing a timetable for hearings, considering the number of defendants, the volume of evidence, the mandate of lay judges, and the schedules of panel members and the parties.
- ii. Inviting the parties to consolidate their lists of evidence and agree on undisputed facts, as well as to request effective presentation of material evidence.

Recommendation

- iii. Scheduling consecutive “day-to-day” hearings and, if this is not possible due to technical or other reasons, schedule at least one hearing per week.
- iv. Delegating – when appropriate – the summoning of witnesses to the parties while maintaining control mechanisms to ensure the presence of witnesses.
- v. Requesting that the parties inform the court about health-related absences in due time, and continuously assess the validity of submitted medical documentation.

The most common denominator in the majority of the monitored cases was the overall length of the trial – out of 50 cases, 18 cases are final. However, eight of these were closed due to the expiration of the statute of limitations

as a result of the latest amendments to the CC.

The length of the first instance trial averages 2 years, with the longest trial duration being 2127 days and the shortest nine days.

Average length of proceedings to the first instance verdict

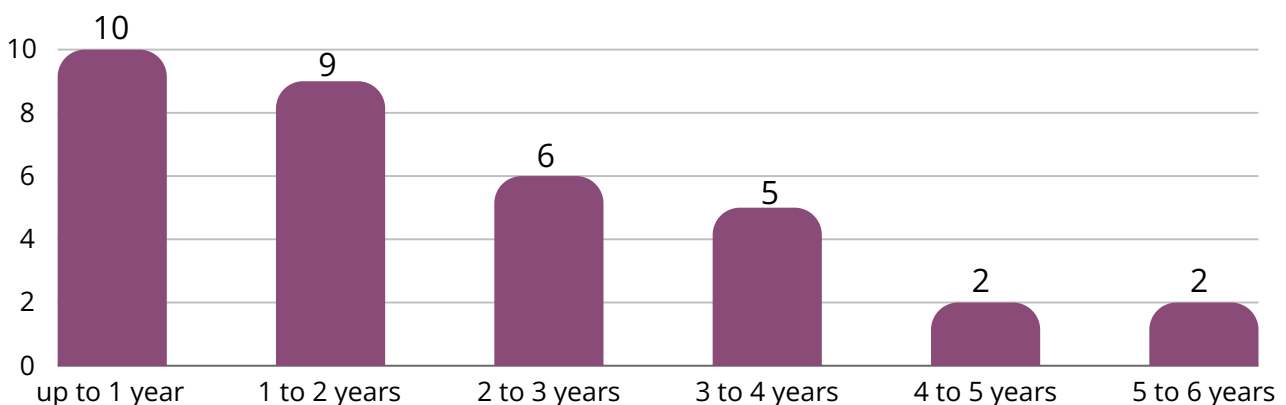


Figure 26 - Average length of proceedings to first instance verdict

In a few cases where the first instance verdict was reached within a reasonable time, the judges used trial management techniques that contributed to the timely processing of the case. For example, at the beginning of the trial, the judges scheduled a significant number of hearings in advance, all the while taking into consideration the conflicting commitments of the parties and members of the panel.

Notably, in one high-level corruption case with multiple defendants, the first instance trial was completed in less than a year because hearings were scheduled regularly, at least once a week. Given the current proactive approach of the judges in the OCC Department to schedule more frequent hearings, along with their readiness to adopt more efficient trial management practices, the Projects recommends scheduling day-to-day hearings, when possible, or at least one hearing per week.¹⁴⁶ Observing the so-called principle of concentration of the main hearing in OCC cases could contribute to the efficient delivery of justice and consequently increase public trust in the judiciary.

Furthermore, the Project observed that the pace and dynamics of the hearings depended on the volume of documentary evidence and the number of proposed witnesses.

Both parties sometimes presented repetitive documentary evidence or proposed numerous witnesses to testify on the same circumstances. However, reconsidering and consolidating both parties' lists of evidence was observed in cases where the trials were starting anew or at the start of a retrial; this practice should and could be adopted at the very beginning of each trial to save time and resources.¹⁴⁷

Another good practice introduced by the judges was the delegation of the summoning of witnesses to the party that proposed them, in agreement with the parties. Though not prescribed by law, this significantly contributed to avoiding delays due to the absence of witnesses.

The Project noted that the most frequent reason for postponement of hearings was the absence of the defendant, mainly due to health issues. Good practices were observed when judges ordered the inspection of sick leave notes issued by doctors and warned parties that they were obliged to inform the court of their unavailability to attend the hearing as soon as the reason for their absence occurred. In this way, the court would be able to inform other parties and reschedule the hearing instead of postponing it, thereby avoiding unnecessary delays and costs.

