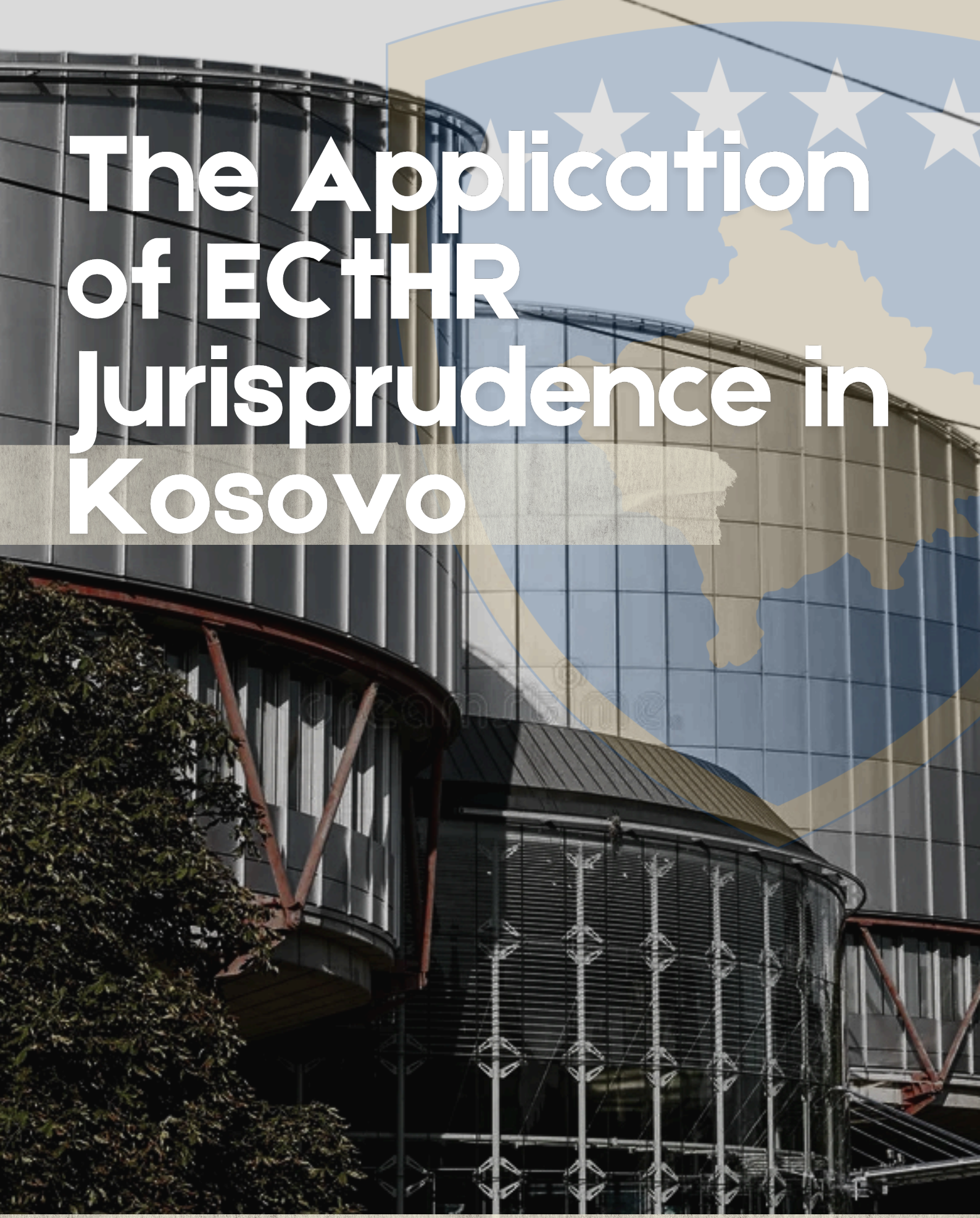
The Application of ECtHR Jurisprudence in Kosovo



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ACRONYMS

ECtHR - European Court of Human Rights

ECHR - European Convention on Human Rights

CC - Constitution Court of the Republic of Kosovo

KJC - Kosovo Judicial Council

KPC - Prosecution Council of Kosovo

IPA - Information and Privacy Agency

IOBSCK - Independent Oversight Board of the Civil Service of Kosovo

IMC - Independent Media Commission

PRB - Procurement Review Body

CA - Competition Authority

FLAA - Free Legal Aid Agency

Executive summary

In the legal order of Kosovo, human rights and fundamental freedoms are applied according to the interpretations given to these rights by the jurisprudence of the European Court of Human Rights (ECHR). This is in accordance with the Constitution of the Republic of Kosovo, which obliges institutions to interpret human rights and fundamental freedoms in conformity with the jurisprudence of this Court.

However, 17 years after the adoption of the Constitution of the Republic of Kosovo, the level of application of ECHR jurisprudence is not at the desired level. Monitoring conducted revealed that ECHR jurisprudence was applied in only 2% of court hearings and in 13% of issued judgments. The highest percentage of application of this jurisprudence is recorded in the Basic Courts (21%), while the lowest percentage is recorded in the Court of Appeals (2%). As for the nature of the cases, the highest percentage of application of ECHR jurisprudence is observed in civil cases (18.7%). Despite its importance, monitoring did not identify any case in which lawyers applied ECHR jurisprudence.

The monitoring also found that in all cases, ECHR jurisprudence was not applied adequately. In 33.3% of the judgments in which the application of ECHR jurisprudence was recorded, this application was made only in a general manner, without specifying a specific decision. This fact significantly lowers the percentage of adequate implementation of ECHR jurisprudence by the judiciary.

One of the rights guaranteed by the European Convention on Human Rights is the right to trial within a reasonable time. For this right, the ECHR has established clear standards. Regarding the respect of this right, monitoring found that, in principle, the courts in Kosovo violate citizens' right to a trial within a reasonable time. The monitoring found that the average time for resolving a case at the first instance is 1,256 days. This time period, in principle, exceeds the requirement for trial within a reasonable time. Thus, currently, the judiciary of the Republic of Kosovo is not able to guarantee a trial within a reasonable time.

However, for this situation, the judiciary is not exclusively to blame. The large number of unresolved cases faced by the judicial system makes it impossible to handle cases within a reasonable time. In this regard, the efforts of the judicial system have not yielded results. Despite the increase in the number of resolved cases over the years, the number of unresolved cases still increased. The reason for this is the failure of public institutions to fulfill their obligations, which forces citizens to seek the realization of their rights through judicial means.
Kosovo lacks a mechanism for addressing the violation of the right to a trial within a reasonable time. The Ministry of Justice’s draft law that attempted to do this was in conflict with the Constitution and posed a serious threat to the administration of justice in courts

Regarding equality of arms, in the context of ECHR jurisprudence, monitoring found that with some exceptions, the way evidence is administered by courts is in accordance with the standards of ECHR jurisprudence. Furthermore, in relation to the principle of equality of arms, the monitoring finds that this principle is significantly violated in regard to the review of parties' appeals by the Court of Appeals. According to the European Convention on Human Rights and ECHR jurisprudence, courts are obliged to reason the claims of the parties to demonstrate that they have been heard. However, monitoring shows that in 48.4% of the analyzed cases, the Court of Appeals did not respond to the raised claims and did not clarify whether they were decisive.

Furthermore, monitoring has found that the courts in Kosovo sufficiently fulfill the requirements of the European Convention on Human Rights and the jurisprudence of the ECHR regarding professional legal protection. However, contrary to this jurisprudence is the way the Free Legal Aid Agency operates.

According to the European Convention on Human Rights and the ECHR jurisprudence, the publicity of court hearings is guaranteed. Monitoring shows that all hearings were public, but the lack of their publication in the official schedule contradicts the standards of the ECHR.
The seizure of property in criminal procedure, as currently applied, does not meet ECHR standards regarding the right to property. In the five monitored cases, properties remained seized for an average of 1,263 days, without being reviewed by the court. Regarding property protection, monitoring has found that proportionality is also violated in cases of security measures on certain assets, which are imposed during civil procedures.

The monitoring has found that the courts have fully respected the linguistic rights of parties in the proceedings.

The monitoring did not identify cases of violation of the principle of equality of arms by the courts. However, the monitoring did find violations of this principle by political actors, through interfering statements towards the justice system.

Monitoring also identified that in some cases, doubts may be raised that the courtroom acoustics compromise the standards set by the ECHR

Metholodogy

From June 1, 2024, to May 31, 2025, under the project "Preparing Kosovo's Institutions for the Implementation of the Jurisprudence of the European Court of Human Rights (ECtHR)," funded by the German Embassy in Kosovo, the Kosovo Law Institute (KLI), FOL Movement, and the Initiative for Progress conducted a monitoring of the implementation of ECtHR jurisprudence in courts and independent institutions. The monitoring was based on a predefined methodology aimed at identifying the level of application of ECtHR jurisprudence and standards by courts and independent institutions.

Prior to the start of monitoring, the areas of ECtHR jurisprudence to be covered were thoroughly researched and defined. The purpose of the monitoring was to provide a realistic overview of how ECtHR case law is applied in quantitative terms, and to what extent its standards are upheld in qualitative terms.

For each specific area, measurable indicators were drafted to assess the implementation of ECtHR jurisprudence and standards. Accordingly, all findings presented in this report derive from specific data generated through these indicators.

To reflect the level of implementation, a mixed monitoring and research methodology was developed, which included:

1. Direct monitoring of court sessions;
2. Analysis of court judgments;
3. Analysis of case file documents;
4. Analysis of lawyer complaints;
5. Analysis of decisions by independent institutions.

The monitoring sample included 100 court hearings, 200 judgments, 15 case files and lawyer complaints, and 60 decisions by independent institutions. The monitored cases included criminal, civil, and administrative matters across all levels of the judiciary and five independent institutions (Information and Privacy Agency, Independent Oversight Board for Civil Servants, Procurement Review Body, Independent Media Commission, and Competition Authority).

This form of monitoring was made possible through cooperative access granted by the judiciary. The Kosovo Judicial Council (KJC), through a decision dated January 24, 2025, permitted access to case documents for monitoring purposes. All courts demonstrated cooperation throughout the monitoring and contributed to the report's consolidation by participating in meetings to discuss related issues.

The data collected were processed and analysed. This mixed-method approach enabled the generation of factual findings in the relevant areas. After deriving the findings, they were analysed in the context of the European Convention on Human Rights (ECHR), ECtHR jurisprudence, Kosovo's Constitution, Constitutional Court judgments, and applicable legislation. This ensured the report presents an accurate and specific picture of the application of ECtHR jurisprudence and standards by courts and independent institutions.

All findings were discussed in four different meetings (two virtual discussions and two focus groups) with relevant stakeholders, including KJC members, judges, prosecutors, representatives from the Ombudsperson Institution, the Justice Academy, academics, lawyers, and civil society. Before publication, the draft report was shared for comments with all relevant actors.

