OSCE Organization for Security and Co-operation In Europe
Mission in Kosovo

TRIAL MONITORING REPORT

ADJUDICATION OF WAR CRIMES CASES IN KOSOVO

JULY 2026

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS

CCK	Kosovo Criminal Code
CPC	Kosovo Criminal Procedure Code
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EULEX	European Union Rule of Law Mission in Kosovo (EULEX Kosovo)
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTY	International Criminal Tribunal for the former Yugoslavia
KBA	Kosovo Bar Association
OSCE	Organization for Security and Co-operation in Europe, Mission in Kosovo
SFRY	Socialist Federal Republic of Yugoslavia
SPO	Special Prosecution Office

EXECUTIVE SUMMARY

This report presents the findings of the OSCE Mission in Kosovo's (OSCE) trial monitoring of war crimes proceedings[1] conducted before the Special Department of the Basic Court of Prishtinë/Priština, from 1 January 2019 to 31 December 2025. It builds upon the OSCE's longstanding engagement in monitoring war crimes proceedings in Kosovo, following earlier assessments published in 2002,[2] and 2010,[3] and reflects the transition from international and hybrid mechanisms to local adjudication. The reporting period coincides with significant institutional and procedural developments, including the entry into force of the Law on Courts in 2019,[4] which established special departments within the Basic Court in Prishtinë/Priština and Court of Appeals, with exclusive jurisdiction over war crimes, the transfer of a substantial caseload from EULEX to the newly established institutions, and the introduction of trials *in absentia* through successive amendments to the Kosovo Criminal Procedure Code (CPC).[5] These developments have contributed to an increase in indictments and a renewed focus on addressing impunity for serious violations of international humanitarian law committed during the conflict in Kosovo.

Drawing on the monitoring of all war crimes cases adjudicated before the Special Department during the reference period, the report identifies a number of persistent and interrelated challenges. These include prolonged delays in proceedings, uncertainty regarding the interpretation and application of procedural safeguards in trials conducted *in absentia*, recurring evidentiary difficulties, including in relation to witness attendance, disclosure obligations, the quality of indictments and the assessment of evidence, as well as broader institutional constraints affecting the Special Prosecution Office (SPO) and the judiciary. The report further highlights the impact of political sensitivities and the continued effects of limited regional co-operation on the effective investigation, prosecution and adjudication of war crimes cases.

While the OSCE notes positive developments, including steps taken by judicial institutions vested by law with jurisdiction to process war crimes cases and the efforts of judicial actors to apply international fair trial standards, the report

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[1] For the purposes of this report, the terms "war crimes cases", "war crimes trials" and "war crimes proceedings" are used descriptively to refer to cases charged under *Chapter Sixteen* of the law in force at the time of the alleged offence, namely the Socialist Federal Republic of Yugoslavia Criminal Code. Their use does not reflect any qualification by the OSCE of the charges or of the acts allegedly committed by the accused persons.
[2] OSCE (September 2002) Kosovo's War Crimes Trials: A Review. Available at: https://omik.osce.org/kosovo/12549 [accessed 12 June 2026]
[3] OSCE (May 2010) Kosovo's War Crimes Trials: An Assessment ten years on 1999–2009. Available at: https://www.osce.org/files/f/documents/2/d/68569.pdf [accessed 12 June 2026]
[4] Official Gazette (18 December 2018) Law No. 06/L-054 on Courts, 2018. Available at: https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302 [accessed 12 June 2026]
[5] Official Gazette (17 August 2022) Code No. 08/L-032, Criminal Procedure Code. Available at: https://md.rks-gov.net/wp-content/uploads/2024/07/8750FE73-BA51-463C-BA88-31D0B8865840.pdf [accessed 12 June 2026]

concludes that structural and operational shortcomings continue to undermine the efficiency, consistency, and perceived fairness of proceedings. In particular, delays and procedural uncertainty risk affecting the rights of the accused, the meaningful participation of victims, and public trust in the justice system.

KEY FINDINGS

The OSCE monitored 48 war crimes cases, involving 138 accused, before the Special Department of the Basic Court of Prishtinë/Priština during the reporting period. By 31 December 2025, 17 cases had been finalized, with 88 per cent of the cases that proceeded to trial resulting in a guilty verdict. The findings below highlight the principal procedural and structural observations through the monitoring of these proceedings:

- **Some positive developments in the adjudication of war crimes cases are noted.** These include increased involvement of judicial institutions vested by law with jurisdiction over proceedings before the Special Department, a growing number of completed cases during the reporting period, and examples of good practice in the application of fair trial safeguards;
- **Prolonged delays remain a cross-cutting concern.** The OSCE observed recurring delays linked to non-appearance of witnesses, changes in trial panel composition, delayed disclosure and translation of evidence, and logistical constraints affecting the transport of the detained accused;
- **The quality and clarity of indictments continue to raise concerns in some cases.** The OSCE observed shortcomings in the individualization of charges, particularly in cases involving multiple accused and collective modes of liability, as well as in the identification of mitigating circumstances known at the time of filing;
- **Evidentiary challenges continue to affect trial fairness.** The OSCE observed recurring reliance on prior recorded statements in circumstances where live testimony would better safeguard defence rights. While such statements may be admissible in limited situations, live testimony remains preferable wherever possible, particularly in war crimes cases where witness evidence is often central to adjudication;
- **Securing witnesses and evidence from outside Kosovo remains a serious obstacle.** Limited regional co-operation, combined with witness security concerns and the limited practical use of alternatives such as video-link testimony, continues to affect both the prosecution and the defence and raises equality of arms concerns;
- **Disclosure and translation problems continue to disrupt proceedings and impair defence preparation.** The OSCE also observed practical obstacles affecting detained accused in reviewing voluminous case files and video evidence with counsel;
- **Proceedings conducted *in absentia* continue to raise important procedural concerns.** These include uncertainty regarding the application of

the “reasonable efforts” standard, delays in the holding of initial hearings, and unresolved questions concerning the scope of effective defence and access to extraordinary legal remedies.

