

Criminal Case Management and the Scheduling of Trials

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1. Introduction

Since 1999, the Organization for Security and Co-operation in Europe (“OSCE”) Mission in Kosovo has held a pivotal role in monitoring the justice system in Kosovo for compliance with fair trial and international human rights standards. Trial monitoring is conducted by OSCE personnel in courts across Kosovo, focusing on identifying systemic issues affecting the justice system.

The OSCE is concerned that the Kosovo judicial system is not adequately exercising its criminal calendaring authority. The caseload challenges facing the Basic Courts of Kosovo are staggering. During the first three months of 2023, the Basic Courts presided over 46,852 criminal cases: of those 40,707 were inherited and 6,145 cases were newly filed.¹ However, only 5,833 cases were resolved leaving 41,019 pending at the end of the three month reporting period. Despite these circumstances, courts² regularly fail to schedule criminal trials on consecutive or uninterrupted days. This practice exacerbates court backlogs, is an inefficient use of judicial resources, and ultimately creates a barrier to justice.

This report analyzes the issue of criminal case backlogs and delays, which is a widespread problem in Kosovo that negatively affects access to justice and the efficient administration of justice. Specifically, the report focuses on how systemic criminal case management practices relating to scheduling trials over a prolonged period of time aggravate criminal case backlogs. The report is based on the direct field monitoring conducted by OSCE staff of criminal hearings observed in 2023. Its purpose is to make actionable recommendations to the relevant judicial system actors in order to improve criminal case management at the trial stage.

1 Kosovo Judicial Council *Statistical Report of the Courts Term I 2023*, page 10. https://www.gjyqesori-rks.org/wp-content/uploads/reports/15988_KGJK_Raporti_statistikor_tremujorit_pare_2023_mbi_punen_gjykatave.pdf original in Albanian (accessed 30 June 2023).

2 For brevity and consistency this document will refer to actions taken by “the court” even though Kosovo’s Code of Criminal Procedure foresees criminal matters occurring before a single trial judge or a panel of judges with a presiding trial judge.

2. Methodology

The report is based on trial monitoring activities of the OSCE and draws on the local legal framework and international standards pertinent to criminal case management, as it relates to scheduling trials. Its focus is to identify systemic issues related to scheduling trials in a lawful and efficient manner.

Findings are based on direct observations by OSCE monitors of hearings it has monitored and published written judgments in criminal cases in 2023. This data has been analysed for compliance with Kosovo law and international human rights standards.

3. Legal Standard

Both the Kosovo Constitution (“Constitution”) and the European Convention on Human Rights (“ECHR”) provide for an accused’s right to a fair trial within a reasonable time. The Constitution guarantees individuals accused of criminal offenses the right to liberty and security of the person (Article 29), as well as the right to a fair and impartial trial within a reasonable time (Article 31). Moreover, Article 6 of the ECHR guarantees the right to a trial within a reasonable time. This provision is designed to build public trust in the effectiveness and credibility of the judicial system and, in criminal matters, to avoid that a person charged with a criminal offense should remain too long in a state of uncertainty about his or her fate.³

Kosovo’s Code of Criminal Procedure (“CPC”) specifically addresses the issue of trial length:⁴ trials before a single trial judge must be completed within 90 days, whereas trials before a panel of judges must be completed within 120 days.⁵ Trial deadlines may be extended only if the court issues a “reasoned decision” citing an exigent circumstance, such as an unusually large number of witnesses, lengthy witness testimony, an unusually large number of exhibits, or to ensure security of the trial.⁶ The court may extend trials by 30 days for each of these circumstances.⁷ Additionally, the court may adjourn a trial if it finds that new evidence must be collected, if the accused has become afflicted by a temporary mental disorder or disability after committing the criminal offense, or if there are other impediments that prevent the successful completion of the main trial.⁸

These provisions alone permit a trial to be extended no less than *seven times* for legitimate case management reasons, and they do not account for the common occurrence observed by OSCE trial monitors where one or more parties fail to appear for a court proceeding, or appear but are unprepared to proceed. However, the Kosovo Judicial Council (“KJC”), recognizing the need to schedule productive and uninterrupted hearings, has issued guidance stating that courts must schedule continuous hearings for criminal domestic violence cases, criminal cases pending for more than two years, as well as criminal cases remanded for retrial in addition to other situations.⁹

3 *Dimitrov and Hamanov v. Bulgaria*, ECtHR Judgment of 10 May 2011.