The status of ECtHR Jurisprudence in the Kosovo legal order

“Committed to the creation of a state of free citizens that will guarantee the rights of every citizen, civil freedoms and equality of all citizens before the law,” states the Preamble of the Constitution of the Republic of Kosovo. This proclaimed commitment is reflected in the substantive part of the Constitution, where the protection of human rights and fundamental freedoms occupies a central role.

The constitutional definition of the state declares that “The Republic of Kosovo exercises its authority based on the respect for human rights and freedoms of its citizens and all other individuals within its borders” Respect for human rights and freedoms is also defined as a core value of the constitutional order of the Republic of Kosovo[1].

Human rights are enshrined in Chapter II of the Constitution, while Chapter III provides expanded rights for non-majority communities. According to the Constitution[2] human rights cannot be restricted even through constitutional amendments.

Notably, the Constitution of Kosovo allocates the most provisions to the field of human rights and freedoms. Chapter II sets out 36 articles related to these rights. Additionally, the Constitution directly incorporates nine (9) international instruments for human rights protection, including the ECHR and its Protocols[3].

Within this constitutional framework, the jurisprudence of the ECtHR holds a special place. While the Constitution guarantees many human rights, their meaning is as interpreted by the ECtHR. Article 53 of the Constitution states: “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights”.

In line with this, the Constitutional Court (CC) has emphasized that “According to Article 53 of the Constitution, the courts of the Republic of Kosovo, without exception, are obliged to interpret ‘the human rights and fundamental freedoms guaranteed by this Constitution in accordance with the jurisprudence of the European Court of Human Rights.’” This means that whenever the CC or ordinary courts interpret rights and freedoms under the Constitution, the human rights standards defined in ECtHR case law must be applied when relevant. In case of conflict, ECtHR standards prevail[4].

Thus, the Constitution of the Republic of Kosovo has designated the jurisprudence of the ECtHR as a point of reference in the interpretation of human rights. Accordingly, the Constitution stipulates that human rights are protected in accordance with the meaning that this Court has given to those rights.

[1] Constitution of the Republic of Kosovo, Article 1.2 and Article 7
[2] Ibid, Article 144.3.
[3] Constitution of the Republic of Kosovo, Article 22
[4] Judgment in Case No. KI207/19. Constitutional Court. Paragraph 109. Pristina, 5 January 2021. (See link: [1] Neni 19, par. 2; Rregullorja e Kuvendit të Republikës së Kosovës; Korrik 2022.)

Importance of Implementing ECtHR Jurisprudence

Given that human rights and fundamental freedoms must be interpreted in line with the jurisprudence of the ECtHR, the application of this jurisprudence is a prerequisite for the protection of these rights, as required by the Constitution.

The implementation of ECHR jurisprudence by institutions is crucial for several reasons.

Firstly, it is a constitutional obligation under Article 53. Therefore, its application is the implementation of the Constitution itself.

Furthermore, through the application of the ECtHR's jurisprudence, Kosovo's legal order, in terms of the protection of human rights and fundamental freedoms, is harmonized with the practice of the ECtHR. Such harmonization is a necessity in the event of Kosovo's membership in the Council of Europe, which Kosovo regards as a state objective.

It is important to emphasize that in the protection of human rights and fundamental freedoms, various dilemmas may often arise, depending on the circumstances of each individual case. The jurisprudence of the ECtHR, developed over the years through a significant number of judgments, has clarified a wide range of standards in this field. Thus, this jurisprudence, in addition to being a constitutional obligation, enables the resolution of dilemmas that may emerge in practice.

Thus, the application of ECtHR jurisprudence in Kosovo's legal system is not only a constitutional requirement but also serves a multidimensional role in advancing human rights and fundamental freedoms.

One of the conclusions drawn from the focus group organized for the purpose of drafting this report was that the application of ECtHR jurisprudence, among other things, enhances public trust and the confidence of parties involved in judicial proceedings.

The application of ECtHR Jurisprudence by the courts

Despite the fact that the implementation of ECtHR jurisprudence is an obligation for all institutions, the primary responsibility for its application lies with the courts. However, based on the direct monitoring of 100 court hearings, ECtHR jurisprudence was referenced in only two cases — one criminal and the other civil. Expressed in percentage terms, this means that ECtHR jurisprudence was applied during court hearings in just 2% of the monitored cases.

In how many court hearings was the ECtHR case law mentioned?

Chart 1: Application of ECHR Jurisprudence During Court Hearings

In both instances, the jurisprudence was mentioned by the judges. During monitoring, no instances were recorded in which ECtHR jurisprudence was cited by other litigating parties. This situation indicates a lack of awareness among the parties regarding ECtHR jurisprudence, through which they might otherwise attempt to support their claims before the courts.

A higher percentage of ECtHR jurisprudence application is observed in court judgments. Out of 200 analyzed judgments, monitoring found that in 26 of them, the courts applied ECtHR jurisprudence, whereas in 174 judgments, it was not applied.

The application of ECtHR case law in court judgment

Chart 2: Application of ECHR Jurisprudence in Court Decisions

In terms of the nature of cases, the highest percentage of ECtHR jurisprudence application is found in the civil field. According to the analyzed judgments, ECtHR jurisprudence was applied in 18.7% of monitored civil cases, followed by administrative cases (10%). Regarding criminal cases, ECtHR jurisprudence was applied in 8.7% of the cases.

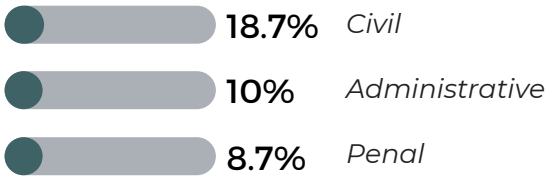

Chart 3: Percentage of ECHR Jurisprudence Application by Case Type

The monitoring also included the application of ECtHR jurisprudence based on court levels. According to the conducted monitoring, the highest percentage of ECtHR jurisprudence application was found in judgments of the Basic Courts — 21% of the analyzed cases. Meanwhile, the percentage of ECtHR jurisprudence application in the Supreme Court (8%) and the Court of Appeal (2%) was significantly lower.

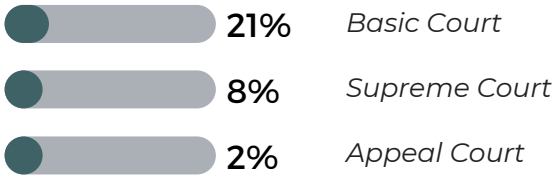

Chart 4: Application of ECHR Jurisprudence by Court Level

In this regard, it is important to emphasize that although human rights are continually relevant issues in court judgments, there may be instances where the specificities of a given case do not necessitate the application of ECtHR jurisprudence. However, such reasoning would only be acceptable if the courts applied ECtHR jurisprudence in the majority of their rulings — not in a context where the jurisprudence is applied in only one out of seven decisions, or just 13%. Therefore, monitoring reveals that, in principle, the courts do not adequately apply ECtHR jurisprudence in their judgments.

Regarding the application of ECtHR jurisprudence by judges, the focus group highlighted several factors that hinder its implementation. One such factor mentioned was the time required by judges to research ECtHR case law. The heavy caseload and lack of resources were identified as obstacles to carrying out this research. During the focus group discussions, it was suggested that one effective way to improve the application of ECtHR jurisprudence would be to conduct research on this case law by categorizing it according to different types of cases handled by the judiciary—research that could then serve as a reference in many similar judgments

On the other hand, although the obligation to apply the ECtHR's jurisprudence lies with the courts, lawyers also have a significant influence on the application of this jurisprudence. If lawyers were to justify their claims through the ECtHR's jurisprudence, this would compel the court to examine those claims in light of that jurisprudence. Thus, the application of the ECtHR's jurisprudence by lawyers would also reflect its application by the courts. Moreover, the use of this jurisprudence in specific cases would strengthen the reasoning behind the claims submitted by lawyers in court. The importance of applying this jurisprudence by lawyers was also emphasized during the focus group.

However, the monitoring conducted did not identify any cases in which lawyers applied ECtHR jurisprudence. In the 15 cases analyzed, not a single instance was found where a lawyer had used ECtHR jurisprudence in their written pleadings.

Quality of ECtHR Jurisprudence application

Through its interpretation of the ECHR, the ECtHR has established important and highly specific standards across many legal areas. In the context of applying this jurisprudence, by contextualizing specific cases, legal claims can be more effectively defended in court, and the quality of justice delivered can be improved. Thus, interpreting human rights must align with ECtHR jurisprudence, and it is not sufficient to merely reference this jurisprudence in abstract terms. The application of ECtHR case law requires the use of specific decisions, contextualized within the circumstances of the individual case.

In the only two (2) court hearings in which ECtHR jurisprudence was mentioned, no specific case or legal standard established by this jurisprudence was cited. In these two (2) cases, the judges mentioned the ECtHR's jurisprudence only in general terms, without specifying any particular decision.

As for the 26 court judgments in which ECtHR jurisprudence was referenced, 17 of them cited specific ECtHR decisions. In all these cases, the citation of the ECHR judgment was found to be accurate. In the remaining nine (9) cases, the jurisprudence was referenced only in general terms.

The highest percentage of specific references to ECtHR jurisprudence was found in civil court judgments. From the analyzed civil judgments, ECtHR jurisprudence was specifically applied in 15% of cases and was referenced in general terms in 2.5% of them. In administrative cases, monitoring revealed that ECtHR jurisprudence was specifically applied in 7.5% of cases and generally referenced in 2.5%. Conversely, the situation was reversed in criminal cases: specific decisions were applied in only 2.5% of cases, while general references occurred in 6.2%.

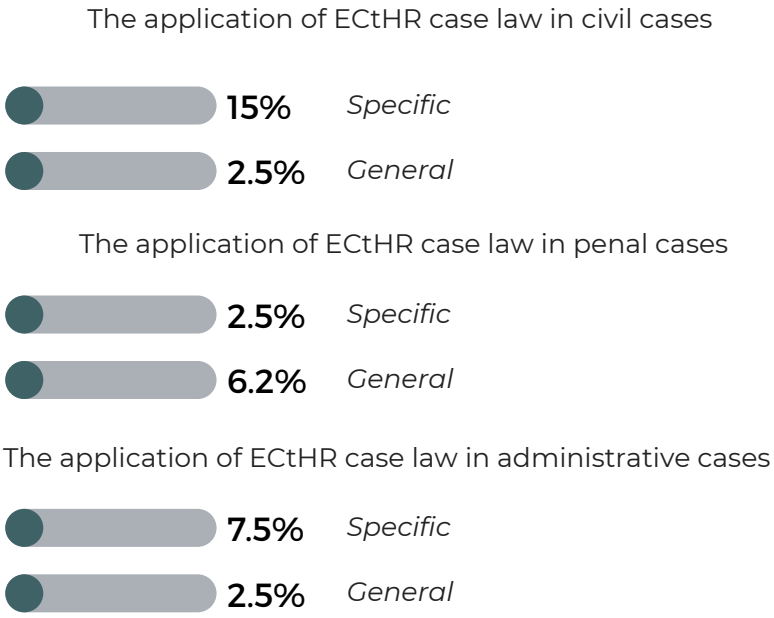

Chart 5: Application of Specific ECHR Decisions by Case Type

Regarding court instance, the highest percentage of specific references to ECtHR jurisprudence was recorded in decisions of the Basic Courts. In these decisions, ECtHR cases were specifically applied in 14% of instances, while general references occurred in 7% of cases.