RECOMMENDATIONS

The recommendations below draw on the OSCE's systematic monitoring of war crimes proceedings over a seven-year period and reflect the key findings identified in this report. They are addressed to the institutions responsible for – or otherwise contributing to – the investigation, prosecution, adjudication, and broader institutional support framework for war crimes cases in Kosovo. While many of these recommendations are not novel and are, in several instances, already reflected in institutional strategic documents, their effective implementation remains contingent upon sustained institutional commitment and the allocation of adequate human and financial resources.

To the Special Department of the Prishtinë/Priština Basic Court

- Prioritize live witness testimony wherever feasible, and make increased use of alternative examination methods, such as video-link testimony, to ensure effective examination and cross-examination of witnesses;
- Ensure that initial hearings in *in absentia* proceedings are held within the time limits prescribed by the CPC;
- Adopt practical measures, in co-operation with the detention facilities, to ensure that detained accused can effectively review voluminous case files and video evidence with their counsel, including through appropriate technical arrangements and other compensatory measures where necessary, in order to safeguard defence rights and compliance with Article 6 of the European Convention on Human Rights (ECHR);
- Ensure that first-instance judgements contain a thorough and individualized assessment of the credibility and probative value of witness testimony, particularly where inconsistencies, trauma, interpretation issues, lapse of time, or other relevant contextual factors arise, in order to strengthen the quality, transparency, and reviewability of judicial reasoning in war crimes cases.

To the Special Prosecution Office

- Exercise particular care in relying on witness testimony for indictments and detention requests, including by assessing the relevance, credibility, and evidentiary basis of such testimony at the earliest possible stage, in order to avoid undue reliance on statements that may later prove insufficiently reliable or probative;

- Ensure the individualization of charges within the indictments, particularly in cases involving multiple accused, in order to reflect each defendant's alleged conduct and degree of responsibility;
- Ensure that mitigating circumstances are identified and addressed at the earliest possible stage and throughout the trial proceedings;
- Ensure the timely disclosure of incriminatory and exculpatory material, including in translation where required, in accordance with Article 239 of the CPC, in order to prevent avoidable adjournments, enable effective defence preparation, and safeguard equality of arms.

To the Kosovo Bar Association

- Ensure the appointment of defence counsel with demonstrated experience in complex criminal and war crimes cases, particularly in proceedings conducted *in absentia*;
- Provide regular, practice-oriented training for defence counsel, available in both Albanian and Serbian languages, focusing on *in absentia* proceedings and effective defence strategies.

To the Kosovo Judicial Council

- Adopt administrative or organizational measures to enhance continuity in trial panel composition, including the possibility to delay the judge's transfer until completion of trial, where applicable – in order to safeguard the accused's right to trial within a reasonable time;
- In co-ordination with courts, enhance public information efforts regarding witness obligations and rights, including the availability of financial assistance for travel and related expenses, in order to reduce delays and improve witness co-operation.

To the Supreme Court

- Issue guidance on the applicable modes of liability for war crimes under the Kosovo Criminal Code (CCK), in order to enhance legal certainty, promote consistent charging practices, and ensure that individual criminal responsibility is properly reflected;
- Clarify, through judicial guidance, the standard of "reasonable efforts" in *in absentia* proceedings, including indicative timelines and procedural steps, in order to promote consistency and effective progression of such proceedings;

- Clarify, through judicial guidance, the interpretation and interaction of Articles 11, 56, and 303 of the CPC as regards the ability of court-appointed defence counsel, specifically in cases tried *in absentia*, to access and pursue extraordinary legal remedies, in order to strengthen legal certainty, ensure effective defence, and safeguard fair trial rights in such proceedings.

To the Ministry of Justice

- Enact legislative amendments to the Law on Courts and the CPC to provide for alternate judges in complex war crimes proceedings, in order to reduce disruptions caused by changes in panel composition, strengthen continuity and efficiency in adjudication, and safeguard legal certainty and fair trial rights;
- Explore legal and practical avenues to strengthen regional co-operation in war crimes cases;
- As the institution exercising oversight over the Kosovo Correctional Service, strengthen co-ordination and operational arrangements to ensure the timely transport of detained accused to court hearings, in order to reduce avoidable postponements and better safeguard the right to trial within a reasonable time.

ANALYSIS

1. Introduction

The OSCE has been monitoring the justice system in Kosovo for compliance with human rights and fair trial standards, with the aim of strengthening the rule of law through targeted recommendations.[6] Within this framework, the OSCE has prioritized monitoring war crimes trials.

War crimes trials represent one of the most complex and sensitive forms of criminal adjudication, requiring courts to address serious allegations arising from armed conflicts, often decades after the events in question. Such proceedings typically involve extensive evidentiary records, vulnerable witnesses, regional investigative challenges, and heightened expectations from victims and society at large. Ensuring accountability in these cases is essential not only for individual justice but also for the rule of law, reconciliation, and the prevention of impunity.

Since the end of the conflict in Kosovo, responsibility for investigating and adjudicating war crimes has progressively shifted from international and hybrid mechanisms to local institutions. The entry into force of the Law on Courts in January 2019 marked a significant milestone in this transition, establishing special departments within the Basic Court of Prishtinë/Priština and the Court of Appeals and conferring on them jurisdiction over war crimes cases.[7] This institutional reconfiguration, together with legislative amendments introducing and subsequently expanding the availability of trials *in absentia* under the CPC,[8] as well as the adoption of prosecutorial strategies on war crimes[9] has reshaped the legal and procedural landscape governing such proceedings.[10] These institutional and procedural changes have also coincided with a noticeable increase in indictments for war crimes in recent years, making it timely to assess how war crimes trials have been adjudicated since the transfer of responsibility to the Special Department.