4 *See generally* CPC Art. 5(1)(2).

5 *Id.* at Art. 310(1).

6 *Id.* at Art. 310(2).

7 *Id.* at Art. 310(3).

8 *Id.* at Art. 306(1).

9 Appendix I to the Kosovo Judicial Council’s 2022-2025 Strategic Plan for the Improvement of Access. https://www.gjyqesori-rks.org/wp-content/uploads/2023/03/KJC_Strategic_Plan_on_Access_to_Justice_2022.pdf (accessed 30 June 2023).

Of note, several other jurisdictions have adopted commonsense procedural case management rules requiring uninterrupted or consecutive trials. For instance, in Albania if a trial cannot be completed in only one session, the court may continue the trial until the next working day; the court may adjourn for a maximum of fifteen days but only for special reasons.¹⁰ North Macedonia stipulates that where it is not possible to finish the main hearing in a single day, the presiding judge may continue the event to the following working day.¹¹ Italy's criminal procedure code stipulates that if a trial cannot be completed in one hearing, it must be continued to the following non-holiday or weekend day; only if absolutely necessary may the hearing be continued "for a maximum term which, computing all extensions, do[es] not exceed ten days."¹² Spain's criminal procedure code requires that once an oral trial begins, it shall continue "during all the consecutive sessions that are necessary until its conclusion."¹³ In the United States, both California and Massachusetts state courts require trials to be scheduled on "as close to sequential days as the calendar of the trial judge permits"¹⁴ or "commenc[ing] trial promptly at 9:30 a.m. on the scheduled date and to continue without interruption until completion."¹⁵ These straightforward case management rules ensure that matters are conducted speedily and justly.

10 Trial – General Rules – Interrupted trials, Article 342 (1) and (2), Criminal Procedure Code of Albania. [Kodi i Procedures Penale-2017.pmd \(pp.gov.al\)](https://www.pp.gov.al/Kodi_i_Procedures_Penale-2017.pmd) original in Albanian (accessed 30 June 2023).

11 Article 359 (1), Criminal Procedure Law of North Macedonia. https://jorm.gov.mk/wp-content/uploads/2016/03/Zakon_za_Krivicna_postapka_150_18112010-2.pdf original in Macedonian (accessed 30 June 2023).

12 Book 7 – Judgment, Title II – Hearings, Chapter 1 – General Provisions, Article 477 – Duration and organization of the trial, Code of Criminal Procedure of Italy. https://www.gazzettaufficiale.it/dettaglio/codici/codiceProceduraPenale/465_0_1 original in Italian (accessed 30 June 2023).

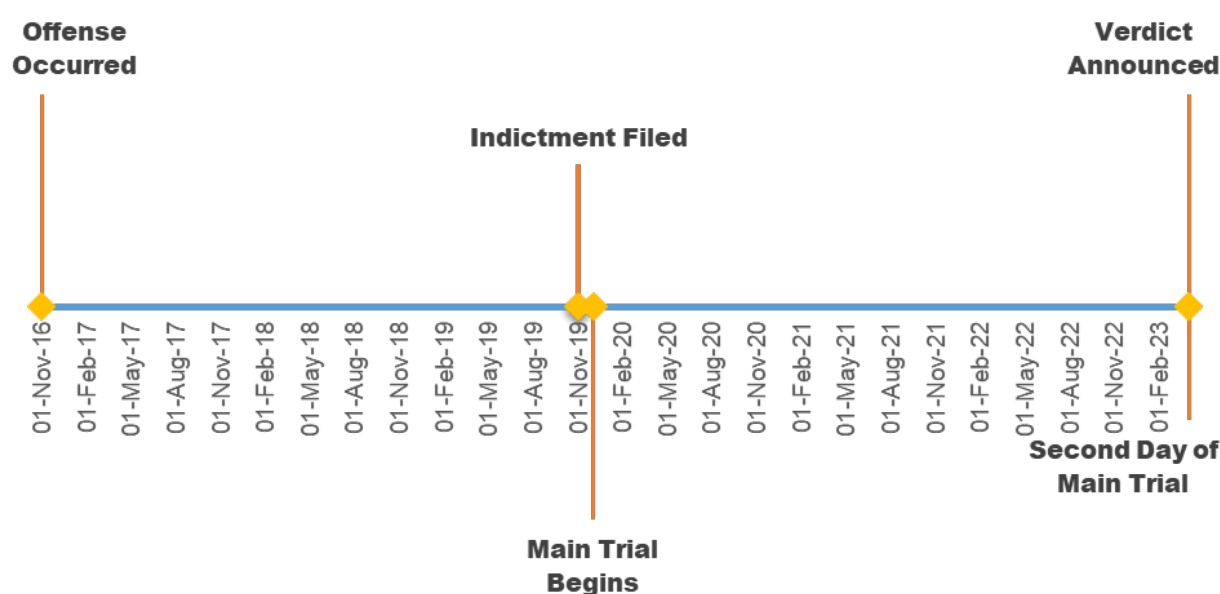
13 Royal Decree of 14 September 1882 approving the Criminal Procedure Act, Title III, Chapter V – Suspension of the oral trial, Article 744. <https://www.boe.es/buscar/act.php?id=BOE-A-1882-6036&p=20230629&tn=1#a744> original in Spanish (accessed 30 June 2023).