¹⁴⁶ The legal basis for this is clearly stated in Art.359 (1) CPC (Official Gazette of the Republic of North Macedonia No.150/10, 100/12, 142/16 and 198/18), which envisions that the main hearing shall be held without interruptions, and if it is not possible to complete the main hearing during a single session, the Presiding Judge shall adjourn the hearing to the following working day.

¹⁴⁷ Article 358 (2) CPC (Official Gazette of the Republic of North Macedonia No.150/10, 100/12, 142/16 and 198/18) obliges the presiding judge to eliminate anything that might delay the proceedings and does not serve the purpose of clarifying the issues.

Reasons for postponement

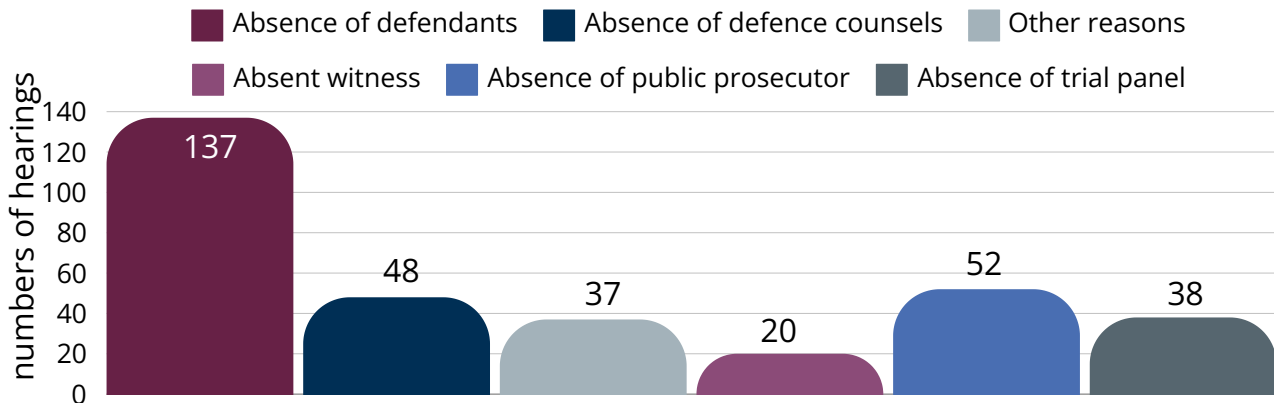


Figure 27 - Reasons for postponement

The Project detected delays caused by trials starting anew due to a change in the composition of the trial panel. Namely, the defence (ab)used its procedural right to request re-representation of all previously presented evidence.¹⁴⁸

The current draft amendments of the CPC will resolve this issue by allowing new members of the panel to familiarise themselves with the case file instead of repeating the entire

procedure from the beginning.

In the future, amendments in the CPC that establish a deadline for the review of the indictment would address efficiency issues caused by lengthy procedures for the review of indictments, which in 13 out of the monitored 50 cases lasted longer than 90 days, in three cases longer than 180 days and one case reached almost one year.

¹⁴⁸ According to Art.371 (2) CPC (Official Gazette of the Republic of North Macedonia No.150/10, 100/12, 142/16 and 198/18), the main hearing shall start anew if the individual judge or the composition of the trial panel has changed. With the parties' consent, the trial panel may decide not to examine certain witnesses and expert witnesses again, but to read their statements that have been put on record during the previous main hearing.

The judiciary should redouble its efforts to efficiently process and finalise high-level OCC cases in the appeal phase.

- i. The Judicial Council should ensure a sufficient number of judges and the timely filling of all future vacant positions at the Appellate Court Skopje.
- ii. The Judges of the Appellate Court Skopje should consistently apply the CPC provisions that regulate the holding of a hearing or reversing a verdict and decide on the merits, especially when the violations are issues that can be solved without ordering a retrial.
- iii. The President of the Appellate Court Skopje, in coordination with the Head of the Criminal Department in this court, should facilitate discussion between second instance and first instance judges on the challenges faced by both instances, in cases where retrials are ordered.

To facilitate the processing of high-level cases, the Judicial Council should make sure that the empty posts in the Appellate Court Skopje are filled as soon as possible, according to the internal systematisation in the court, especially bearing the current workload in mind. The last election of judges was in November 2023, after a recruitment process for four criminal law judges (40% of the total) was opened in July 2021.