Against this backdrop, the OSCE has continued its mandate to monitor the justice system for compliance with international human rights and fair trial standards. This report focuses on war crimes trials adjudicated before the Special Department within the Basic Court of Prishtinë/Priština (the Special Department) since the transfer of

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[6] Pursuant to UN Security Council Resolution 1244 and OSCE Permanent Council Decision No. 305 of 1 July 1999 (subsequently interpreted since 2008).

[7] Similarly, according to the Law No. 08-L168 on the Special Prosecution Office, the Special Prosecution Office is assigned competence to investigate and prosecute war crimes cases. Available at: https://md.rks-gov.net/wp-content/uploads/2024/07/C4599EE5-5654-41A9-855C-6CA524D30222.pdf [accessed 12 June 2026]

[8] Official Gazette (17 August 2022), Article 303. The previous version of the CPC (Code No. 04/L-123, 2012) entered into force in 2013 and remained valid until February 2023, when it was replaced with the current CPC (Code No. 08/L-032, 2022).

[9] Ministry of Justice, *Strategy of War Crimes* (Prishtinë/Priština, 2019 and 2025)

[10] Ministry of Justice (2024), Strategy on Transitional Justice. Available at: https://kryeministri.rks-gov.net/wp-content/uploads/2024/06/STRATEGY-ON-TRANSITIONAL-JUSTICE-IN-REPUBLIC-OF-KOSOVO-2024-2034.pdf [accessed 12 June 2026]

responsibility from EULEX in 2019. The report provides an objective, data-driven analysis of procedural and contextual issues arising in these proceedings, with the aim of assessing how the current framework operates in practice. It examines key procedural and substantive aspects of these proceedings, identifies recurring challenges observed through trial monitoring, and evaluates their impact on the rights of the accused, the interests of victims, and the overall administration of justice.

While the report acknowledges progress achieved in recent years, it also underscores that effective implementation of the war crimes framework remains constrained by limited resources, political sensitivities, and insufficient international and regional co-operation. The analysis and recommendations contained herein are intended to support ongoing efforts by Kosovo institutions and international partners to strengthen the capacity, consistency, and fairness of war crimes adjudication in line with international standards.

2. Methodology, Scope and Limitations

The sample of cases analysed in this report represents all cases involving war crimes charges[11] adjudicated before the Special Department following its creation under the Law on Courts that entered into force in January 2019.[12] Accordingly, the reference period is from 1 January 2019 to 31 December 2025. For the purposes of this report, references to war crimes trials are descriptive and do not reflect any qualification by the OSCE of the charges or the acts of individuals. Rather, it refers to cases that were charged under *Chapter Sixteen* of the law in place at the time of the alleged offence, *i.e.,* the Socialist Federal Republic of Yugoslavia Criminal Code (SFRY Criminal Code), under the subtitle *War crime against the civilian population*.[13]

The sample analysed for the purposes of this report comprises a total of 48 cases, encompassing 394 hearings:

[11] The OSCE is also aware of two additional cases that were treated as confidential due to the sensitive nature of the charges. In these cases, the OSCE was unable to directly monitor certain sensitive hearings but remained informed about the overall proceedings.

[12] Official Gazette (18 December 2018) LAW No. 06/L-054 ON COURTS. Available at: https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302 [accessed 12 June 2026]

[13] Official Gazette SFRY (1 July 1977*)* Criminal Code of the Socialist Federal Republic of Yugoslavia, article 142. Available at: https://www.refworld.org/legal/legislation/natlegbod/1977/en/13685 [accessed 9 December 2025]

Sample of War Crimes Cases before the Special Department of the Basic Court of Prishtinë/Priština analysed for the purpose of this report (1 January 2019 to 31 December 2025)	
Status	Number of cases
Cases finalized	17
Ongoing trials	9
Pre-trial proceedings[14]	22

The data for this report were collected through systematic trial monitoring of war crimes proceedings before courts with assigned jurisdiction, based on regular attendance of public hearings, review of publicly available court documents, and analysis of procedural developments across cases. Where relevant, findings were complemented by secondary sources, including applicable legal frameworks and institutional reports.

The sample focuses only on proceedings where an indictment was filed before the Special Department[15] and does not include preliminary procedures[16] or cases adjudicated by international and internationalized tribunals.[17]

While the report's overall analysis is based on the 48 cases in the monitored sample, the assessment of indictment-related issues is limited to the 27 indictments that were available to the OSCE for review, while the other 21 remain officially classified.[18]

It should be noted that, in assessing delays and their underlying causes, due consideration was given to the exceptional circumstances related to the COVID-19 pandemic in 2020 and 2021, which are not indicative of a systemic issue. In addition, several indictments filed *in absentia* remain confidential and have not yet advanced to trial, thus community background of the accused remains unavailable.

[14] For the purpose of this report, pre-trial proceedings represent cases for which an indictment was filed, including cases where an effective initial hearing was held but did not proceed further. It is possible that a hearing on the detention on remand has occurred, but no hearings on the merit of the case occurred as of 31 December 2025.
[15] Cases adjudicated by EULEX or by other courts/departments than the Special Department of the Prishtinë/Priština Basic Court were excluded (e.g., cases heard by the Mitrovicë/Mitrovica Basic Court or the Prizren Basic Court).
[16] Defined as cases where an investigation was launched but no indictment has been filed.
[17] This report does not address cases under the jurisdiction of the Kosovo Specialist Chambers or any international institutions.
[18] The remaining 21 indictments could not be assessed for this purpose due to access limitations, including confidentiality restrictions.