14 Cal. R. Ct. 5.393. https://www.courts.ca.gov/cms/rules/index.cfm?title=five&linkid=rule5_393 (accessed 30 June 2023).

15 ALM Dist. Ct. S.O. 6-83: Scheduling, continuance and administrative policies. <https://www.mass.gov/districtmunicipal-court-rules/district-court-standing-order-6-83-scheduling-continuance-and-administrative-policies> (accessed 30 June 2023).

4. Case Analysis

Despite national and international legal guidance, Kosovo’s criminal justice system faces significant delays that are at least partially due to inefficient criminal case management at the trial stage. For instance, in a criminal case proceeding in the Prizren region, the alleged offense took place on 21 November 2016 with the indictment filed three years later on 25 November 2019. Although the main trial commenced on 30 December 2019, the court continued the matter until 14 April 2023—well outside the 120 day time limit prescribed for panel trials by the CPC. The verdict was later announced on 19 April 2023 (see Chart 1 below).

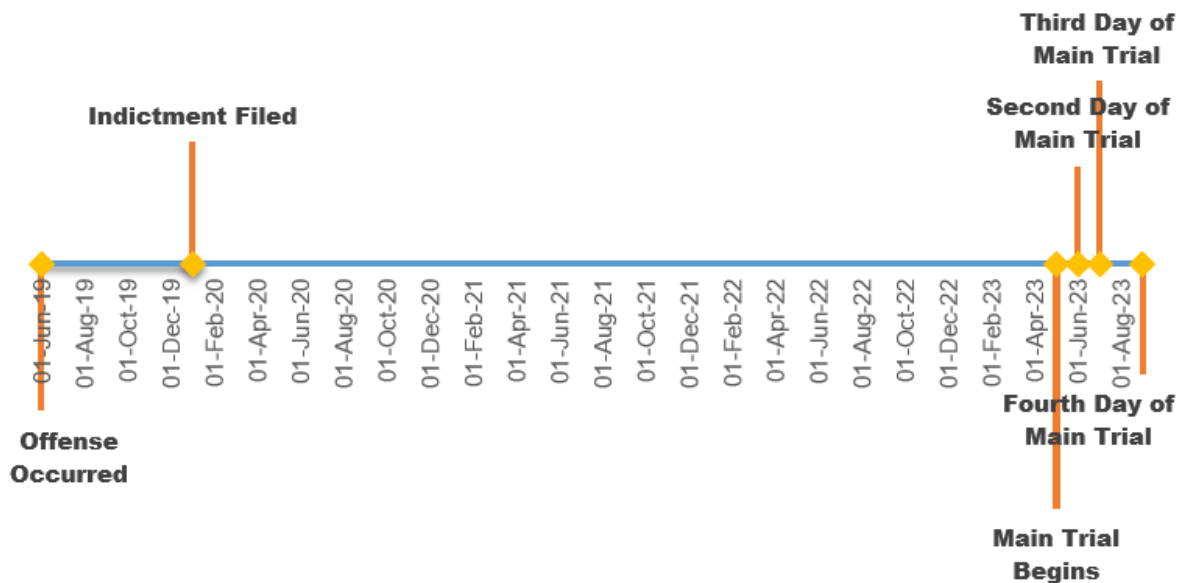


Example 1: Criminal Case Management Timeline in Prizren Region