Based on predictable estimates such as retirements, they should try to initiate the election procedure even before the posts become vacant in order to prevent prolonged vacancies.¹⁴⁹

According to the Project's trial monitoring findings, it took the Appellate Court Skopje an average of 101 days from receiving of the proposal of the Higher Public Prosecution Office to schedule a public session.¹⁵⁰

¹⁴⁹ Article 105 of the Constitution; Article 36 and 46 of the Law on Judicial Council (Official Gazette of the Republic of North Macedonia No.102/19).

¹⁵⁰ The data derives from the decisions of the Appellate Court Skopje that were published on the webpage, in the monitored cases in which a public session was held.

In five instances, this took more than 150 days. On average, the second instance decision was rendered 60 days after the public session was held. However, in the high-level cases, the second instance decision was rendered on average 101 days after the public session, with two of these cases reaching more than 210 days.

Presently, 12 cases are undergoing appellate review, out of which five are retrials. Since the beginning of the Project, the Appellate Court Skopje issued a decision in 17 monitored cases, 11 of which are high-level. In three of these high-level cases, a rejection verdict was rendered due to the expiration of the statute of limitations as a result of the CC amendments and in additional three the Appellate Court reversed the first instance verdicts in the parts of the

decisions for the criminal sanctions.

In the remaining five, the first instance verdict was annulled and a retrial was ordered. In most of the cases sent for a retrial, the Appellate Court referred to unclear and contradictory verdicts, or verdicts that did not contain the reasons for the decisive facts or evidence presented, as grounds for a retrial.¹⁵¹

It is important to note that retrials contribute to delaying proceedings, and can lead to the statute of limitations expiring. They are also accompanied by many other potential problems, such as creating uncertainty for defendants, victims, and even witnesses, undermining the right to a trial within a reasonable time, and the rule against double jeopardy.

Average length of proceedings to the final and binding verdict

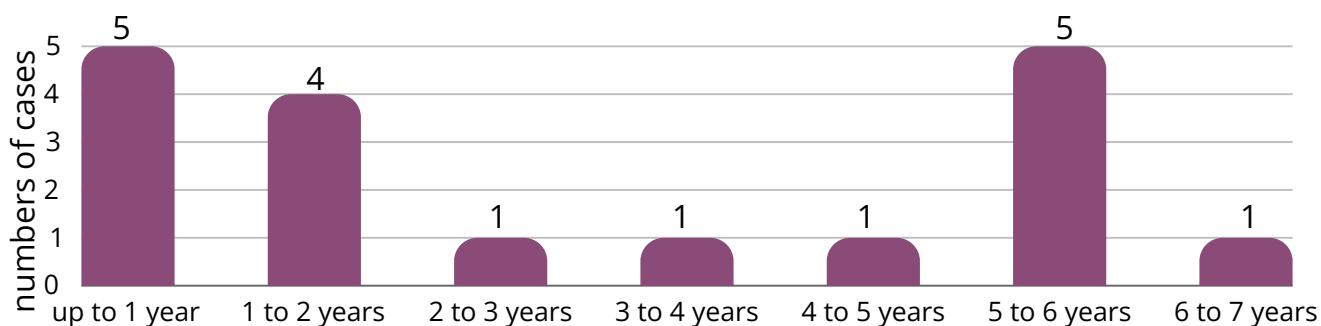


Figure 28 - Average length of proceedings to the final and binding verdict

¹⁵¹ Article 415 (1) item 11 CPC (Official Gazette of the Republic of North Macedonia No.150/10, 100/12, 142/16 and 198/18).

Therefore, the Project recommends that the Appellate Court should avoid narrow interpretations of the provisions that allow them to hold hearings and make decisions on the merits. Instead, they should fully utilise these provisions in accordance with the law.¹⁵² Notably, since the beginning of the Project, no hearing has been held in any of the monitored cases in the appeal phase. Consequently, the President of the Appellate Court, in accordance with the

Head of the Criminal Department in this court – within their competence – should facilitate discussions among judges to ensure that high-level cases are processed within a reasonable time and reach the final decision as soon as possible.

The upcoming amendments of the CPC foresee a deadline for scheduling the public session. This will significantly contribute to speeding up second instance proceedings.