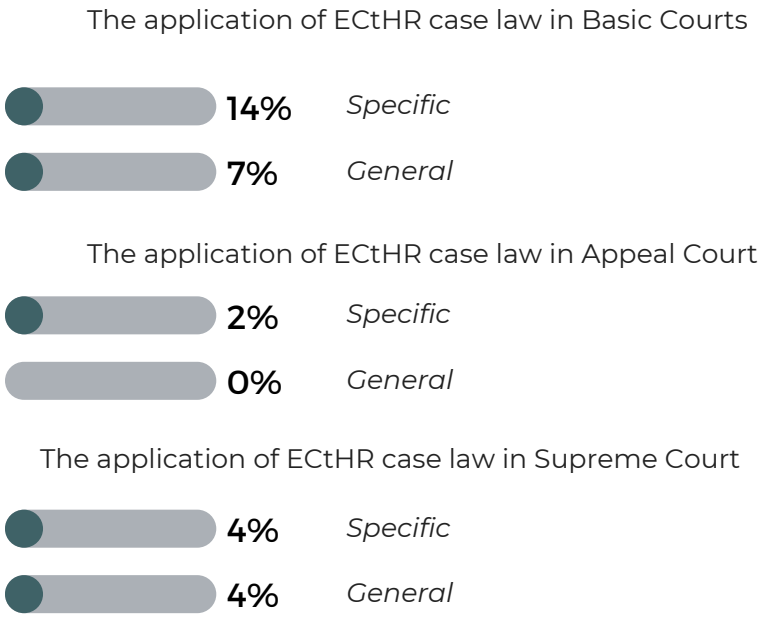

Chart 6: The application of specific ECtHR judgments by judicial instances

In this context, it is crucial to emphasize that applying ECtHR jurisprudence is not a merely formal matter. Abstract references are insufficient. Article 53 of the Constitution of the Republic of Kosovo serves a substantive purpose — to protect human rights in line with the specific standards established by the ECtH R. Therefore, the constitutional obligation to apply ECtHR jurisprudence is not fulfilled through abstract mentions alone. Instead, reference must be made to specific cases and the legal standards established by the Court must be applied in the context of the individual case.

The quality of the application of ECtHR jurisprudence was also discussed during the focus group. Among other things, it was emphasized that references must be adequate. In other words, it was noted that it is important not only to cite a specific judgment, but also to ensure that the cited decision corresponds to the specific circumstances of the case in question

It was emphasized that, in terms of the application of ECtHR jurisprudence, the Academy of Justice should also play a supportive role—by providing training to judges and prosecutors, as well as through the utilization of memoranda of cooperation with NGOs and other professionals in the field

Trial within a reasonable time

One of the main problems affecting the justice system in Kosovo since the declaration of independence has been the duration of judicial proceedings. The Rule of Law Strategy also emphasizes that "the length of proceedings remains one of the most critical and complex issues within the rule of law sector. It directly affects the right to a trial within a reasonable time, as guaranteed by the Constitution and the ECHR"[5]. An unreasonable delay undermines one of the key components of a fair trial — the right to be judged within a reasonable time frame, as protected by Article 6 of the ECHR.

According to the ECHR, requiring that cases be handled within a "reasonable time" highlights the importance of delivering justice without delays that may undermine its effectiveness and credibility[6]. Regarding this right, the ECtHR has issued a large number of decisions, establishing the standards necessary for its implementation. The right to trial within a reasonable time is one of the most frequently addressed issues by the ECtHR — and also one of the most frequently violated. In general, 18.28% of the violations identified by the Court pertain to this right[7].

The monitoring also evaluated the average duration of case resolution. Based on the total number of analyzed judgments, it was found that the average time from the initiation of a case (filing of indictment in criminal cases or lawsuit in civil and administrative cases) to the issuance of a first-instance court judgment was almost three years — specifically, 1,256 days.

Monitoring revealed that the longest delays were in civil cases, averaging 1,546 days. For criminal cases, the average duration was 1,211 days, while for administrative cases it was 788 days.

The oldest criminal case recorded during monitoring dated back to 2006. There was also a civil case initiated in 2006, while the oldest administrative case was initiated in 2015:

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[5] Rule of Law Strategy 2021–2026. Ministry of Justice. July 2021. Page 11. (See link: https://md.rks-gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf). (Last accessed: 8 May 2025)

[6] Case of H. v. France, European Court of Human Rights. Strasbourg, 24 October 1989. Paragraph 58; Case of Katte Klitsche de la Grange v. Italy, European Court of Human Rights. Strasbourg, 27 October 1994. Paragraph 61. (See links: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57502%22]}; https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57893%22]}) (Last accessed: 8 May 2025).

[7] "GjEDNj,1959-2021", European Court of Human Rights, February 2022, Page 6. (See link: https://johan-callewaert.eu/wp-content/uploads/2022/11/Overview_19592021_ENG.pdf) (Qasur për herë të fundit më 8 maj 2025).

Special Department

Year	Number of cases
2013	1
2022	1
2024	1

Serious Crime Department

Year	Number of cases
2009	1
2012	1
2016	1
2017	1
2018	1
2019	1
2020	4
2021	1
2022	2
2023	2
2024	3
2025	1

General Department - Penal Division

Year	Number of cases
2006	1
2016	1
2017	1
2019	1
2020	1
2022	1
2023	2
2024	7
2025	3

Department for Administrative Matters

Year	Number of cases
2015	1
2017	1
2019	2
2022	6
2023	7
2024	1
\\	2

General Department - Civil Division

Year	Number of cases
2006	1
2011	1
2015	3
2016	3
2018	1
2019	1
2020	7
2021	3
2022	3
2023	5
2024	5
2025	1
\\	6

Table 1: Number of Cases by Year of Initiation

It must be noted that the above calculation was made from the initiation of the case to the issuance of a first-instance judgment. However, according to ECtHR standards, the duration of proceedings is measured from the moment a case is initiated until it becomes final and binding[8]. Therefore, in light of ECtHR standards, the actual duration would be even longer.

The monitoring findings reveal widespread violations of the right to a trial within a reasonable time. The overall average of 1,256 days to resolve a case shows the judicial system's inability to provide justice within a constitutionally guaranteed timeframe under Article 6 of the ECHR.
In this situation, it is essential to implement reforms and institutional behavioral changes so that the judiciary can guarantee the examination of cases within a reasonable time frame. The ECtHR in its jurisprudence has emphasized that the measures chosen to address the violation of the right to a trial within a reasonable time must be adapted to the specific context of the judiciary situation in a given country[9].

Thus, for the purpose of identifying the measures that should be applied in order to avoid violations of the right to trial within a reasonable time, it is important to clarify the causes of delays in the examination of judicial cases.

One of the main reasons causing delays in case processing is the heavy workload of the courts. This is particularly pronounced in the civil field. Unfortunately, over the years, this situation has only worsened. While at the end of 2018 the number of unresolved cases was 44,213, by the end of 2024 this number increased to 121,324 cases.

Year	*Number of Unresolved Cases*
2018	*44,213*
2019	*47,926*
2020	*64,414*
2021	*85,087*
2022	*99,407*
2023	*112,623*
2024	*121,324*

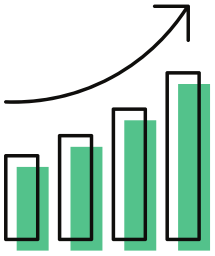

Chart 7: Number of Unresolved Cases

[8] Case of Neumeister v. Austria, European Court of Human Rights. Strasbourg, 27 June 1968. Paragraph 18. (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57544%22]}); Case of König v. Germany, European Court of Human Rights. Strasbourg, 28 June 1978. Paragraph 98. (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57512%22]}); Case of Poiss v. Austria, European Court of Human Rights. Strasbourg, 23 April 1987. Paragraph 50. (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57560%22]})

[9] Case of Scordino v. Italy (No. 1), European Court of Human Rights. Paragraph 183. Strasbourg, 29 March 2006. (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-72925%22]}), (Last accessed: 29 June 2024); Case of Tomažič v. Slovenia, European Court of Human Rights. Paragraph 37. Strasbourg, 13 December 2007. (See link: https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22Case%20of%20Tomazic%20v.%20Slovenia%22],%22itemid%22:[%22001-83973%22]}).

The increase in the number of judges and the improvement of their work efficiency has resulted in more than a four (4) fold increase in the number of cases resolved during the years 2018-2024. While in 2018 judges resolved 16,768 cases, the number of cases resolved in 2024 was 80,448.

Year	Number of Resolved Cases
2018	16,768
2019	20,335
2020	20,329
2021	23,077
2022	25,632
2023	38,554
2024	80,448

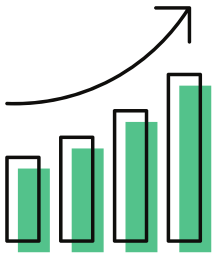

Chart 8: Number of Resolved Cases

Thus, the more than four (4) fold increase in the number of cases resolved annually by the judiciary has not impacted the reduction of unresolved cases, which have nearly tripled. This is because the increase in unresolved cases has been accompanied by an unnatural rise in the number of cases received, as a result of non-fulfillment of obligations by public institutions, which have forced citizens to realize their rights through judicial means.

Year	Number of Registered Cases
2018	19,609
2019	24,048
2020	29,319
2021	43,536
2022	40,826
2023	53,767
2024	89,926

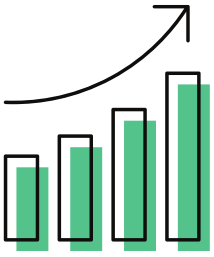

Chart 9: Number of Registred Cases

A significant portion of these cases derives from obligations under collective agreements, which were not fulfilled by public institutions, thus obliging citizens to seek judicial recourse[10]. In this way, the Government has also acted in relation to double pensions, where despite the fact that certain categories were recognized the right to a double pension, the Government did not acknowledge this right, forcing these individuals to claim their rights through judicial channels[11].

Beyond this, another source of judicial cases has now emerged, threatening to flood the judiciary with cases. The non-fulfillment of constitutional obligations by the Assembly in relation to Law No. 08/L-196 on Salaries in the Public Sector risks overloading the judiciary with tens of thousands of cases[12].

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[10] The Cost of Unpaid Jubilee Salaries. Kosovo Law Institute. Pristina, September 2024. (See link: https://kli-ks.org/wp-content/uploads/2024/09/IKD-Kosto-e-pagave-jubilare-te-papaguara-2.pdf).

[11] The Government of Kosovo is Violating the Rights of Pensioners to Dual Pensions. Kosovo Law Institute. Pristina, 14 June 2024. (See link: https://kli-ks.org/qeveria-e-kosoves-eshte-duke-shkelur-te-drejtat-e-pensionisteve-per-pension-te-dyfishte/).