In a domestic violence case proceeding in the Prishtinë/Priština region, the judge granted the prosecutor’s request to adjourn on the first day of trial due to his self-professed lack of preparation because his office had not supplied the defense with necessary information, and despite the fact that a witness (who had incurred travel expenses to attend trial) would not be available if the matter were continued. In this case, the offense occurred 06 June 2019, the indictment was filed 13 January 2020, and the trial commenced over three years later on 29 May 2023—again, well outside the time limit prescribed by the CPC.¹⁶ The second day of trial—and first productive trial hearing—began 26 June 2023 but was adjourned because the parties proposed to recess for lunch and the court had other hearings scheduled that afternoon. On 24 July 2023 the injured party testified that she was subjected to harassment, intimidation, and stalking by the defendant. The examination could not continue into the afternoon session because the

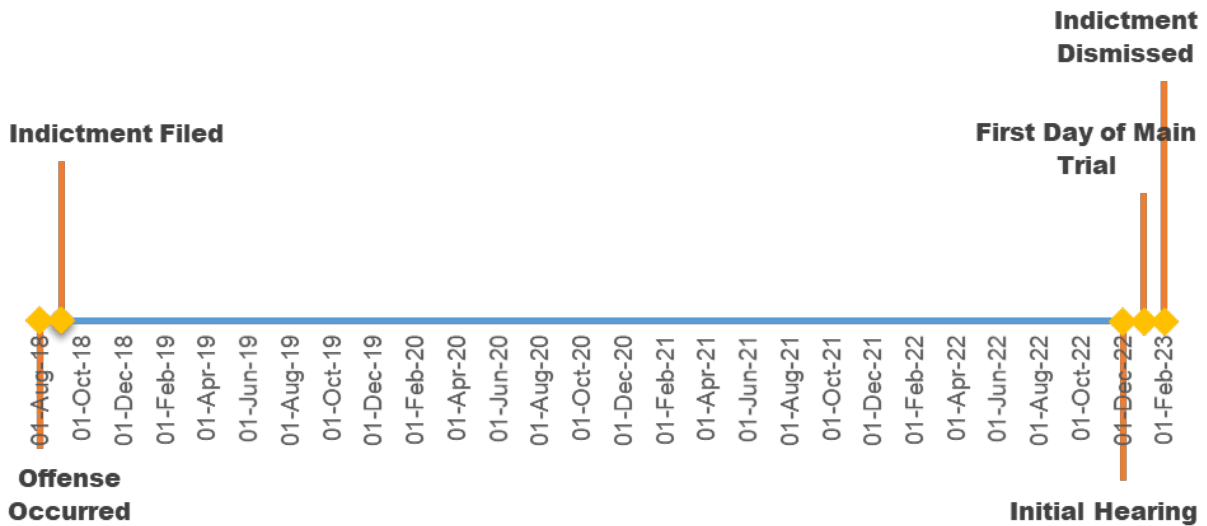
¹⁶ Art. 249 of CPC

prosecutor affirmed she was on duty and had other obligations. The following trial date was scheduled for 7 September 2023 (see Chart 2 below).