3. Legal Framework Applicable to War Crimes Trials

A. Applicable Legal Standards

War crimes proceedings in Kosovo are governed by a complex interaction of legal regimes, including international standards, applicable law in Kosovo at the time of the offence, and contemporaneous procedural law. This interrelation explains why war crimes indictments refer to charges under the SFRY Criminal Code, which have been further articulated and defined by the CCK.[19]

Although Kosovo is not a member of the Council of Europe and is therefore not formally bound by the ECHR, Article 22 of the Constitution accords the Convention direct applicability and supremacy over Kosovo law. As the European Court of Human Rights (ECtHR) is the authoritative interpreter of the ECHR, its jurisprudence is relevant in Kosovo, including in criminal matters, particularly where the CCK incorporates constitutional and international human rights guarantees.[20]

With respect to substantive law, jurisprudence from both the International Criminal Tribunal for the former Yugoslavia (ICTY) and courts in Kosovo have consistently confirmed that war crimes committed during the conflict in Kosovo are governed by the SFRY Criminal Code, in conjunction with international humanitarian law.[21] The definition of what constitutes a war crime in the SFRY Criminal Code was defined according to the 1949 Geneva Conventions and Additional Protocols,[22] as Yugoslavia was a signatory.[23] The Supreme Court of Kosovo has expressly affirmed that the SFRY Criminal Code constitutes the applicable substantive law for such offences.[24]

B. Sentencing Framework and the Principle of Legality

Regarding sentencing, the Supreme Court of Kosovo has confirmed that, at the time the criminal offences were committed, the SFRY Criminal Code was in force. Article 38(1) of that law provided that "the prison sentence cannot be shorter than fifteen days nor longer than fifteen years." Article 38(3) caused confusion for judicial authorities as it stated that aggravated forms of this offence can lead to a punishment of imprisonment of up to *twenty years.*[25] In 2023, the Supreme Court in Kosovo clarified this question by stating that, in the current context of war crimes

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[19] Official Gazette SFRY, Articles 144-147

[20] *Also see*: Article 53 of the Constitution of Kosovo [Interpretation of Human Rights Provisions]: Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights. Available at: https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=3702 [accessed 12 June 2026]

[21] *Prosecutor v. Milutinović et al*., Case No. IT-05-87-T (ICTY Trial Chamber, 26 Feb 2009), paras 447, 1154, 1155; Supreme Court, pml.nr.26/2023, 2020:017884, 20 March 2023

[22] International Commiitee of the Red Cross (1949) Geneva Conventions and Additional Protocols. Available at: https://www.icrc.org/en/law-and-policy/geneva-conventions-and-their-commentaries#text940076 [accessed 12 June 2026]

[23] OSCE (May 2010), Kosovo's War Crimes Trials: An Assessment ten years on 1999–2009, p.9

[24] *See* judgement Pml. no. 138/2021 (5 May 2021)

[25] Official Gazette SFRY, Article 38

trials in Kosovo, the maximum sentence that may lawfully be imposed is fifteen years' imprisonment.[26]

The Court held that Article 38(3) of the SFRY Criminal Code was not applicable and therefore a sentence of twenty years' imprisonment could not be imposed for a basic criminal offence, but only for a statutorily defined aggravated form of such an offence.[27] Importantly, an aggravated form of such an offence must be *explicitly* provided for by law and cannot be equated with aggravating circumstances relating to the manner of commission of the offence. The SFRY Criminal Code did not define aggravated forms of commission; therefore, the highest possible sentence for a crime under the classification of War Crimes is fifteen years.

This approach by the Supreme Court is consistent with the principle of legality as defined by ECHR in its case law, including the prohibition of retroactive or more severe punishment.[28] Hence, where two potentially applicable legal regimes are incompatible, courts are required to apply the law that was in force at the time of the offence and, where necessary, the interpretation that is the most favourable to the accused, while ensuring legal certainty and foreseeability in sentencing.

C. Jurisdictional Developments and Institutional Capacity

The legal framework governing the handling of war crimes committed in Kosovo has shifted across multiple legal and institutional frameworks. Annex A to this report provides an overview of the establishment of international, hybrid and local courts. This report will focus on the adjudication of war crimes trials by the Special Department following the entry into force of the Law on Courts in January 2019.[29] The Law on Courts reorganized Kosovo's court system by establishing special departments within the Basic Court of Prishtinë/Priština and the Court of Appeals with exclusive jurisdiction over war crimes cases. These special departments became operational in June 2019 following the selection of judges through internal competition. The Special Department of the Prishtinë/Priština Basic Court adjudicates war crimes cases in which an indictment assessment was not previously completed, while cases already past that stage continued before the courts previously seized of those matters. The Law on Courts also confers jurisdiction on the Special Department in cases remitted by the Court of Appeals due to procedural

[26] Supreme Court, pml.nr.26/2023, 2020:017884, 20 March 2023.

[27] Specifically, paragraph 3 of Article 38 applies only where: (i) the offence is committed with intent; (ii) the offence has a legally prescribed aggravated form; and (iii) the basic offence carries a maximum penalty of fifteen years. *See* Supreme Court, pml.nr.26/2023, 2020:017884, 20 March 2023, p. 7.

[28] *See Kononov v. Latvia*, ECtHR Judgment of 17 May 2010, para. 187; *Vasiliauskas v. Lithuania*, ECtHR Judgment of 20 October 2015, paras 18, 162, 184. *See* also ECtHR, Key Theme 1: Article 7 – International Crimes

[29] Official Gazette, Law No. 06/L-054 on Courts

violations.[30] Appeals in war crimes cases are decided by a Special Panel of the Court of Appeals.[31]

Similarly, according to the Law No. 08-L168 on the Special Prosecution Office, the SPO is conferred exclusive jurisdiction to investigate and prosecute war crimes and other violations of international humanitarian law. Since its establishment, EULEX transferred approximately 900 war crimes-related cases to the SPO, while around 2,000 cases of missing persons were transferred from the EULEX Police War Crimes Unit to the Kosovo Police War Crimes Investigation Directorate.[32] In 2019, the Kosovo Prosecutorial Council adopted a dedicated strategy for addressing war crimes cases, which led to the establishment of a specialized War Crimes Investigation Department within the SPO, mandated to handle these cases.