[12] Shala, G. & Jakaj, N. THE INACTION OF THE ASSEMBLY VIOLATES THE RIGHTS OF 90,696 PUBLIC OFFICIALS AND JEOPARDIZES THE STATE BUDGET. Kosovo Law Institute. Pristina, March 2025. (See link: https://kli-ks.org/wp-content/uploads/2025/03/Mosveprimi-i-kuvendit-shkel-te-drejtat-e-90696-zyrtareve-publik-dhe-rrezikon-buxhetin-shteteror.pdf); Tempus 156: Re-flooding of the judiciary with cases. Betimi për Drejtësi. 5 May 2025. (See link: https://betimiperdrejtesi.com/tempus-156-ri-vershimi-i-gjygesorit-me-lende/).

In this situation, the judiciary will naturally find it impossible to provide justice within a certain time frame. According to the ECtHR jurisprudence, the responsibility to guarantee a trial within a reasonable time frame does not lie solely with the judiciary but also with other institutions[13].

In this context, for the judiciary to be able to guarantee trial within a reasonable time frame, public institutions must regulate their decision-making in such a way as to fulfill their obligations, thereby not forcing citizens to claim their rights only through the judiciary. Only this approach could ease the judiciary's caseload so that the judiciary can guarantee a trial within a reasonable time frame.

To address the right to a trial within a reasonable time, the Ministry of Justice has published for public consultation the Draft Law on the Realization of the Right to a Trial within a Reasonable Time. Despite the legitimate objective, the content of the draft published for public consultation does not address the intended purpose.

The draft law has defined trial deadlines, considered as reasonable: three years at first instance and two years at second instance. The determination of these deadlines as criteria for calculating a reasonable time frame is in open contradiction with the standards established by the ECtHR regarding trial within a reasonable time. The ECtHR has decisively determined that there can be no uniform criterion regarding the assessment of the reasonableness of the time frame, but this must be evaluated on a case-by-case basis, according to criteria set by the ECtHR[14]. After setting these deadlines, the draft law lists the ECtHR criteria as exceptional criteria, but not as basic criteria for assessing the reasonableness of the trial duration [15].

Thus, given the fact that the issue of trial within a reasonable time, in the meaning of Article 53 of the Constitution, must be interpreted in accordance with ECtHR jurisprudence, it follows that the content of the draft law in question is unconstitutional. Regarding this draft law, after publication on the public consultation platform, apart from a meeting held, the Ministry of Justice has not informed how it proceeded further.

In conclusion, the monitoring findings and the analysis carried out show the necessity of taking steps to realize the right to a trial within a reasonable time, the violation of which is a principle in the judicial system. The resolution of this situation requires broad inter-institutional engagement that goes beyond the judiciary. Reforms taken in this field must be in line with the ECtHR jurisprudence and, as this jurisprudence itself requires[16], in accordance with the specific circumstances.

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[13] Case of Martins Moreira v. Portugal, European Court of Human Rights. Paragraph 60. Strasbourg, 26 October 1988. (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57535%22]}).

[14] "Case of Comingersoll S.A. v. Portugal, European Court of Human Rights. Paragraph 19. Strasbourg, 6 April 2000. (See link: https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22Case%20of%20Comingersoll%20S.A.%20v.%20Portugal%22],%22itemid%22:[%22001-58562%22]}), (Last accessed: 8 May 2025)

[15] Shala, G. TRIAL WITHIN A REASONABLE TIME LIMIT. Kosovo Law Institute. Page 9. Pristina, July 2024. (See link: https://kli-ks.org/wp-content/uploads/2024/07/Gjykimi-brenda-afatit-te-arsyeshem-1.pdf)

[16] "CASE OF SCORDINO v. ITALY (No. 1)". European Court of Human Rights. Paragraph 185. Strasburg, March 29, 2006. (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-72925%22]}); "CASE OF TOMAŽIČ v. SLOVENIA". European Court of Human Rights. Paragraph 37. Strasburg, December 13, 2007. (See link: https://hudoc.echr.coe.int/fre#{%22fulltext%22:[%22Case%20of%20Tomazic%20v.%20Slovenia%22],%22itemid%22:[%22001-83973%22]}); "CASE OF FINGER v. BULGARIA". European Court of Human Rights. Paragraph 127. Strasburg, May 10, 2011; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104698%22]}; "CASE OF ROBERT LESJAK v. SLOVENIA". European Court of Human Rights. Paragraph 36. Strasburg, July 21, 2009; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-93660%22]}, (Last accessed on 30 June 2024).

Equality of arms

The equality of arms of litigants is the central feature of the right to a fair trial. In general, the principle of equality of arms requires that each litigant during a trial be given reasonable opportunities to present their claims before the court. These opportunities must be to the extent that they do not place one party at a disadvantage with the other party[17]. Thus, equality of arms requires a fair balance of treatment of the parties. This concept is applied on both criminal and civil procedure.[18].

The principle of equality of arms, in the context of the right to a fair trial, has been consistently addressed by the jurisprudence of the ECtHR. This is not only in the sense of the principle of the approach that the Court should follow in relation to the litigants, but also in the sense of specifying the rights that each litigant should have so that during the examination of a criminal or civil case, the Court can protect the principle of equality of arms.

The monitoring conducted analyzed the implementation of the standards of the ECtHR jurisprudence in relation to specific issues related to the principle of equality of arms. In terms of the principle of equality of arms, specifically, the object of the monitoring was:

- Handling of proposals from litigants regarding the production of new evidence or the hearing of witnesses;
- The manner of handling the parties' appeal claims in the Court of Appeal;
- Equality of arms in terms of legal aid.

The standards and findings regarding these issues will be presented later in this report.

a. Proposal of evidence

The ECHR does not lay down specific provisions regarding the manner in which evidence is administered in criminal or civil proceedings. The issue of the administration of evidence is a matter that must be regulated by specific national laws.

In Kosovo, regarding criminal and civil procedure, the issue of evidence administration is regulated by the Code No. 08/L-032 of Criminal Procedure and Law No. 03/L-006 on Contested Procedure.

[17] "CASE OF FOUCHER v. FRANCE". European Court of Human Rights. Paragraph 34. Strasbourg, 28 March 1997. (See the link: https://hudoc.echr.coe.int/eng?i=001-58017). "CASE OF FAIG MAMMADOV v. AZERBAIJAN". European Court of Human Rights. Paragraph 19. (See the link: https://hudoc.echr.coe.int/eng?i=001-170465).
[18] "CASE OF FELDBRUGGE v. THE NETHERLANDS". European Court of Human Rights. Paragraph 44. Strasbourg, 29 May 1986. (See the link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57486%22]}).

Regarding criminal procedure, the Code No. 08/L-032 of Criminal Procedure stipulates that "The single trial judge or the presiding judge is responsible for the proper functioning of the judicial review, including the taking of evidence." According to this Code, the Court may prohibit the taking of evidence if:

2.1. taking such evidence to supplement other evidence is unnecessary and redundant because the matter in question is generally known;
2.2. the fact to be proved is immaterial to the decision or has been proved;
2.3. the evidence is entirely inappropriate, impossible or inaccessible; or
2.4. the request is made to delay the proceedings[19].

Furthermore, the Code No. 08/L-032 of Criminal Procedure stipulates that "The presentation of evidence includes all facts that the court considers important for a correct and fair trial". According to this Code, "Until the conclusion of the judicial review, the parties may propose the examination of new facts, the collection of new evidence and repeat the proposals that the single trial judge, the presiding judge or the trial panel has previously rejected."[20].

Regarding civil proceedings, Law No. 03/L-006 on Contested Procedure has determined that "The parties have the duty to present all the facts on which they base their claims and to propose evidence by which such facts are established" and that "The court is authorized to establish facts that the parties have not presented and to take evidence that the parties have not proposed, only if the result of the examination and evidence leads to the conclusion that the parties intend to dispose of claims that they cannot freely dispose of (defined in Article 3, paragraph 3 of this law), unless otherwise provided by law". According to this Law, "The court cannot base its decision on facts and evidence in relation to which the parties have not been given the opportunity to state their views"[21].

In addition to these provisions, the Criminal Procedure Code No. 08/L-032 and Law No. 03/L-006 on Contested Procedure have also established other provisions related to the proposal, acceptance, admissibility and administration of evidence during criminal and civil proceedings. On the other hand, in the context of the standards set by the ECtHR, it should be noted that despite the fact that the issue of evidence is a matter regulated by domestic legislation, it cannot be said that the issue of evidence is not subject to treatment by the jurisprudence of this court. This is taking into account the fact that in specific cases, the manner of administration of evidence may be a determining factor in relation to the final assessment of compliance with equality of arms.

The ECtHR in its jurisprudence has determined that it is its duty under the ECHR to determine whether the proceedings as a whole were fair, and this includes the manner in which evidence was obtained[22]. But, with regard to evidence, the ECtHR emphasized that it is not its role to act as a fourth-instance body when appealing court decisions, except in cases in which the findings are considered arbitrary or clearly unreasonable[23].

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[19] Criminal Procedure Code No. 08/L-032, Article 252.
[20] Ibid. Article 325.
[21] Law No. 03/L-006 on Contested Procedure, Article 7.
[22] "CASE OF ELSHOLZ v. GERMANY". The European Court for Human Rights. Paragraph 66. Strasbourg, 13 July 2000. (See the link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58763%22]}); "CASE OF DEVINAR v. SLOVENIA". The European Court for Human Rights. Paragraph 45. Strasbourg, 22 May 2018. (See the link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-183127%22]}).
[23] "CASE BOCHAN v. UKRAINE (No. 2)". The European Court for Human Rights. Paragraph 61. Strasbourg, 5 February 2015. (See the link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-152331%22]}.

According to the Code No. 08/L-032 of Criminal Procedure and Law No. 03/L-006 of Contested Procedure, the litigants have the right to submit proposals for the hearing of witnesses or the presentation of new evidence. Although Article 6 [Right to a fair trial] does not include specific provisions regarding the taking of evidence, the jurisprudence of the ECtHR has emphasized that under this article, the proceedings as a whole, including the manner in which evidence is taken, must be "fair"[24].

Regarding the "fairness" of the treatment of the parties' proposals for the taking of evidence, the ECtHR has issued specific standards. In relation to this issue, its jurisprudence has emphasized that:

1.Courts must respond to a request to hear a witness if the request is properly filed[25];

2.In the event that a request to hear a witness is denied, the Courts must justify these decisions, so that the denial is not an arbitrary action that undermines the ability of the litigants to present arguments in their favor[26];

Roughly similar standards have been established by the ECtHR in relation to other types of evidence that may be used during a trial. Refusal to receive certain evidence, for example expertise, must be evaluated in light of the specific circumstances of the case[27].

In this way, in general, it can be seen that the jurisprudence of the ECtHR, despite drawing attention to the fact that provisions regarding the administration of evidence are not found in Article 6 of the ECHR, issues regarding the administration of evidence fall within the regulation of the ECHR and, consequently, the review by the ECtHR. While maintaining the margin of free evaluation of the courts, the ECtHR emphasized that, in relation to the issues of administration of evidence, there will be a violation of Article 6 when it is estimated that the way of administration of evidence has violated the fairness of a court process.