7

Recommendation

Use data-driven decision-making processes to ensure efficient allocation of resources for the processing of OCC cases:

- i. The court president(s) and chiefs of Public Prosecution Offices should proactively use the institutions' official annual reports to conduct continuous needs assessments and advocate for additional resources based on the data contained therein.
- ii. The court president(s) and Judicial Council should facilitate temporary transfers of judges according to the specific needs of certain courts or departments, and discuss the possibility of appointing specific judges who would decide solely in the review phase of the indictment.
- iii. The Council of Public Prosecutors should regularly fill empty posts in the Basic Public Prosecution Office for OCC.
- iv. The executive power should respect the envisioned budget allocation for the judiciary and enable the hiring of additional administrative staff to support the work of judges and public prosecutors.

¹⁵² Article 424 (1) of the CPC (Official Gazette of the Republic of North Macedonia No.150/10, 100/12, 142/16 and 198/18).

Based on the Project's trial monitoring, and consultations with both judges and public prosecutors, human resources in the courts and in the BPPO OCC are seriously lacking.

Although the overall number of judges follows European standards,¹⁵³ the workload in the OCC Department in BCC Skopje shows that the number of cases in this department compared to the number of cases processed yearly is disproportional. This was confirmed during the consultations with the judges, who said that the number of cases completed by them was more than double that of the envisioned orientation number of cases. The Project observed that judges from other departments of the BCC Skopje with less workload were assigned occasionally as second professional judges on panels of high-level OCC cases. The Project commends this practice, as the systematic and data-driven reshuffling of judges would enable more efficient trials.

A possible solution for improving efficiency by re-allocation of resources could be to appoint specific judges to decide solely in the indictment review phase, coupled with an adequate scoring system to evaluate them accordingly. This would strengthen this important phase of the criminal procedure, which is currently not

sufficiently functional, as acknowledged by the judges as well as by the Judicial Council. For this to be achieved, the Judicial Council, in coordination with court presidents and criminal judges from all instances, could conduct an analysis for detection of the weaknesses of the indictment review phase. The results from such analysis should offer practical solutions for issues in the criminal proceedings caused by delays and poor-quality decisions in the indictment review phase.

Ultimately, the Judicial Council should support the requested temporary transferral of judges from less busy courts to others with a higher workload, all the while analysing the reasons for the backlog of cases. Subsequently, based on this analysis, it should offer a sustainable systemic solution. Of note, this issue was included in the National Strategy for Human Resources in the Judicial Network.¹⁵⁴

Similarly, the Human Resources Strategy for the Prosecutorial Network notes that the current network of the public prosecution offices should be redesigned according to measurable assessment and criteria, as well as in accordance with the re-designing of the judicial network.¹⁵⁵ According to the Annual Report of the State Public Prosecution Office, the total number of

¹⁵³ See European judicial systems CEPEJ Evaluation Report 2022 Evaluation cycle (2020 data): [1680a86279.\(coe.int\).](https://www.coe.int/en/web/cepej/evaluation-report-2022)

¹⁵⁴ [Konecen+narativen+del+Strategija+za+covecki+resursi+sud+mreza+za+objava+3.pdf \(vsrm.mk\)](#)

¹⁵⁵ [strategija-na-chovechki-resursi-za-javnoobvinitelskata-mrezha-.pdf \(jorm.gov.mk\)](#)

prosecutors in the BPPO OCC during 2022 was 11 out of the 18 envisioned with systematization, while one-third of the envisioned posts across the country are not filled.¹⁵⁶ In July 2023, the Council of Public Prosecutors issued a decision to establish the number of prosecutors in all public prosecution offices, which again set the number of prosecutors at the BPPO OCC at 18. The prosecutors in the BPPO OCC are elected with a mandate of four years, and the delays in their election or re-election have an impact on the processing of OCC cases, especially given that the investigations in these cases are complex and the trials are lengthy. On many occasions, the Project observed that hearings were postponed or rescheduled because the mandate of the leading prosecutor had expired and the procedure for election was not completed on time. The State Public Prosecution Office and the Council of Public Prosecutors should establish a practice of continuous reassessment of the number of prosecutors based on the needs assessments of the workload of all public prosecution offices. This would increase the effective prosecution of OCC cases and speed up the pace of trials, especially as the Project constantly observed difficulties in scheduling hearings due to conflicting commitments among the prosecutors in charge of the case.