The implementation of the 2019 war crimes strategy continues to face significant challenges, including political constraints, limited resources, and insufficient international and regional co-operation. Although the war crimes strategy was developed in 2025 and is referenced in the 2024–2034 Transitional Justice Strategy, it has not yet been formally adopted, and its implementation remains dependent on political will and adequate resource allocation.[33]

The SPO remains overstretched. While the number of prosecutors assigned to the war crimes department has increased in recent years, only five prosecutors are assigned to war crimes prosecutions as of 2025.[34] This remains limited in view of the volume and complexity of the inherited and ongoing caseload. These persistent capacity constraints are relevant to several challenges identified in this report, and further specialized training and support remain necessary to address the substantial backlog.

Furthermore, progress in war crimes prosecutions continues to be hampered by the lack of effective regional legal assistance.[35] Nevertheless, the SPO has continued to advance complex cases involving serious violations of international law, underscoring the importance of sustained institutional co-operation and respect for judicial independence. Efforts to recognize and compensate survivors of conflict-related sexual violence have also continued; however, access to justice remains limited due to societal stigma and restrictive eligibility criteria.[36]

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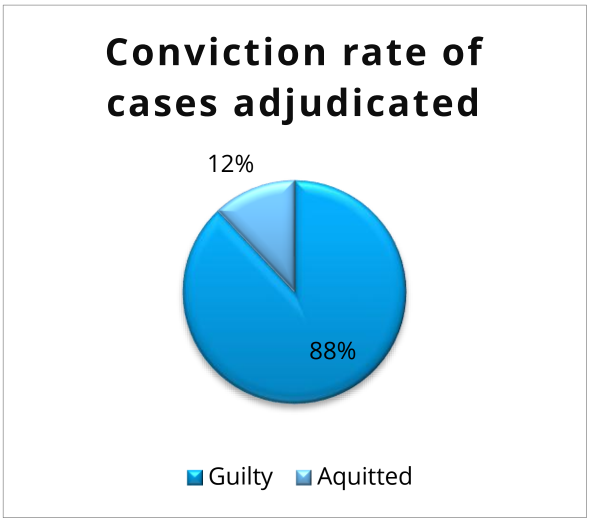
[30] Article 42(5) in conjunction with Article 24(1)(1.1) of the Law on Courts, available at https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=18302 [accessed 12 June 2026]
[31] Humanitarian Law Center Kosovo, *Annual report* (Prishtinë/Priština 2019), p. 330
[32] *Strategy of War Crimes,* p.8
[33] European Commission Kosovo 2024 Report, p. 29. Available at: https://www.ecoi.net/en/file/local/2132161/kosovo-report-2025.pdf [accessed 12 June 2026]
[34] Humanitarian Law Center (2025) Trials in Absentia for War Crimes: Between Statistics and the Reality of Justice page 367. Available at: https://www.hlc-kosovo.org/storage/app/media/Gjykimet%20n%C3%AB%20munges%C3%AB%20p%C3%ABr%20krime%20lufte_Raporti%202025/Kosovo%20report%202025%20ALB%20SRB%20ENG.pdf [accessed 12 June 2026]
[35] European Commission, Kosovo 2024 Report, p. 29
[36] 2024-2034 Strategy on Transitional Justice

4. Findings

A. General Observations on Cases Monitored

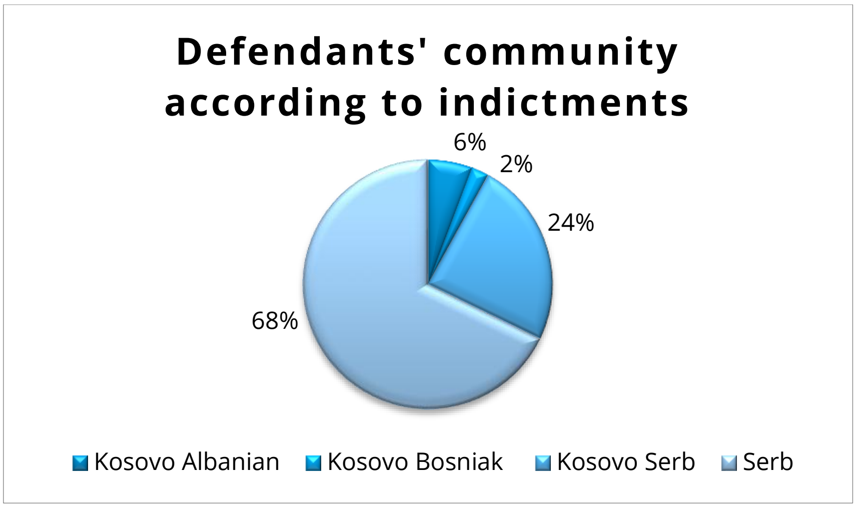


Since the establishment of the Special Department at the Basic Court in Prishtinë/Priština in January 2019, 48 cases involving allegations of war crimes in Kosovo have led to the filing of an indictment. These 48 cases concerned a total of 138 individuals with several indictments issued against more than one individual. By 31 December 2025, 17 of these cases had been adjudicated with final judgements, amounting to a 35 per cent case resolution rate during the reference period.

Of these 17 cases adjudicated by the Special Department, there is a notably high overall conviction rate, with 88 per cent of the cases that proceeded to trial resulting in a guilty verdict.[37] Only two defendants were acquitted.

With respect to gender, all individuals accused of war crimes in the analysed sample were men. In terms of community background, 68 per cent of cases concerned Serbs,[38] while a further 24 per cent involved Kosovo Serbs.[39] It should be noted, however, that several indictments that were filed *in absentia* remain confidential and have not yet advanced to trial. In these cases, information regarding the gender and community background of the accused remains unavailable.