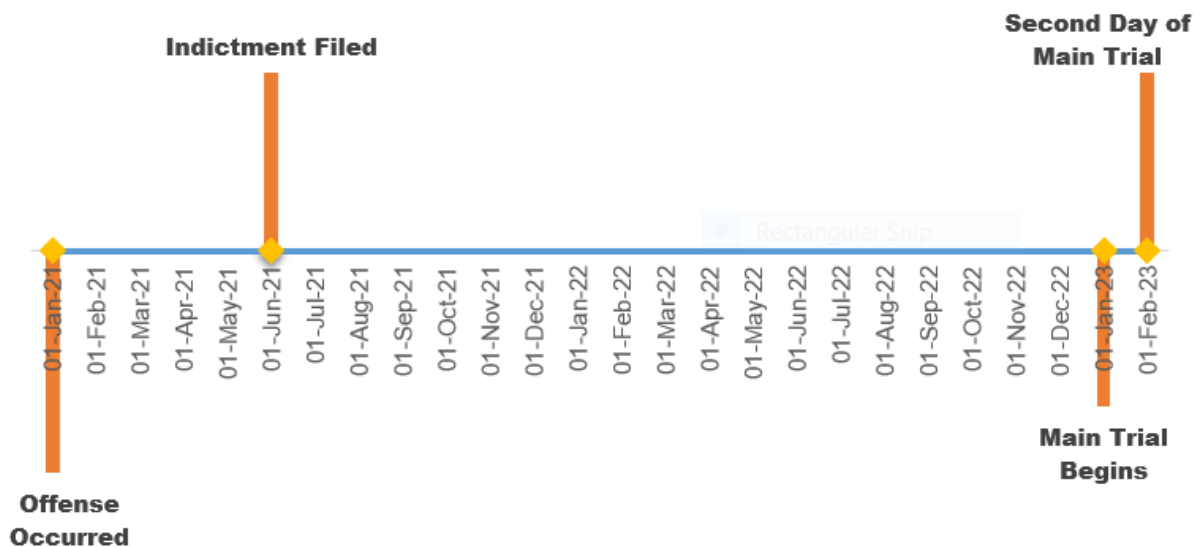
Example 2: Criminal Case Management Timeline in Prishtinë/Priština Region

In a theft case arising from the the Pejë/Peć region, the alleged criminal conduct took place on 11 August 2018 and the indictment was filed on 28 September 2018. However, the first productive initial hearing was not held until four years later on 18 December 2022; at that time, the judge accepted the accused’s plea of not guilty and allowed him time to prepare and present his objections to the indictment. The next hearing was scheduled for 12 January 2023 but, despite being verbally summoned at the previous hearing, neither the defendant nor injured party appeared or justified their absence from the session. The court later dismissed the indictment on 2 February 2023, citing a mediation agreement between the parties (see Chart 3 below). Notably, this ruling was not justified by an analysis of whether the case was appropriate for mediation.



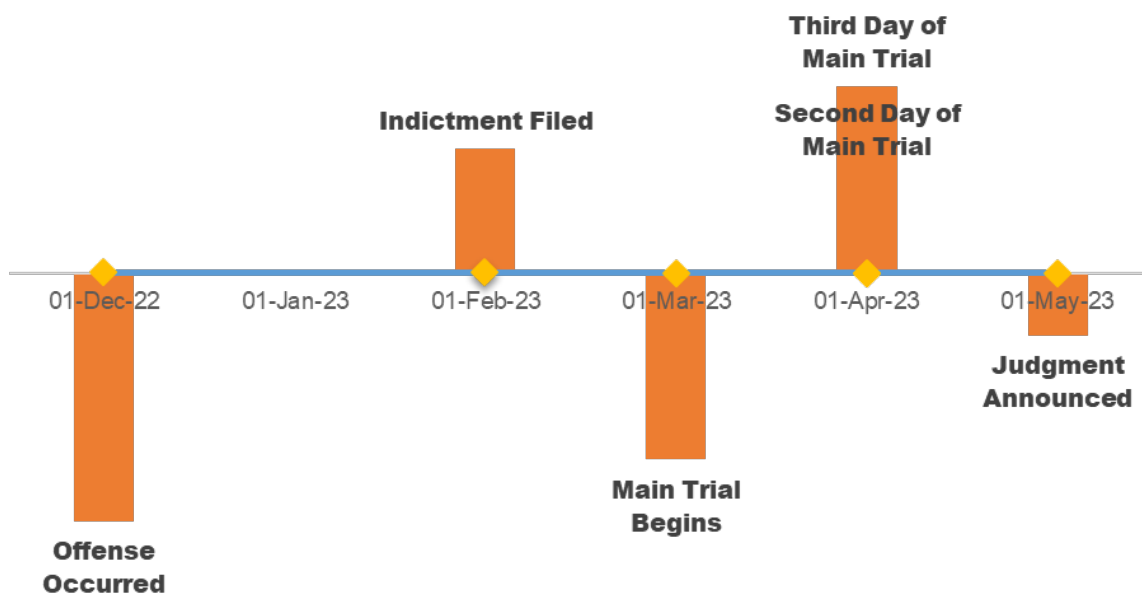
Example 3: Criminal Case Management Timeline in Pejë/Peć Region

A trial panel from the Gjakovë/Đakovica region presided over a criminal case involving the sexual abuse of a minor: the alleged offense occurred 27 January 2021, the indictment was filed 29 June 2021, but the panel did not commence trial until 31 January 2023 when evidence was taken in the form of witness testimony. At the following trial date, 21 February 2023, an expert testified and submitted a written report, and closing arguments were made.