During the Project's consultations, both judges and prosecutors referred to the need for additional administrative staff as a prerequisite for the successful and timely completion of cases. This issue was raised in the Annual Report for the Work of the Courts for 2022 of the Judicial Council¹⁵⁷ and in the above-mentioned Annual Report of the State Prosecution Office for 2022. These reports, however, do not contain specific analysis of the actual consequences of insufficient staff numbers on the work of the institutions. Furthermore, the need for additional human resources in the justice sector was highlighted in the National Strategy for Reform of the Judicial Sector for the period 2017–2022.¹⁵⁸ According to the newly adopted 2024–2028 Justice Sector Development Strategy,¹⁵⁹ one of the main reasons for the incomplete realisation of the previous Strategy was a lack of financial support for the measures related to human resources in the judiciary and its modernisation. This was because the minimal allocation of 0.8% of the GDP for the judicial power was not respected, instead measuring between 0.26% and 0.3%. Similarly, the State Public Prosecution Office reported that the approved budget in 2022 was half of the envisioned 0.4 % from the State Budget.

¹⁵⁶ [izveshtaj-za-rabotata-na-javnite-obvinitelsta 2022 2 mail-2-3.pdf \(jorm.gov.mk\)](#)

¹⁵⁷ [Годишен+извештај+за+работата+на+судовите+во+2022+година.pdf \(sud.mk\)](#)

¹⁵⁸ [16808c4384 \(coe.int\)](#)

¹⁵⁹ [Предлог Развојна Секторска Стратегија за Правосудство 2024 - 2027.pdf \(pravda.gov.mk\)](#)

Elsewhere, it should be emphasised that for the purposes of offering long-term solutions based on reliable data,

as recommended herein, the analytics departments in judicial institutions need to be strengthened.

Capacity

8

Recommendation

Strengthen public prosecutors' capacity to prepare indictments and their in-court performance:

- i. The State Public Prosecution Office should ensure the adoption and effective implementation of guidelines for writing indictments.
- ii. The Chief of the Basic Public Prosecution Office for Prosecuting Organised Crime and Corruption should:
 - Increase the frequency of meetings among public prosecutors to address topics of importance for the quality of their work, including in-court performance.
 - Create internal mechanisms to improve indictments in high-level OCC cases of public interest before their finalisation.
 - Ensure that assessing the quality of indictments as a qualitative indicator in the performance appraisal of prosecutors is properly conducted and provides constructive feedback.
- iii. The Academy for Judges and Public Prosecutors should assess the training needs of prosecutors who deal with OCC cases and revise the curriculum accordingly for in-court performance.

The Project's comprehensive analysis of available judicial acts, following the Project's Methodology, showed poor-quality indictments, which both judges and public prosecutors acknowledged during the Project's discussion forums.

The most frequent issues detected were lack of clarity, vague definitions of the

role and criminal liability of the defendants, failure to correspond the factual description of the crime with the relevant provisions, poor reasoning on the elements of the crime, and insufficiently elaborated supporting evidence that did not clearly reflect each defendant's actions and culpability.

In the 2023 OSCE Corruption Risk Assessment in the Judiciary, judges identified the low quality of indictments as a significant corruption risk.¹⁶⁰ This underlines the fact that gaps in the quality of judicial acts may not always stem from purely capacity problems, and could represent signs of interference.

The Project considers that guidelines would help prosecutors produce clear, comprehensive, and convincing indictments. The OSCE Mission to Skopje, in close co-operation with the State Public Prosecution Office, supported a working group on drafting a handbook that, among other things, would include a compendium of practical instructions with templates that would help prosecutors improve their writing skills.

When finally approved and enacted, the guidelines and templates could be expanded in the future in support of efforts to create a repository of good practices in due course.

In addition, internal meetings between prosecutors during which they could address topics of importance regarding the quality of their work would also help in promoting a culture of self-reflection and learning.

During these meetings, the chief should encourage an open and self-critical exchange of experience and

professional discussions to improve the work and overall image of the prosecution. In this regard, the chiefs of the Public Prosecution Offices could use their managerial competences to review the work of the prosecutors, and offer additional support if needed. This review could take place as early as the investigation phase and during the preparation of the indictment.

Regardless, the review should ensure a proper balance between an individual prosecutor's autonomy and a supervisor's power to assess the performance of their duty. The mechanism should rely on a specific set of guidelines that precisely define the process of quality control for drafting indictments.

This review would also ease the process of evaluating prosecutors' performance for supervisors, as the quality of indictments and other written decisions is one of the most important parameters assessed in the evaluation.

The Project also noted concerns regarding the performance of prosecutors in court. Prosecutors were often unsuccessful in clarifying how certain evidence contributed to proving the charges. One of the most striking issues in this respect was the presentation of material evidence by the prosecution, which often seemed inordinate, long, and confusing for the public.