In practice, the monitoring has only identified a few exceptional cases of problems with respect to these standards, and as such the findings show that in general, the manner in which evidence was administered has not undermined the fairness of the judicial processes. The only exception to this is one case in the Department for Administrative Matters within the Basic Court in Prishtina, where the court did not state anything at all during the hearing regarding the party's proposal to produce new evidence, and one civil case, where the proposal to produce new evidence was rejected without any justification. In two other administrative cases and in another civil case, the court justified the refusal to obtain new evidence, while in two other civil cases, it was stated that the decision regarding the proposal to produce new evidence would be taken outside the hearing. In all other cases, the courts have approved the parties' proposals to produce this evidence.

Thus, with one exception, the findings from the conducted monitoring prove that, in relation to the way of administration of the proposals for the extraction of new evidence, the courts have not violated the fairness of judicial processes.

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[24] "CASE OF DOMBO BEHEER B.V. v. THE NETHERLANDS". The European Court for Human Rights. Paragraph 31. (See the link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57850%22]}).

[25] "CASE OF CARMEL SALIBA v. MALTA". The European Court for Human Rights. Paragraph 77. Strasbourg, 29 November 2016. (See the link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-169057%22]}).

[26] "CASE OF WIERZBICKI v. POLAND". The European Court for Human Rights. Paragraph 45. Strasbourg, 18 June 2002. (See the link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60507%22]}).

[27] "CASE OF ELSHOLZ v. GERMANY". The European Court for Human Rights. Paragraph 66. Strasbourg, 13 July 2000. (See the link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58763%22]}).

b. Claims review

The guarantees provided under Article 6 of the ECHR include the obligation of the courts to justify the decisions taken. The jurisprudence of the ECtHR has emphasized that the ECHR aims to guarantee not rights that are only theoretical, but rights that are practical and effective, the right to a fair trial cannot be considered effective if the claims of the parties are not really "heard", that is, they are not properly examined by the court.

The ECtHR in its jurisprudence has emphasized that court decisions must adequately contain the reasons on which they are based[28]. According to the jurisprudence of the ECtHR, court decisions must adequately express the reasons on which they are based. Without requiring a detailed response to every claim or argument raised, the obligation to give reasons means that the parties to judicial proceedings are entitled to expect a specific and clear response to the arguments that are decisive for the outcome of the judicial proceedings. According to the jurisprudence of this court, the extent of this obligation to give reasons may vary depending on the nature of the decision and must be determined in the light of the circumstances of the case[29].

Reasoned decisions are intended to show the parties that they have been heard, thus contributing to a more willing acceptance of the decision on their part. The lack of reasoning in decisions can create the perception of a certain degree of arbitrariness in judicial decisions. If the claims of the litigants are not answered in judicial decisions, the litigants may claim that they have not been “heard” by the court. Reasoning the claims of the litigants strengthens the position of the parties in the procedure.

On the other hand, it should be noted that the reasoning of judicial decisions makes the judgments more acceptable to the litigants. Furthermore, the reasoning of decisions also increases the transparency of decision-making, so that the courts clearly indicate not only the decisions taken but also the reasons why they took those decisions, thus contributing to increasing public trust in judicial decision-making.

Domestic courts must indicate with sufficient clarity the grounds on which they base their decision. A reasoned decision is important to enable the appellant to effectively exercise any possible right of appeal[30].

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[28] "CASE OF HIRVISAARI v. FINLAND". The European Court for Human Rights. Paragraph 30. Strasbourg, 27 September 2001. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-59682"]}).
[29] "CASE OF MAZAHIR JAFAROV v. AZERBAIJAN". The European Court for Human Rights. Paragraph 33-36. Strasbourg, 2 April 2020. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-202116"]}); "CASE OF MAZAHIR JAFAROV v. AZERBAIJAN". The European Court for Human Rights. Paragraphs 34-36. Strasbourg, 2 April 2020. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-202116"]}).
[30] "CASE OF HADJIANASTASSIOU v. GREECE". The European Court for Human Rights. Paragraph 33. Strasbourg, 16 December 1992. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-57779"]})
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According to Kosovo legislation, decisions of basic courts are subject to appeal to the Court of Appeal, which acts as a second-instance court, with territorial jurisdiction throughout the Republic of Kosovo[31]. Regarding civil cases, Law No. 03/L-006 on Contested Procedure has determined that "in the reasoning of the judgment, or the decision, the Court of Second Instance must evaluate the statements in the appeal that were of decisive importance for issuing its decision"[32]. Whereas, regarding criminal cases, the Code No. 08/L-032 of Criminal Procedure has determined that "in the reasoning of the judgment or ruling, the Court of Appeal evaluates the claims of the appeal and indicates the violations of the law that it has examined ex officio"[33].

Thus, according to the ECHR, the jurisprudence of the ECtHR and positive legislation, courts are obliged to provide reasons in relation to the claims raised by the litigants. In this regard, the Constitutional Court of the Republic of Kosovo has issued several decisions where it has found that the failure to provide reasons for judicial decisions constitutes a violation of the Constitution of the Republic of Kosovo and the ECHR. In one of its decisions, the CC emphasized that "according to the jurisprudence of the ECtHR, Article 6 of the ECHR obliges courts to conduct a proper examination of the submissions, arguments and evidence presented by the parties and to assess, without prejudice, whether they are relevant and weighty for its decision"[34]. In another case, applying the standards established by the ECtHR, the CC emphasized that "The guarantees embodied in Article 6, paragraph 1 of the ECHR, also include the obligation of courts to provide sufficient reasoning for their decisions" and that "A reasoned judicial decision demonstrates to the parties that their case has been truly examined". In this way, the Constitutional Court also emphasized that "Despite the fact that the domestic court has a certain margin of assessment regarding the selection of arguments and the decision on the admissibility of evidence, it is obliged to justify its actions by giving reasons for all its decisions."[35]

In this way, the standards regarding the obligation of the Courts to justify their decisions, in the context of examining the claims of the litigants, have already been defended in several cases by the Constitutional Court.

The monitoring carried out also included the level of reasoning of the decisions of the Court of Appeal in relation to the appeals filed. In this regard, by comparing the appeals filed and the decisions of the Court of Appeal, the monitoring analyzed whether the decisions of the Court of Appeal responded to the specific claims raised by the litigants through the appeals filed.

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[31] Law No. 06/L - 054 on Courts, Article 21.1.
[32] Law No. 03/L-006 on Contested Procedure, Article 204.
[33] Code No. 08/L-032 of Criminal Procedure, Article 404.1.
[34] "AKTGJYKIM ne rastin nr. KI193/19". Constitutional Court. Paragraph 42. Prishtina, December 31, 2020. (See the link: https://gjkkapi.pbc.group/Custom/ki_193_19_agj_shq.pdf).
[35] "JUDGMENT in case no. K143/23". Constitutional Court. Paragraphs 62-63. Prishtina, 6 March 2024. (See the link: https://gjkkapi.pbc.group/Custom/ki_43_23_agj_shq.pdf).

Based on the eight monitored cases, it turns out that the complaints filed included a total of 33 claims. However, compared to the decisions of the Court of Appeal, it turns out that only 17 of these claims were answered in the decisions of the Court of Appeal, while a total of 16 claims remained unfounded. Expressed in percentage terms, it turns out that the Court of Appeal has not provided a response to a total of 48.4% of the claims raised. Moreover, in its decisions, regarding the claims for which no reasons were given, the Court of Appeal has not indicated whether these claims are decisive or not.

Thus, the monitoring shows that in these cases, the Court of Appeal did not provide a justification for almost half of the claims raised by the litigants. This course of action, according to the jurisprudence of the ECtHR, constitutes a violation of the right to a fair trial under Article 6 of the ECHR. In terms of the standards set by the jurisprudence of the ECtHR, these standards are protected by the CC in some cases, where the Court of Appeal is obliged to respond to the claims of the parties. In relation to non-decisive claims, the Court of Appeal is required to provide a justification as to which of the appeal claims it considered non-decisive and, as a result, did not respond to them.

The issue of addressing claims was also discussed during the focus groups, where it was emphasized that it is important to cite every claim raised by the appellant. It was also mentioned that there are cases where the appeal contains claims that are entirely irrelevant to the matter being adjudicated. Nevertheless, the need was highlighted for court judgments to also clarify which claims were deemed irrelevant to the decision-making process, and therefore did not require further reasoning.

c. Free legal aid

Free legal aid is an essential tool to guarantee justice, equality and the functioning of the rule of law. It ensures that every individual, regardless of their financial situation, has a real opportunity to access legal representation and advice. This is particularly important for the protection of the rights of vulnerable and marginalized groups. As a right accessible to all, and not a privilege for a minority, free legal aid gives citizens the appropriate means to protect and exercise their rights.

Equality of arms cannot be implemented if a party does not have professional representation in court proceedings. Due to a lack of legal knowledge, parties may lose their legal options. The lack of such representation risks that equality of arms will remain a theoretical concept.

In relation to criminal proceedings, the ECHR has defined the right to free professional defence as a specific right. According to the ECHR, every accused person has the right 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 free legal assistance when the interests of justice so require[36]. According to the jurisprudence of the ECtHR, the right of every person accused of a criminal offence to be effectively defended by a lawyer is one of the fundamental elements of a fair trial[37].

Regarding legislation, the Criminal Procedure Code No. 08/L-032 has defined two forms of providing free legal defense: 1) Cases when defense is mandatory and 2) Appointment of a defense attorney at public expense in cases when defense is not mandatory[38].

In relation to civil proceedings, the ECHR guarantees legal protection as a specific right. However, the jurisprudence of the ECtHR has emphasized that the ECtHR aims to protect rights that are practical and effective, in particular the right of access to the court. Consequently, the ECtHR emphasized that Article 6.1. of the ECHR may oblige the state to provide legal assistance from a lawyer, when such assistance is necessary to guarantee effective access to a court[39]. According to this Court, the question of whether or not Article 6 of the ECHR requires the provision of legal representation for a particular party will depend on the concrete circumstances of the case, which must be assessed whether, in the light of all the circumstances, the lack of legal assistance would deprive the party of a fair trial.[40]

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[36] The European Convention on Human Rights, Article 6.3.c.
[37] "CASE OF SALDUZ v. TURKEY". The European Court for Human Rights. Paragraph 51. Strasbourg, 27 November 2008. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-89893"]}); "CASE OF IBRAHIM AND OTHERS v. THE UNITED KINGDOM". The European Court for Human Rights. Paragraph 255. Strasbourg, 13 September 2016. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-166680"]}); "CASE OF SIMEONOVI v. BULGARIA". The European Court for Human Rights. Paragraph 112. Strasbourg, 12 May 2017. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-172963"]}); "CASE OF BEUZE v. BELGIUM". The European Court for Human Rights. Paragraph 123. Strasbourg, 9 November 2018. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-187802"]}).
[38] Code No. 08/L-032 of Criminal Procedure, articles 56 and 57.
[39] "CASE OF AIREY v. IRELAND". The European Court for Human Rights. Paragraph 26. Strasbourg, 9 October 1979. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-57420"]}).
[40] "CASE OF McVICAR v. THE UNITED KINGDOM". The European Court for Human Rights. Paragraph 48 and 51. Strasbourg, 7 May 2002. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-60450"]}).