Example 4: Criminal Case Management Timeline in Gjakovë/Đakovica Region

In a case concerning sexual assault against a minor arising from the Ferizaj/Uroševac region, the alleged criminal conduct took place on 19 December 2022 and the indictment was filed on 12 February 2023. The first productive hearing took place on 31 March 2023; the defendant pleaded not guilty and trial commenced with the injured party giving her statement and being cross-examined. The next day of trial began nearly three weeks later on 20 April 2023. The defendant was heard and cross-examined and no further evidence was introduced. The court granted defense counsel’s motion to adjourn as he was unprepared to give his closing argument. The third day of trial convened on 27 April 2023 when the parties made their closing arguments. The judge adjourned proceedings until 2 May 2023 when he announced his verdict. Accordingly, a four-day trial lasted 32 days—well within the CPC’s 90 day time limit, but certainly not an efficient use of time or resources (see Chart 5 below).



Example 5: Criminal Case Management Timeline in Ferizaj/Uroševac Region

5. Conclusions

When a trial is adjourned but not completed, both the court and counsel proceed to address other cases with other demands on their time. Inertia may advance into the judicial calendar thereby paralyzing forward progress by judicial authorities. To maximize judicial economy and the parties' and witnesses' memory of the record, minimize witnesses' travel time and expense, and increase the parties' and witnesses' appearance rate, a two to three day trial should occur over two to three consecutive days—rather than be adjourned and thereby divided into two to three hearings spanning as many months.

6. Recommendations

In light of the issues discussed above, the OSCE recommends the following to improve efficiency in criminal case management in Kosovo:

To the Kosovo Judicial Council and the Kosovo Prosecutorial Council:

- Kosovo Judicial Council and Kosovo Prosecutorial Council should consider developing an internal tracking system (or altering an existing case management system) to identify extensive unwarranted delays and whether they are correlated with specific judges or prosecutors, to adequately conduct performance evaluations.

To the Basic Courts:

- Courts should take all necessary actions to ensure that they comply with the Kosovo Judicial Council's mandate to schedule uninterrupted, continuous hearings for (at a minimum) criminal domestic violence cases, criminal cases pending for more than two years, criminal cases remanded for retrial, and other situations as referenced in the 2022-2025 Strategic Plan.
- Conduct quality control checks of all case types referenced above to identify which criminal cases, should they proceed to trial, must be scheduled for uninterrupted hearings.
- Judges should make full use of their sanction powers, always verify the parties' reasons for delay or absence and apply the CPC's punitive and disciplinary measures of imposing monetary fines or other legal

measures¹⁷ when appropriate. The absence of meaningful sanctions in response to failing to comply with the rules of court—including its scheduling orders—frustrates effective trial management. Those appearing before the court should anticipate that appropriate sanctions will be imposed if their the wrongful conduct interferes with the administration of justice.

To the Prosecution, Defense Counsel, and Authorized Representatives:

- Reaffirm that those providing legal representation should conduct themselves diligently and professionally when advocating for the government or their clients' interests. Counsel and other authorized representatives should manage their court calendars to appear on time, avoid requesting postponements, and not be unjustifiably absent. Courts should be notified in advance with valid justifications for postponements or absences and be provided with suggested alternative dates that have been previously been agreed upon by all parties to the proceeding.

To the Kosovo Academy of Justice:

- Provide training to judges on efficient court administration procedures in line with the CPC and as referenced in the Kosovo Judicial Council's 2022-2025 Strategic Plan.

¹⁷ Article 65 of the CPC empowers the court to fine defense counsel, an injured party or victim, a victim advocate or victim's representative for prolonging proceedings with an amount of up to EUR 1,000 and additionally obliges it to notify the Kosovo Bar Association when a bar member is fined. When such delays are caused by a prosecutor, the courts are required to notify the Chief Prosecutor of their respective prosecution office.