¹⁶⁰ [545929_0.pdf\(osce.org\)](#)

This may indicate the absence of a clear prosecutorial case strategy and harm their theory of the case. Improving the presentation of documentary evidence would result in more efficient and effective trials. Thus, the Academy for Judges and Public Prosecutors should conduct training needs assessments,

conduct training needs assessments, reassess and adjust the curriculum, and focus on the practical side of capacity-building training for prosecutors. It could also prepare a survey on the training needs of public prosecutors who deal with OCC cases and adjust the curriculum accordingly.

9

Recommendation

Improve the capacities of judges of all instances in drafting legal decisions and verdicts, especially towards achieving clearer and more comprehensive legal reasoning.

- i. The President of the Supreme Court and presidents of the appellate courts should address the issue of how to improve the quality of decisions and verdicts during working meetings.
- ii. The Supreme Court should issue compendiums of good examples of decisions and verdicts from courts of all instances.
- iii. The Academy for Judges and Public Prosecutors should make sure that the continuous training would adequately reflect the need to improve legal writing skills for judges of all instances working on OCC cases.

Based on the ongoing analysis of available court decisions, the Project noted that they were repetitive, unnecessarily long, and hard to understand, especially first instance verdicts. Aside from being unclear, the verdicts often explained evidence that

contained irrelevant facts, while at the same time providing very general explanations about the mitigating and aggravating circumstances. In addition, the analysis showed that some verdicts failed to clearly, accurately, and completely identify and substantiate all

factual issues, or to address all raised legal and procedural issues adequately. On several occasions, the court did not provide sufficient elaboration on some contradictory evidence, or outline why certain pieces of evidence were not specifically considered. This often served as a basis for annulling the first instance verdict and ordering a retrial, contributing to delays in proceedings.

During the Project's consultations, judges fully agreed with the need to improve the way verdicts are written but pointed out that in some cases there had been attempts to draft shorter and clearer verdicts. Some of these verdicts in turn had been later quashed by the higher courts due to alleged insufficient legal reasoning.

By prioritising the improvement of decisions and verdicts during working meetings between the Supreme Court and the appellate courts, and based on the conclusions drawn from these meetings, first-instance judges would receive valuable feedback from the higher courts.

This would enable them to address the issue in a more systematic manner. On the other hand, following the issuing of compendiums of good examples of decisions and verdicts from courts of all instances, judges would be able to improve their writing skills and adopt new practices.

Finally, the Academy for Judges and Public Prosecutors should take a proactive approach to address the need for continuous training of judges involved in OCC cases.

This training should aim to improve the overall quality of their decisions. Additionally, the Academy should ensure the participation of judges from all instances.

By providing them with an opportunity for self-critical discussion, and by advocating for a change away from the existing lengthy, repetitive verdicts, the Academy could contribute to driving new standards and improving the verdicts.

Rationalise the process of taking minutes from the hearings in the first instance courts by improving the quality of courtroom recordings and ensuring continuous training for court clerks:

- i. The ICT Centre in the Supreme Court and the Council for ICT in the judiciary should jointly work on enhancing the quality and reliability of courtroom audio and video recording systems.
- ii. The Academy for Judges and Public Prosecutors should organise continuous training for court clerks on effective minute taking, the importance of accurate record keeping, and how best to facilitate information flow during witness examination.

In all monitored cases, the judges ordered court clerks to keep minutes typed on a PC, often in addition to the audio or video-audio recording of the trial.¹⁶¹

Seemingly a technical issue, this practice often results in altering the content of the testimony and causing inaccuracies in written minutes. This is not only a capacity issue; it also jeopardises the integrity of the process given that it frequently causes difficulties during witness examinations by disrupting the natural flow of information. To overcome this obstacle, the ICT Centre in the Supreme Court

and the Council for ICT in the judiciary should ensure the proper functioning of recording systems in all courtrooms and the availability of high-quality, user-friendly recordings. The technically feasible option of converting audio into written text would be another excellent solution in this regard.

In the meantime, mandatory and continuous training of court clerks would raise their professional standards and ensure enhanced accuracy of the written minutes used by judges, prosecutors, and defence attorneys, especially those solely working in the OCC Department in the BCC Skopje.

¹⁶¹ Although the CPC prescribes the audio or audio-visual recording of the trial, the proper functioning of the equipment is questionable and the judges rely on written minutes especially when preparing written decisions.