The basic law regulating the provision of free legal aid in Kosovo is Law No. 04/L-017 on Free Legal Aid, supplemented and amended by Law No. 08/L-035 and Law No. 08/L-063. Free legal aid is provided to all entities that meet the criteria set out in the law. In accordance with this law, legal aid includes, among others, representation in civil, criminal, administrative and minor offense proceedings. The institution responsible for organizing and providing this assistance is the Free Legal Aid Agency (FLAA).

In practical terms, the monitoring carried out has found that in the vast majority of cases, the litigants were represented by a lawyer. According to the monitoring, it results that in all criminal cases, the defendants were represented by lawyers. As for civil cases, in only 1 case were the litigants were not represented by lawyers. While, in administrative cases, 5 cases were identified where the parties were not represented by lawyers.

From the total number of monitored cases, it results that in 89 cases, lawyers were appointed by authorization, while 5 other cases included lawyers appointed by the court ex officio.

Thus, in practice, it results that litigants in almost all cases have professional representation by a lawyer. Thus, in relation to the conduct of court hearings, it results that the requirements of the ECHR and the jurisprudence of the ECtHR are sufficiently met in the courts of Kosovo.

However, the way in which the FLAA currently operates is contrary to the Constitution of the Republic of Kosovo and the jurisprudence of the ECtHR.

Placing the Free Legal Aid Agency under the authority of the Ministry of Justice, after it had previously functioned as an independent institution, is contrary to the jurisprudence of the ECtHR and the Constitution of the Republic of Kosovo.[41]

On June 26, 2024, the Ministry of Justice published the Draft Concept Document for Free Legal Aid on the public consultation platform. In addition to the numerous problems identified in this concept document, the issue of politicization of FLAA is not addressed at all by the concept document. [42]

[41] See more: Shala, G. “The Unconstitutional Politicization of AFLA”. Kosovo Law Institute. Prishtina, October 2022. (See the link: [43] "CASE OF STAROSZCZYK v. POLAND". The European Court for Human Rights. Paragraph 133. Strasbourg, 22 March 2007. (See the link: https://hudoc.echr.coe.int/eng#{"itemid":["001-79879"]}),).

[42] See more: Rezniqi, A. “Experimenting with free legal aid”. Kosovo Law Institute. Prishtina, July 2024. (See the link: https://kli-ks.org/wp-content/uploads/2024/07/IKD-Eksperimentimi-me-ndihmen-juridike-falas.pdf).

Property protection

a. In criminal proceedings

Article 1 of Protocol 1 to the ECHR guarantees the right to property. According to this article, “every natural or legal person has the right to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law”. This article further specifies that “the foregoing provisions shall not, however, prejudice the right of States to apply such laws as they consider necessary to regulate the use of property in accordance with the general interest or to secure the payment of taxes or contributions or other fines”.

The ECtHR’s jurisprudence has consistently emphasized that the restriction of the right to property, in the form of seizure or confiscation in criminal proceedings, is not contrary to the ECHR. However, measures such as seizure or confiscation must pursue a general interest and be proportionate[43].

In order for the seizure of assets in criminal proceedings to be in accordance with the ECHR, the Court stressed that several conditions must be met. First, it is required that the seizure be provided for by law. Furthermore, the decision to seize must pursue a legitimate aim and be proportionate to the aim pursued. In order to determine the proportionality of the measure in question, according to the ECtHR, the duration of the seizure measure must be taken into account. This duration must be considered separately from the duration of the trial. The maintenance of a seizure decision must examine its necessity in view of the development of the criminal proceedings, the consequences of its implementation for the accused and the decisions taken by the authorities in this matter[44].

In other words, the ECtHR case law specifies that the reasonable duration in the context of a seizure measure is a different issue from the reasonable duration in the context of a trial. Thus, if an asset is seized during the entire trial in criminal proceedings and the trial is conducted within a reasonable time, the reasonableness of the time in relation to the seizure measure is not necessarily respected. Thus, according to this case law, courts must constantly examine whether the holding of certain assets under the seizure measure is necessary in criminal proceedings, taking into account the negative consequences that certain parties are affected by.

[43] “CASE OF RAIMONDO v. ITALY”. The European Court for Human Rights. Paragraph 27–30. Strasbourg, 22 February 1994. (See the link: https://hudoc.echr.coe.int/eng?i=001-57870).
[44] “CASE OF LACHIKHINA c. RUSSIE”. The European Court for Human Rights. Page 59. (See the link: https://hudoc.echr.coe.int/eng?i=001-177865).

In practice, monitoring and analysis has identified cases where various assets have been seized for the purposes of criminal proceedings. These assets were held under seizure for years, until a first instance judgment was issued. During this time, this seizure was not reviewed by the Court. On average, the monitoring found that the time during which the assets remained seized was at least 1,272 days.

Out of five cases of this nature, in three of them, the first instance judgment did not confiscate the assets seized during the investigation phase, but ordered their return. Thus, the assets in question remained seized for a while, and were then not confiscated by the Court. The situation would not be very problematic if the duration of the asset seizure were reasonable, which is not the situation in the present case. These assets, on average, remained under the seizure measure for at least 1263 days (325 days at the least and 1627 days at the most).

As for the assets that were seized during the investigation phase, and that with the announcement of the verdict it was obliged to return to the accused, they are of various types. Starting from phones, cars and real estate. While in one of these cases it was found that numerous real estate assets have remained seized for almost five years. In this case, it was found that almost 20 different real estate properties were seized, including apartments, plots and a house, the value of which according to the indictment is over one million euros.

Issues related to asset seizure were also discussed during the focus groups. It was emphasized that if there are claims that the asset is linked to the criminal offense, it cannot be released, and if it was obtained during the commission of the offense, it must be confiscated. However, concerns were raised regarding the seizure of movable assets, particularly vehicles, with reference to cases where expensive cars remained under seizure for over 10 years and the accused were not compensated for the loss.

It was further noted that the Criminal Procedure Code has been amended, and that prosecutors are now required to assess both the loss of the asset and the cost of its depreciation. Additionally, the law allows for such assets to be sold, with the proceeds kept until the end of the proceedings. Nevertheless, shortcomings in this regard were acknowledged, even though progress is being made. It was also noted that in some cases, institutions have been sued for confiscating assets whose value has significantly diminished over time.

Furthermore, examples were mentioned of asset seizures carried out based on decisions by the Police, in which neither the Court nor the Prosecution had been notified

b. In civil proceedings

According to the jurisprudence of the ECtHR, the right to property can also be violated in civil proceedings. According to this jurisprudence, this right can be violated in terms of the duration of civil proceedings, which violates the peaceful enjoyment of property, as well as through the duration of the security measure.

According to the case law of the ECtHR, the proper administration of justice requires time. However, this Court emphasizes that the length of judicial proceedings has a direct impact on the right of citizens to the peaceful enjoyment of their possessions, such that excessive length of judicial proceedings imposes an excessive individual burden on citizens and consequently upsets the fair balance that must be struck between the right of citizens to the peaceful enjoyment of their possessions and the general interest[45]. Thus, according to the jurisprudence of the ECHR, in these cases, the length of the proceedings violates the right to property[46], in addition to the potential to constitute a violation of a fair trial, in terms of the right to a trial within a reasonable time.

As stated, the monitoring carried out showed that the average duration of handling civil cases, from the moment of filing the lawsuit until the moment of issuing the judgment in the first instance, is 1,546 days. This issue, in terms of the violation of the right to a fair trial, in terms of a trial within a reasonable time, is addressed in Chapter 6. However, this way of acting, according to the jurisprudence of the ECtHR, in addition to a fair trial, also represents a violation of the right to property under Article 1 of Protocol 1 to the ECHR.

On the other hand, according to the jurisprudence of the ECtHR, the right to property in civil proceedings is also violated in the context of the imposition of a security measure. According to the jurisprudence of the ECtHR, the manner in which security measures are applied, through which property rights are restricted until a final decision is made in civil proceedings, may constitute a violation of the right to property. According to this court, when applying these measures, three essential conditions must be met: 1) the measure must be provided for by law, 2) it must pursue a legitimate aim in the public interest, and 3) it must respect the principle of proportionality, maintaining a fair balance between the general interest and individual rights[47].

[45] "CASE OF KUNIC v. CROATIA". The European Court for Human Rights. (See the link: https://hudoc.echr.coe.int/eng?i=001-78948).
[46] "CASE OF IMMOBILIARE SAFFI v. ITALY". The European Court for Human Rights. Strasbourg, 11 January 2007. (See the link: https://hudoc.echr.coe.int/eng?i=001-58292).
[47] "CASE OF KARAHASANOGLU v. TURKEY". The European Court for Human Rights. Paragraph 121. Strasbourg, 16 March 2021. (See the link: https://hudoc.echr.coe.int/fre?i=001-208535).

The ECtHR emphasized that the courts must take into account the duration of the measure. However, in addition to the duration, the courts must also take into account the extent and nature of the restrictions imposed by the security measure, as well as the existence or absence of procedural guarantees. Thus, in cases where the measure has been applied for a considerable period of time, is broad in content, is not subject to individual review and is applied in an automatic and rigid manner, it can be concluded that we are dealing with a disproportionate interference and consequently with a violation of the right to property, under Article 1 of Protocol No. 1 to the ECHR.

In five analyzed cases, in which the courts had imposed a security measure, the KLI found that the object of the security measure was immovable property. On average, the duration of the security measure in these cases was about four and a half years, or 1,655 days. In four cases, at the end of the process, the courts ruled in favor of the party that requested the security measure, while in one case, the court ruled in favor of the opposing party and abolished the security measure.

In general, the duration of the security measures in these cases indicates non-implementation of the standards of the ECtHR regarding the protection of property in the case of the appointment of security measures in civil proceedings. In particular, the findings indicate a failure to comply with the proportionality criterion.

With regard to security measures, it was noted during the focus group discussions that such measures can be modified or revoked at any time upon the request of the parties, provided that the circumstances have changed during the course of the proceedings. However, it was stated that in most cases, such requests are not submitted, which prevents the court from reassessing the security measures. Furthermore, it was emphasized that civil cases in which a security measure has been imposed are treated as a priority. Nevertheless, handling these cases within a reasonable time frame is often not feasible due to the high volume of cases.

Publicity of hearing

The publicity of court hearings is a crucial component of the right to a fair trial. The ECHR provides that "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law..."[48]. The principle of publicity of hearings is also enshrined in the Constitution of the Republic of Kosovo and the applicable legislation.