[37] The conviction rate is calculated based on the 17 cases that were adjudicated and confirmed by the Special Department between 1 January 2019 and 31 December 2025. Specifically, 15 cases led to a guilty verdict, while two cases led to an acquittal.
[38] Living outside of Kosovo.
[39] For this analysis, the information was extracted from the 29 indictments available to the OSCE, representing 87 defendants.



These general observations provide context for the thematic findings set out below. While they reflect increased activity in the adjudication of war crimes cases before local institutions, the OSCE's monitoring identified recurring procedural and structural issues as set out below.

B. Prolonged delays in War Crimes Trials

i. Compliance with the Right to Trial within a Reasonable Time

Article 5 of the CPC is in line with Article 6(1) of the ECHR, which states that everyone has the right "*to a fair and public hearing within a reasonable time*".[40] The ECtHR has ruled that, in counting the "reasonable time" of a trial, the period starts from the day on which a person is charged[41] until the final acquittal or conviction, including appeal.[42] While there is no strict quantitative number, the factors taken into consideration in determining whether the proceedings took a "reasonable time" include the complexity of the case, the applicant's conduct, and the conduct of the relevant administrative and judicial authorities.[43]

The CPC contains several provisions designed to ensure that Kosovo courts respect the right to a fair trial within a reasonable time. These provisions apply to all criminal proceedings. However, by their very nature, war crimes trials are inherently complex.

Further, many war crimes cases require the translation of extensive bodies of evidence and court proceedings due to the linguistic needs of the parties involved. In addition, such cases often involve a significant number of witnesses, further contributing to the complexity and length of proceedings.

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[40] *See* also Article 5(3) of ECHR.
[41] *See Neumeister v. Austria*, ECtHR Judgment of 27 June 1968, para. 18.
[42] *See Wemhoff v. Germany*, ECtHR Judgment of 27 June 1968, para. 18.
[43] *König v. Germany*, ECtHR Judgment of 28 June 1978, para. 99.

While the OSCE takes these structural and procedural challenges into account, the ECtHR has consistently held that, although the complexity of a case may justify a certain length of proceedings, judicial authorities remain under a positive obligation to organize their judicial systems in a manner that ensures compliance with the reasonable-time requirement,[44] particularly where the accused is deprived of liberty.[45] Indeed, delays in war crimes proceedings have a qualitatively different impact than in ordinary criminal cases, most notably because the vast majority – almost 95 per cent – of the accused in war crimes cases are held in pre-trial detention. According to the jurisprudence of the ECtHR, breaches of statutory procedural time limits, where attributable to the conduct of judicial authorities, may amount to a violation of the accused's right to a fair trial within a reasonable time.[46]

The OSCE has identified several recurring causes of delay in the monitored war crimes cases, which are set out in detail below.

ii. Main Causes of Delays Observed

Witnesses Non-Appearance

The OSCE has observed multiple instances in which witnesses failed to appear in court despite being properly summoned by the court upon proposal of either the prosecution or the defence. Specifically, of the 25 cases that proceeded to trial and included at least one evidentiary hearing, 13 cases experienced delay due to the absence of a witness. When examined at the level of hearings rather than cases, 33 evidentiary hearings out of 158 (21 per cent) were delayed because at least one witness did not appear.

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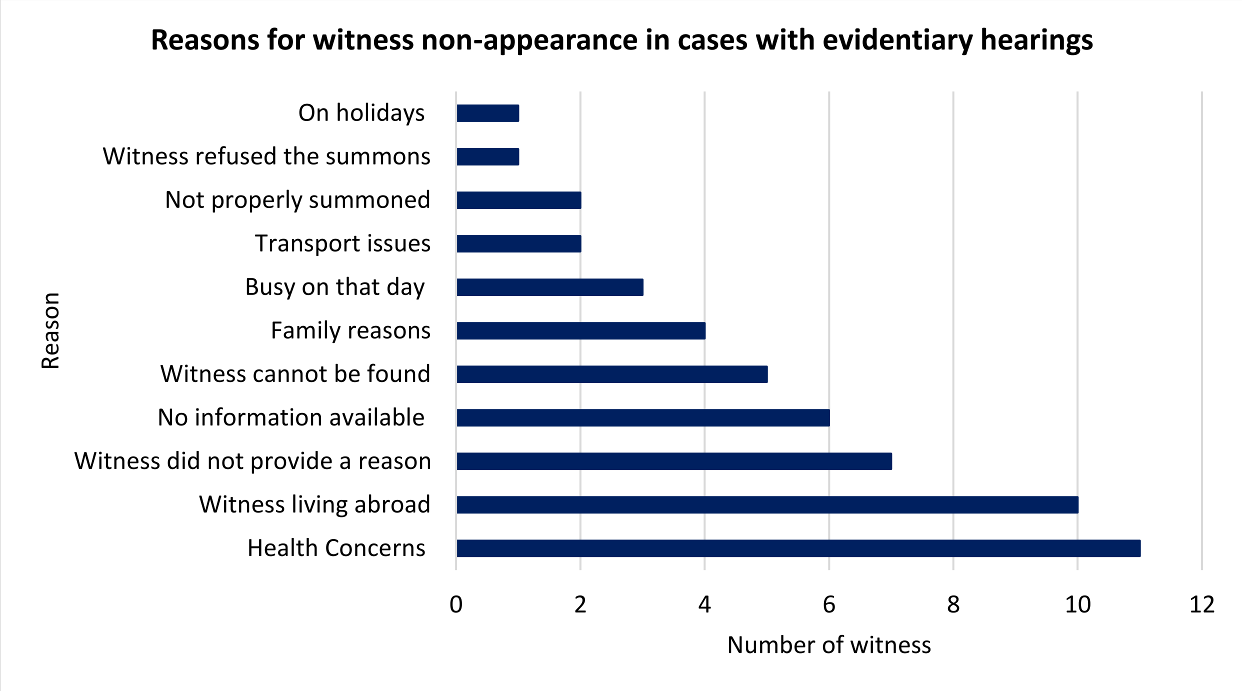
[44] Ivana Roagna, "*The right to trial within reasonable time under Article 6 ECHR: A practical handbook*", (2018), p.29

[45] Kalashnikov v. Russia, 15 July 2002, paras 132–134.