The Judicial Council and the State Public Prosecutor in close coordination with the Council for Public Prosecutors should enhance the quality of performance evaluation processes, including by:

- i. Continuously reviewing the methods used to evaluate judges and prosecutors.
- ii. Gathering feedback from judges and prosecutors on their opinions of evaluation processes.

In December 2020, following the adoption of the new Law on Judicial Council and Law on Public Prosecution Office, the Judicial Council and the State Public Prosecution Office adopted their respective internal acts on evaluating judges' and public prosecutors' work performance, including detailed qualitative and quantitative criteria.¹⁶²

Although the results of the regular four-year assessment based on the newly developed internal acts and/or methodologies are not available yet, some judges and public prosecutors were already evaluated based on the new methodologies as part of the extraordinary assessment envisioned for promotion.

The first indications from the extraordinary assessments, however have not been encouraging; based on consultations with several judges and public prosecutors, the evaluations are being conducted mainly without any objective assessment of qualitative criteria. This in turn has led to the judges and public prosecutors being evaluated receiving the highest scores possible.

This is alarming, as it indicates that even with formal quantitative and qualitative criteria in place, evaluators appear to lack a culture of professionalism. The Project recommends that the Judicial Council and the State Public Prosecutor, in close coordination with the Council of

¹⁶² According to the Law on Judicial Council (Official Gazette of the Republic of North Macedonia No.102/19) and the Law on Public Prosecution Office (Official Gazette of the Republic of North Macedonia No.42/20), the performance assessment of both judges and prosecutors is based on the sum of results from qualitative criteria (60 per cent of the grade) and quantitative criteria (40 per cent of the grade).

Public Prosecutors should maintain a continuous review of the methods to evaluate judges and prosecutors as well as gather their feedback on this matter.

A possible solution for objective self-evaluation of the Councils, of both the process and the methods of evaluation would be to conduct an anonymous survey among judges and public. The results from such a survey would enable

the Councils to obtain broader and more relevant information, rather than relying solely on individual objections raised in the evaluation processes.

By determining the weaknesses and shortcomings in the regulations and their practical implementation, the Councils would be able to conduct objective and merit-based elections and promotions.

Use of Specific Judicial Tools

12

Recommendation

Take immediate actions within the existing legal framework to increase confiscation rates:

- i. Public prosecutors should regularly order financial investigations and request temporary asset seizures, in all cases in which unlawful property benefit was acquired and/or financial damage to the State Budget occurred.
- ii. Judges should ensure that the executive part of verdicts establish an adequate link between the measure of confiscation and the conviction itself; in particular, they should provide a clear and detailed description of the assets that should be confiscated.
- iii. The Academy for Judges and Public Prosecutors should continuously include training on financial investigations and confiscation in their curriculum and to present the achieved results in a measurable manner.
- iv. The Ministry of Justice, the Supreme Court and the State Public Prosecution Office should proactively coordinate interoperability between competent institutions, for the purposes of confiscation.

Recommendation

v. The executive power should:

- Facilitate regular meetings between all relevant stakeholders involved in confiscation, especially the courts, public prosecution offices, the Agency for [the] Management of Confiscated Assets, the Agency for Real Estate Cadastre, and the State Attorney Office.
- Allocate resources for the hiring of expert staff who would work alongside prosecutors on financial investigations.
- Ensure proper functioning of the database and electronic system used by the Agency for [the] Management of Confiscated Assets, and support needed updates.
- Assess the capacity of the National Coordination Centre a.for [the] Fight against Organised Crime and make proposals for possible improvements.

Since the start of the Project, limited asset seizures have remained particularly concerning, especially as the processing of corruption cases cannot be considered effective without the confiscation of illegally acquired property gains and/or compensation for financial damage to the State Budget.

The Project noted a very low number of proposals for confiscation and little to

no indication that a financial investigation had been conducted. The prosecution proposed confiscation in only seven indictments out of the 34 cases monitored by the Project in which illegal property gain was acquired with the (alleged) criminal offence(s).

In an additional five of these cases, the prosecution proposed this measure in the amended indictment and/or in closing arguments.