According to the ECtHR jurisprudence, "the holding of public hearings constitutes a fundamental principle enshrined in paragraph 1 of Article 6 of the ECHR. This public nature protects litigants from the administration of justice in secret with no public scrutiny. It is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of paragraph 1 of Article 6 of the ECHR, namely a fair trial.[49]

The ECtHR further clarifies that restrictions on public and media access to hearings must be limited strictly to what is necessary to achieve the desired objective. The Court has emphasized that "the mere presence of sensitive information in case documents does not automatically justify the exclusion of the public without assessing the necessity of such closure by weighing the principle of public hearings against the need to protect public order and national security. Therefore, before excluding the public from any part of the proceedings, courts must assess whether such an exclusion is necessary in the specific circumstances to protect a public interest, and the restriction must be confined strictly to what is necessary for achieving that aim."[50]

With regard to the holding of court hearings, the monitoring identified that courts fully respect the principle of publicity. All monitored court hearings were open to the public, and in none of them did the courts issue decisions excluding the public.
However, according to ECtHR jurisprudence, the principle of publicity not only encompasses the openness of the hearings but also imposes an obligation on the courts to notify the public about the scheduling of such hearings. In this regard, the ECtHR has emphasized that "a trial satisfies the publicity requirement if the public has access to information on the date and location of the hearing and if the venue is easily accessible to the public."[51]

In line with this obligation, the monitoring also assessed the courts' notification practices regarding the holding of hearings. Out of 100 monitored hearings, only 12 were published in the court hearing schedules. Consequently, the courts' obligation to inform the public about scheduled hearings was not fulfilled in 88% of monitored cases, and it was respected in only 12% of them.

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[48] European Convention on Human Rights, Article 6.1.
[49] "CASE OF MALHOUS v. THE CZECH REPUBLIC." European Court of Human Rights. Paragraphs 55–56. Strasbourg, 12 July 2001. (See link: "CASE OF KARAHASANOGLU v. TURKEY". The European Court for Human Rights. Paragraph 121. Strasbourg, 16 March 2021. (See the link: https://hudoc.echr.coe.int/fre?i=001-208535).
[50] "CASE OF NIKOLOVA AND VANDOVA v. BULGARIA." European Court of Human Rights. Paragraph 74. Strasbourg, 17 March 2014. (See link: "CASE OF KARAHASANOGLU v. TURKEY". The European Court for Human Rights. Paragraph 121. Strasbourg, 16 March 2021. (See the link: https://hudoc.echr.coe.int/fre?i=001-208535).
[51] "CASE OF RIEPAN v. AUSTRIA." European Court of Human Rights. Paragraph 29. Strasbourg, 14 November 2000. (See link: https://hudoc.echr.coe.int/eng#{"itemid":["001-58978"]}).

To align with ECtHR standards on the publicity of hearings, courts must ensure that all hearings are published in the official hearing schedules. Failure to do so renders the publicity guaranteed by the courts incomplete under the standards of the ECtHR.

Regarding courtroom management, monitoring revealed that the practice of holding hearings in judges' offices remains an ongoing issue at the Basic Court in Pristina. This court has 16 courtrooms, all located within a single court building ("Building D"), which houses the Special Department and the Department for Serious Crimes. Meanwhile, the General Department, including the Civil and Criminal Divisions, located in "Building A," lacks any courtroom, resulting in almost all of its hearings being conducted in judges' offices.

Thus, of the 100 monitored hearings, only 34 were held in courtrooms, all of which involved cases from the Special Department and the Department for Serious Crimes.

Acoustics in courtrooms

Article 6 [Right to a Fair Trial] of the ECHR, when read in its entirety, guarantees the defendant's right to participate effectively in the proceedings. This includes, among other things, not only the right to be physically present but also the right to hear and follow the developments of the trial. According to ECtHR jurisprudence, poor acoustics in the courtroom and difficulties in hearing may constitute a violation of this right if they prevent the defendant from effectively following and understanding the proceedings[52].

During the monitoring, two cases were identified in which acoustic issues in the courtrooms made it difficult to clearly hear the statements made during the hearings. These acoustic difficulties were also confirmed through questionnaires conducted with the parties involved in these proceedings.

While emphasizing that poor acoustics was not identified as a general problem but only in two specific cases, in light of ECtHR jurisprudence, judges have a duty during hearings to ensure that all parties can clearly hear all statements made in the courtroom.

Linguistics rights

The ECHR stipulates that any person accused of a criminal offense has the right to the free assistance of an interpreter if they do not understand or speak the language used in court[59]. The defendant's right to interpretation is an essential precondition for the conduct of a fair trial. No person can benefit from a fair trial if they do not understand the language in which the proceedings are conducted. Without interpretation, the accused's ability to make informed decisions during the proceedings may be seriously compromised[53].

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[52] "CASE OF STANFORD v. THE UNITED KINGDOM." European Court of Human Rights. Paragraphs 26 and 29.
[53] European Convention on Human Rights. Council of Europe. Article 6.3(e). Rome, 4 November 1950. (See link: Article 6 [Right to a Fair Trial] of the ECHR, when read in its entirety, guarantees the defendant's right to participate effectively in the proceedings. This includes, among other things, not only the right to be physically present but also the right to hear and follow the developments of the trial. According to ECtHR jurisprudence, poor acoustics in the courtroom and difficulties in hearing may constitute a violation of this right if they prevent the defendant from effectively following and understanding the proceedings).

With respect to the right to interpretation, the ECtHR has emphasized that it is the obligation of the courts to verify whether justice requires, or has required, the appointment of an interpreter to assist the defendant. According to the ECtHR, this obligation is not limited solely to cases where the foreign defendant explicitly requests interpretation. Given the central role of the right to a fair trial in a democratic society, this duty arises whenever there is reason to doubt that the defendant has sufficient command of the language used in the proceedings, for example, if the defendant is neither a citizen nor a resident of the state where the proceedings are taking place. This obligation also applies in cases where interpretation is to be provided in a third language (e.g., when no interpreter is available for the defendant's native language, but the defendant also speaks a different, non-native language, which is not an official language of the court[54]). In such cases, the Court must assess the defendant's knowledge of the third language before deciding to use it for interpretation purposes[55].

It should also be noted that the ECHR refers to the right to interpretation only in the context of criminal proceedings. However, it is self-evident that no fair trial can take place in civil proceedings either, if one of the parties does not understand the language in which the proceedings are conducted.

Kosovo's legislation concerning the right to interpretation for parties who do not understand the language used in judicial proceedings is aligned with the ECHR and ECtHR jurisprudence. Regarding criminal proceedings, the Criminal Procedure Code No. 08/L-032 provides that: "A person involved in criminal proceedings who does not speak or understand the language in which the proceedings are conducted has the right to speak their own language and to be informed, through free interpretation, of the facts, evidence, and proceedings. The interpretation must be of sufficient quality to ensure the fairness of the procedure and shall be provided by an independent interpreter."[56]

In the context of civil proceedings, Law No. 03/L-006 on Contested Procedure provides that: "If the procedure is not conducted in the language of a party or other participants in the procedure, oral translation shall be provided upon their request into their own language or a language they understand, including of all pleadings, written evidence, and the content of the court hearing." According to this law, "interpretation expenses shall be covered by the court's budget."[57]

[54] Example: 1.
[55] "CASE OF VIZGIRDA v. SLOVENIA." European Court of Human Rights. Paragraph 81. Strasbourg. (See link: https://hudoc.echr.coe.int/eng?i=001-185306).
[56] Article 14.2, Criminal Procedure Code No. 08/L-032. Republic of Kosovo, 2022.
[57] Law No. 03/L-006 on Contested Procedure. Article 96. Republic of Kosovo, 2008.

The right to interpretation is strongly reinforced by both the Criminal Procedure Code No. 08/L-032 and the Law on Contested Procedure No. 03/L-006, which classify the denial of this right as a substantial procedural violation[58]. As a result, court decisions issued without respecting this right must necessarily be annulled.

Beyond the legal framework, monitoring has found that these rights are also respected in practice. Out of all monitored cases, it was found that in only four instances the hearings were not held in a language understood by all parties. Three of these cases were criminal and one was civil. In each of these cases, the court provided adequate interpretation.

Thus, with respect to the linguistic rights of parties to proceedings, both the legal framework and judicial practice are in line with the ECHR and the jurisprudence of the ECtHR.

Decision-making by independent institutions

As previously stated, under the Constitution of the Republic of Kosovo, the interpretation of human rights must be aligned with the ECtHR. This is stipulated in Article 53 of the Constitution, which states: “Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights.”

Article 53 does not refer solely to a particular institution, such as the courts, but to the entire legal order of Kosovo. This means that the obligation to interpret human rights in accordance with ECHR case law is not exclusive to the judiciary but applies to all public institutions when issuing decisions.

In addition to courts, the monitoring also covered five independent institutions, analyzing the extent to which their decisions apply the ECtHR. These include the IPA, IOBCSK, the IMC, PRB, and the CA.

Of the 60 decisions analyzed from the five independent institutions, the monitoring found that ECtHR jurisprudence was applied in only four decisions, issued by just two of the institutions. Three of the cases involving ECtHR jurisprudence were decisions issued by the IPA. In two of those cases, specific ECtHR rulings were referenced, while in the third, ECtHR case law was cited only generally. The fourth case was a decision from the IOBCSK, which also cited ECtHR jurisprudence generally without referring to a specific decision. For the remaining three institutions, namely the IMC, the PRB, and the CA, no decisions were identified that referenced ECtHR jurisprudence.

[58] Criminal Procedure Code No. 08/L-032. Article 384.1.1.4. Republic of Kosovo, 2022; Law No. 03/L-006 on Contested Procedure. Article 182.2.j. Republic of Kosovo, 2008.

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Institution	Decisions analysed	Decisions referencing ECHR	Application rate (%)	Quality of Application
IPA	12	3	25%	2 decisions with specific references to ECHR, 1 general reference
IOBCSK	12	1	8.30%	General reference to ECHR jurisprudence, no specific decision cited
IMC	12	0	0%	No reference to ECHR jurisprudence
PRB	12	0	0%	No reference to ECHR jurisprudence
CA	12	0	0%	No reference to ECHR jurisprudence
TOTAL	60	4	6.70%	Only 2 out of 5 institutions applied ECHR case law in a total of 4 decisions

Table 2: Application of ECHR jurisprudence by independent institutions

These findings point to a widespread failure to apply ECtHR jurisprudence in the decision-making processes of independent institutions. Aside from three IPA decisions and one IOBCSK decision, the monitoring identified no cases where ECtHR jurisprudence was applied by the other three independent institutions.

In this context, it must be reiterated that ECtHR case law is binding for all public institutions. Therefore, the institutions monitored must recognize that their decision-making processes involve matters of fundamental rights, the interpretation of which must be consistent with ECtHR jurisprudence. Consequently, these institutions should begin to act in accordance with their constitutional obligation by incorporating ECHR case law into their decisions.

Presumption of innocence

The ECHR stipulates that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."[59] This principle is also enshrined in the Constitution of the Republic of Kosovo and the Criminal Procedure Code.

According to the ECtHR jurisprudence, the principle of the presumption of innocence requires, among other things, that courts must not approach a case with the preconceived idea that the accused has committed the offense[60]. During the monitoring process, no judicial behavior was identified that, under ECtHR jurisprudence, would constitute a violation of the principle of the presumption of innocence in this respect.