[46] The ECtHR notes that a failure to comply with the right to a trial within a reasonable time (violation of Article 6(1) of the ECHR) is established only in cases where the conduct of the local authorities/competent governmental agencies has a significant impact on delays and adjournments of proceedings. In contrast, when the applicant (defendant in a criminal case) is deemed to have acted in a way that prolonged the proceedings, either by impeding the criminal investigation and requesting several postponements or by filing "*numerous applications for annulments and [presenting] unfounded partiality complaints*", the ECtHR considers such applications unfounded. *See Lammi v. Finland*, ECtHR Judgment of 15 February 2006.



In total, 52 witnesses failed to appear or delayed their appearance in war crimes trials between January 2019 and December 2025. The reasons for these absences vary, as reflected in the chart above. A significant proportion of absences (22 per cent) was attributed to health-related issues. Several witnesses cited advanced age as a factor limiting their ability to travel to attend hearings before the Prishtinë/Priština Basic Court. Others indicated that they do not reside in Prishtinë/Priština - for which the OSCE notes positively that video-link testimony was arranged in several instances to facilitate the participation of witnesses. However, this option remains limited to witnesses located in Kosovo or in locations with effective co-operation arrangements with Kosovo courts. As a result, several witnesses, including a large proportion of defence witnesses residing in locations without such co-operation agreements, were unable to benefit from video-link testimony and therefore either did not provide a testimony or their statement was read into the record.[47]

The ECtHR has held that courts bear responsibility for ensuring the attendance of relevant participants in trial proceedings, including witnesses, co-defendants, and representatives, where their non-attendance results in the postponement of hearings.[48] While the advanced age of certain witnesses is a factor beyond the control of the parties and is directly linked to the time elapsed between the alleged events and the conduct of the trial, other causes of non-attendance can be addressed by the Court and by the parties calling the witnesses. In this regard, several witnesses

[47] Information provided by several defence counsel at trials and confirmed during an interview by the OSCE with a defence counsel held on 25 November 2025.
[48] *See Tychko v. Russia*, ECtHR Judgment of 11 June 2015, para. 68. *See* also ECtHR, *Guide on Article 6 of the European Convention on Human Rights* (2022), para. 341.

cited transportation-related difficulties, including the cost of travel to the court and the lack of timely financial assistance to arrange transportation. In addition, approximately 14 per cent of witnesses who failed to appear did not provide any justification for their absence. In such cases, courts were compelled to request police escorts and, on several occasions, police visits to witnesses' residences in order to secure their attendance. This practice imposes significant administrative costs and may indicate practical challenges in securing witness attendance, particularly where witnesses may not be fully aware of their procedural obligations or available support measures.

In some instances, witnesses appear before the court but are required to return at a later date to provide their testimony due to case-management issues. Such postponements may impose an unnecessary and avoidable burden on witnesses and adversely affect public confidence in the judicial process.

To illustrate, in one case, a witness objected to being asked to return for a subsequent hearing, explaining that they had already been summoned multiple times, faced financial difficulties in covering transportation costs for a nearly 100 km one way journey, and was undergoing medical treatment. The witness further stated that the court had not reimbursed expenses previously incurred, despite the legal obligation to do so.[49] It also raises concerns regarding compliance with Article 63(1)(1.16) of the CPC, in which witnesses who qualify as injured parties or victims are guaranteed the right to compensation and reimbursement of expenses arising from their participation in criminal proceedings. This highlights the risk that inadequate support may hinder witness participation and undermine the integrity of the proceedings.

The OSCE encourages judicial institutions to strengthen efforts to inform the general public of both their obligations and their rights when summoned to appear as witnesses, including the availability of financial assistance to cover travel expenses. Improved awareness and timely support would help reduce delays in proceedings and alleviate the burden placed on law enforcement authorities.

Changes to the trial panel composition

As indicated above, war crimes proceedings are, by their nature, particularly complex. They typically involve a large number of witnesses, extensive evidentiary records, and protracted procedural phases. The OSCE has observed multiple instances in which deficiencies in case management contributed to significant delays in proceedings. While certain delays may stem from factors beyond the control of

[49] Witnesses are expressly included in the CPC under Article 449 and Articles 451–456 as participants whose expenses form part of the costs of criminal proceedings, obliging competent institutions to cover necessary costs such as travel, accommodation, and other participation-related expenses, even though the CPC does not dedicate a separate article specifically to witnesses.

judicial institutions, in some instances, concrete measures could be taken to ensure the orderly and expeditious conduct of trials.

A recurrent source of delay identified by OSCE monitors is a change in the composition of trial panels, particularly where no institutionalized mechanism exists to ensure continuity or preserve case knowledge following replacements. Such changes frequently result in adjournments, either because newly appointed panel members require time to review prior testimonies and hearing records, or, more significantly, because the trial must be conducted *de novo* due to the reconstitution of the panel. Even in cases where proceedings were not restarted, a change in panel composition often resulted in delays of two to three months before the next hearing could be scheduled. Where trials were conducted *de novo*, the resulting delays were considerably more severe, particularly in cases that had already been ongoing for several years. OSCE monitoring indicates that this affected more than 24 per cent of cases (six out of twenty-five) that proceeded to trial.

By way of example, in one case, proceedings were suspended for approximately three months between July and October 2024 following a change in the trial panel. In the same case, a second panel change occurred in September 2025, at which point the court ordered the trial to start over. Of note, the accused had been in pre-trial detention since December 2022, while the case finally reached completion with a guilty verdict on 26 December 2025.