Confiscation mapping

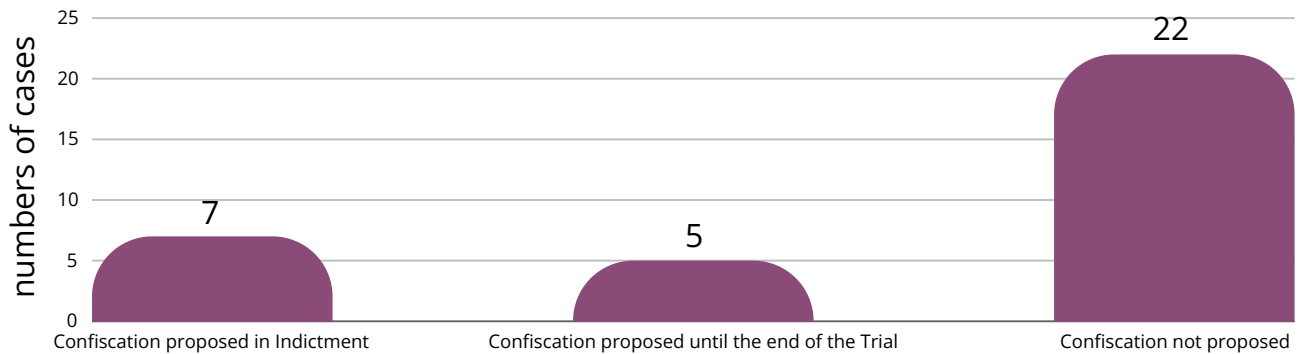


Figure 29 - Confiscation mapping

The Project noted ambiguities in determining the exact amount of actual damage (usually affecting the State Budget) caused by perpetrators. Additionally, there are legal obstacles in enforcing confiscation measures to achieve adequate compensation for the damage.

All of the above indicate a lack of effective financial investigations in order to ensure temporary asset seizure and consequent confiscation of illegal gains following the final verdict. During the consultations, it was confirmed that prosecutors did not make proper use of the relevant legal provisions of the CC and the CPC.

This issue is compounded by a lack of expert staff capable of supporting the work of prosecutors in this phase of proceedings.

This state of affairs places an additional burden on judges when drafting

verdicts and establishing a clear link between the proceeds of crime and the criminal charges. More specifically, in cases with multiple defendants, judges pointed to difficulties in determining the exact value of assets needing to be confiscated due to poor descriptions in indictments. Therefore, financial investigations and confiscation should remain one of the top priorities in the curriculum for initial and continuous training of the Academy for Judges and Public Prosecutors.

Certain issues will be resolved with the proposed amendments of the CPC. For example, they envision a proposal for confiscation as an obligatory element of the indictment in cases where unlawful property benefit was acquired. Similarly, the amendments require a detailed description of the confiscated property in a conviction verdict. Furthermore, they offer precise instructions for temporary asset seizure

for the purposes of confiscation. In the meantime, the Project considers the relevant legal framework sufficient to ensure effective asset seizure. However, this will require a greater commitment to the tracking of illegal assets by prosecutors and adequate weight being given to the financial component of the investigation. However, another obstacle in this regard sees public prosecutors rarely obtaining the necessary data in due time. Indeed, in this respect, they are often forced to use personal connections in other institutions or other informal channels of communication rather than relying on official correspondence.

Furthermore, the role of the Ministry of Justice, the Supreme Court, and the State Public Prosecution Office is essential in facilitating interoperability between different actors involved in the confiscation procedure. The establishment of a model for interoperability among all stakeholders in the judicial sector is already foreseen as an activity in the recently adopted 2024–2028 Justice Sector Development Strategy. In the meantime, the aforementioned difficulties in data exchange could be resolved by

organising monthly meetings between representatives of competent institutions, especially the courts, public prosecution offices, the Agency for Management of Confiscated Assets, and the Agency for Real Estate Cadastre.

Another body that would be useful for data exchange and inter-institutional cooperation is the National Coordination Centre for Fight against Organised Crime within the Ministry of Interior. By improving its capabilities and facilitating real-time information sharing, all relevant stakeholders would be better equipped to streamline the process of gathering data related to possible illegal financial flows. This would ensure that such activities were addressed promptly and effectively.

Moreover, keeping track of illegal assets on a permanent basis, throughout the entire criminal procedure and following the final verdict, is crucial for effective confiscation. A proper database and electronic system in the Agency for Management of Confiscated Assets that would be capable of signalling any possible changes in assets owned by the individual(s) subject to confiscation would enable prompt and successful asset seizure.



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A series of horizontal dotted lines spanning the width of the page, providing a guide for handwriting practice.



REGIONAL TRIAL MONITORING PROJECT
COMBATTING ORGANIZED CRIME AND CORRUPTION
IN THE WESTERN BALKANS