However, it should be emphasized that the presumption of innocence is not a duty imposed solely on judges. The obligation to respect this principle also extends to other public officials. As a procedural safeguard in criminal proceedings, the presumption of innocence establishes specific requirements in situations that include, among others, premature public statements about the accused's guilt made by public officials[61], even when such references are made solely in the reasoning of a decision that suggests the accused may be guilty[62].

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[59] European Convention on Human Rights, Article 6.2.
[60] "CASE OF BARBERÀ, MESSEGUÉ AND JABARDO v. SPAIN." European Court of Human Rights. Strasbourg, 6 December 1988. (See link: https://hudoc.echr.coe.int/eng#{"itemid":["001-57429"]}).
[61] "CASE OF ALLENET DE RIBEMONT v. FRANCE." European Court of Human Rights. Paragraphs 35–36. Strasbourg, 10 February 1995. (See link: https://hudoc.echr.coe.int/eng#{"itemid":["001-57914"]}); "CASE OF NEŠŤÁK v. SLOVAKIA." European Court of Human Rights. Paragraph 88. Strasbourg, 27 February 2007. (See link: https://hudoc.echr.coe.int/eng#{"itemid":["001-79608"]}).
[62] "CASE OF CLEVE v. GERMANY." European Court of Human Rights. Paragraph 41. Strasbourg, 15 January 2015. (See link: https://hudoc.echr.coe.int/eng#{"itemid":["001-150309"]}).

The ECtHR's case law prohibits public authorities, including officials, from making public judgments about individuals who have been acquitted or are awaiting trial, regardless of the final judicial decision in the specific case.

The ECtHR's Guide on the Right to a Fair Trial devotes particular attention to the statements of public officials, especially those from the executive and legislative branches, due to their visibility and influence in the public domain.

As in previous years[63], throughout 2024 and into 2025, various statements were made by representatives of the Government and the Assembly that interfered with the work of the judiciary and, in relation to certain defendants, violated the principle of the presumption of innocence[64]. Such declarations by institutional actors, as has been noted in the past, are contrary to the Constitution of the Republic of Kosovo and to the ECtHR.

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[63] Jakaj, N. and Zekaj, E. "Interventions in the Justice System through Public Statements." Kosovo Law Institute. (See link: These findings point to a widespread failure to apply ECtHR jurisprudence in the decision-making processes of independent institutions. Aside from three IPA decisions and one IOBCSK decision, the monitoring identified no cases where ECtHR jurisprudence was applied by the other three independent institutions.

[64] See e.g. "Kurti flet për Enver Sekiraqën: Arratisja e tij është dështim i sistemit tonë gjyqësor". Nacionale. (See link: Shih psh. https://reporteri.net/lajme/kurti-kritikon-prokurorine-e-shtetit-kemi-hyre-ne-javen-e-30-te-nga-sulmi-ne-banjske-dhe-ende-ska-aktakuze-per-radoiciqin; https://nacionale.com/politike/kurti-flet-per-enver-sekiraqen-arratisja-e-tij-eshte-deshtim-i-sistemit-tone-gjyqesor/);
"Kurti kritikon Prokurorinë e Shtetit: Kemi hyrë në javën e 30-të nga sulmi në Banjskë dhe ende s'ka aktakuzë për Radoiçiqin". Reporteri. 14 April 2024. (See link: Shih psh. https://reporteri.net/lajme/kurti-kritikon-prokurorine-e-shtetit-kemi-hyre-ne-javen-e-30-te-nga-sulmi-ne-banjske-dhe-ende-ska-aktakuze-per-radoiciqin; https://nacionale.com/politike/kurti-flet-per-enver-sekiraqen-arratisja-e-tij-eshte-deshtim-i-sistemit-tone-gjyqesor/); "'Pesë vjet pa rezultat', Kurti sërish me kritika për Prokurorinë Speciale: Kemi rritur buxhetin, sillni kriminelët para drejtësisë". Dosja. 31 May 2024. (See link: Shih psh. https://reporteri.net/lajme/kurti-kritikon-prokurorine-e-shtetit-kemi-hyre-ne-javen-e-30-te-nga-sulmi-ne-banjske-dhe-ende-ska-aktakuze-per-radoiciqin; https://nacionale.com/politike/kurti-flet-per-enver-sekiraqen-arratisja-e-tij-eshte-deshtim-i-sistemit-tone-gjyqesor/).

Conclusions

- The monitoring findings reveal a low level of application of ECtHR jurisprudence in court decisions. This practice constitutes a failure to fulfill the constitutional obligation imposed on courts under Article 53 of the Constitution.
- Monitoring showed that in some instances, ECtHR jurisprudence was applied only formally, without reference to specific decisions of the Court.
- In only 2% of the monitored hearings was ECtHR jurisprudence mentioned, and even then, only in a generalized manner, without citing any particular judgments.
- ECHR jurisprudence was applied in 13% of the analyzed judgments: in 8.5% of those cases, specific ECHR decisions were cited, while in 4.5%, the jurisprudence was referenced only generally, without any specific citation.
- The highest percentage of ECtHR jurisprudence application was found in civil judgments (18.7%), followed by administrative judgments (10%). The lowest application rate was observed in criminal judgments.
- In terms of court levels, the highest level of application was observed at the Basic Courts (21%), followed by the Supreme Court (8%). In the Court of Appeals, only 2% of judgments included references to ECHR jurisprudence.
- No instances were found where lawyers applied ECtHR jurisprudence in their legal submissions. While the obligation to apply ECtHR case law rests with the courts and not with lawyers, the use of such jurisprudence by lawyers would prompt courts to consider claims in light of ECtHR standards and would strengthen the effective protection of the rights of represented parties.
- The analysis of decisions by five independent institutions indicates an almost complete absence of ECtHR jurisprudence application. Only 4 decisions (6.7%) included any reference to ECtHR case law, and these came from only two institutions (three from the Information and Privacy Agency, with two containing specific citations and one a general reference, and one from the Independent Oversight Board for the Civil Service of Kosovo with a general reference). The monitoring found no cases where ECtHR jurisprudence was applied in decisions from the Independent Media Commission, the Procurement Review Body, or the Competition Authority. This situation reflects a clear failure by these institutions to comply with their constitutional obligations.
- Monitoring found that, in principle, the judiciary does not ensure the right to a trial within a reasonable time. The average duration for adjudicating cases is 1,256 days. In civil matters, the average duration is 1,546 days; in criminal cases, 1,211 days; and in administrative cases, 788 days.
- The oldest criminal and civil cases identified during the monitoring date back to 2006, while the oldest administrative case was initiated in 2015.
- These findings demonstrate that the judiciary is incapable of delivering judgments within a reasonable time, and responsibility for this does not lie solely with the judicial system.

- The judiciary's difficulties in delivering timely justice stem from the high number of incoming cases, which have nearly tripled the number of unresolved cases, despite the judiciary having quadrupled the number of cases it resolves.
- Kosovo lacks a mechanism for addressing violations of the right to a trial within a reasonable time. The draft law from the Ministry of Justice that sought to establish such a mechanism was found to be contrary to the Constitution and posed serious risks to the proper administration of justice.
- With respect to the ECtHR standard on equality of arms in the context of evidence administration, monitoring found that, generally and with some exceptions, the methods used to administer evidence were in compliance with ECtHR jurisprudence.
- According to the ECHR, ECtHR jurisprudence, and applicable legislation, courts are obliged to provide reasoning in relation to claims raised by the parties. Properly reasoned decisions serve to demonstrate that the parties have been heard.
- In practice, monitoring highlighted deficiencies in this area, showing that the Court of Appeals failed to respond to 48.4% of the claims raised by the parties in the cases reviewed. Moreover, in its decisions, the Court of Appeals did not clarify whether the unaddressed claims were decisive.
- In some cases, the Constitutional Court of the Republic of Kosovo found violations of the right to a fair trial due to the lack of reasoning in judicial decisions.
- As for professional legal assistance (i.e., free legal aid), monitoring found that almost all parties involved in proceedings had professional representation by a lawyer. Thus, in terms of the conduct of court hearings, Kosovo's judiciary largely meets the requirements of the ECHR and ECtHR jurisprudence.
- However, regarding the functioning of the FLAA, its current structure is inconsistent with both the Constitution of the Republic of Kosovo and ECtHR case law.
- Monitoring revealed full respect for the principle of publicity in the holding of court hearings.
- However, the principle of publicity was undermined by courts' failure to notify the public of hearing dates—specifically, the failure to publish hearings in the court schedules.
- The transparency and administration of justice were also compromised in some cases by the practice of holding hearings in judges' offices rather than courtrooms.
- Monitoring further found instances where poor courtroom acoustics raised concerns about compliance with ECtHR standards.
- The seizure of property in criminal proceedings, as currently practiced, fails to meet ECtHR standards of proportionality and periodic review. In the five monitored cases, property remained under seizure for an average of 1,263 days without court reassessment, and in three cases the property was returned only after the first-instance judgment.

- Monitoring also identified violations of proportionality in civil proceedings involving security measures on certain assets.
- The average duration of 1,546 days, almost four years, from the filing of a lawsuit to the first-instance judgment in civil matters imposes an excessive burden on the parties. In light of ECtHR case law, such delays not only infringe upon the right to a trial within a reasonable time (Article 6.1 of the ECHR), but also undermine the peaceful enjoyment of property (Article 1 of Protocol No. 1 to the ECHR).
- Monitoring found that courts fully respected the linguistic rights of parties in proceedings.
- No instances were found where courts violated the principle of equality of arms. However, political actors were found to have undermined this principle through public statements interfering with the judiciary.

Recommendations

- Judges, in accordance with their constitutional obligation, should increase the application of ECtHR jurisprudence in their judgments.
- Lawyers should apply ECtHR jurisprudence in support of their arguments and legal claims.
- ECHR jurisprudence should be applied through references to specific cases, rather than in abstract or general terms.
- Independent institutions should apply ECtHR jurisprudence in the decisions they issue.
- Courts should prioritize the resolution of old cases.
- Public administration institutions and the Assembly should fulfill their legal obligations by preventing the continued overburdening of the judiciary with excessive case inflow.
- A mechanism should be established to address violations of the right to a trial within a reasonable time. The law establishing this mechanism must comply with the Constitution, the ECHR, and ECtHR jurisprudence, and it should address the specific needs of the Kosovo judiciary.
- The Court of Appeals must respond to all appeal claims raised by parties in judicial proceedings.
- The Government and the Assembly should adopt legislation that transforms the FLAA Agency into an institution independent from the Ministry of Justice.
- Judges should publish hearings in the court's official schedule.
- Whenever possible, court hearings should be held in dedicated courtrooms, not in judges' offices.
- Judges must ensure proper courtroom acoustics so that all parties can clearly hear the proceedings.
- Judges, within the scope of their authority, should ensure the protection of parties' property when such assets are placed under seizure or security measures.
- Political officials must refrain from making statements that interfere with the functioning of the judiciary.