In most of the above-mentioned cases (67 per cent), trial panel changes resulted from judges' appointments to other judicial instances, while other changes may have reflected internal administrative movements. While such appointments are largely unavoidable, the OSCE encourages the Kosovo Judicial Council to adopt measures to mitigate their impact on ongoing proceedings – including the possibility of delaying the judge's transfer until completion of trial – in order to safeguard the accused's right to trial within a reasonable time. Legislative amendments to provide for the designation of alternate judges in complex and lengthy proceedings, such as war crimes cases, would also constitute a strong mechanism for limiting disruption, enhancing continuity and efficiency, and safeguarding the accused's fair trial rights.

<u>Transportation of the detained accused</u>

Another case-management issue, directly involving detention authorities, concerns delays resulting from insufficient co-ordination in the transportation of detained accused from detention facilities to courtrooms. While such delays are often limited to a few hours, in several cases the accused could not be brought to court at all, resulting in the postponement of scheduled hearings.

Even short delays may adversely affect the efficiency of proceedings, particularly where witnesses are present in court but hearings cannot proceed due to the absence or delayed transfer of the accused, necessitating the rescheduling of testimony.

The OSCE monitoring indicates that in approximately 30 per cent of cases that proceeded to trial and involved detained accused, at least one hearing was delayed due to the detention facility's inability to ensure timely escort. Such delays adversely affect the accused's right to trial within a reasonable time under Article 6(1) of the ECHR, and undermine the requirement under Article 5(3) that proceedings be conducted with special diligence where the accused is in pre-trial detention. Strengthening co-ordination, capacity, and predictability in detainee transportation is therefore essential to prevent avoidable delays and to safeguard these rights.

Delays in the disclosure of evidence

Pursuant to Article 239 of the CPC, the prosecution is obligated to disclose to the defence the evidence relied upon in the indictment, as well as all materials collected during the investigative phase of the proceedings.[50] This obligation includes both incriminatory and exculpatory evidence relating to the accused and to witnesses interviewed during the investigation. In accordance with Article 239(2) of the CPC, such materials must be made available in a language understood by the defendant. The ECtHR has consistently held that the failure to disclose relevant material in a timely manner, including exculpatory evidence, may undermine the fairness of the proceedings as a whole, particularly where such delays affect the defence's ability to prepare its case effectively.[51]

The OSCE observed that a number of hearings were postponed because the prosecution was either unwilling or unable to disclose exculpatory or inculpatory material relating to witnesses in a timely manner. Delays in disclosure are frequently exacerbated by the untimely translation of witness statements and other evidentiary material. Specifically, 7 per cent of hearings were postponed due to delays in disclosure, contrary to the requirements of Article 239 of the CPC. These delays affected 11 cases, representing nearly half of the war crimes cases that have proceeded to trial.

Delayed disclosure and translation of evidentiary material affected proceedings at multiple stages of the trial. In some cases, the defence indicated that it was not in a position to enter a plea because key translated documents were missing from the case file. This raises concerns under Article 6 (3)(a) of the ECHR, which guarantees the accused the right to be informed promptly and in detail, in a language they understand, of the nature and cause of the accusation. In another case, the defence

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[50] Official Gazette (17 August 2022) Code No.08/L -032, Criminal Procedure Code, Article 239

[51] ECtHR: Mirilashvili v. Russia, Application no. 6293/04, Judgment, 11 December 2008, para. 204; *Rowe and Davis v. the United Kingdom,* Application no. 28901/95*, 16 February 2000,* paras 54, 66; *Edwards and Lewis v. the United Kingdom,* Applications nos. 39647/98 and 40461/98, 27 October 2004, para. 34.

counsel objected when evidence relied upon by the prosecution, or referred to by witnesses during examination-in-chief, had not been previously disclosed. The defence consequently requested access to the material and additional time to prepare for cross-examination, contrary to the accused person's right to have adequate time and facilities for the preparation of the defence per Article 6(3)(b) of the ECHR.

Such late disclosure not only disrupted the conduct of the proceedings but also required the recall of witnesses, further exacerbating delays. The ECtHR has held that deficiencies in disclosure that necessitate adjournments or impair the defence's ability to test evidence through effective cross-examination may upset the balance between the parties and affect the overall fairness of the trial.[52]

Additional concerns arise in relation to the review of evidence by accused persons held in detention. As highlighted in several cases and raised by defence counsel during consultation meetings, the detained accused faced significant practical obstacles in accessing voluminous case files. These challenges are particularly pronounced in relation to video evidence, as detention facilities often lack the technical infrastructure and equipment for secure handling of sensitive evidence preventing the defence counsel and the accused to review such materials together. Of note, in ECtHR jurisprudence, the concept of "adequate facilities" under Article 6(3)(b) includes practical arrangements enabling the accused to examine the evidence against them, particularly where the materials are extensive or technically complex.[53]

By way of illustration, during a hearing in 2025, the defence counsel requested that the court provide copies of all case-file materials relating to a witness called by the prosecution in order to prepare adequately for cross-examination. The Presiding Judge noted that the case file comprised about 16,000 pages and that the detention facility lacked the conditions necessary to provide such a volume of materials to the accused. In the absence of compensatory measures, such limitations risk impairing the effective exercise of defence rights and raise concerns regarding compliance with the guarantees of Article 6 of the ECHR.

C. Clarity of Charges and Quality of Indictment

International and local standards require that criminal charges be formulated with sufficient clarity and detail to enable the accused to understand the nature and cause of the accusations and to prepare an effective defence. Under Article 14(3)(a) of the International Covenant on Civil and Political Rights (ICCPR) and Article 6(3)(a) of the ECHR, an accused must be informed promptly and in detail, in a language they understand, of both the legal characterization of the offence and its essential factual

[52] *Natunen v. Finland,* Application no. 21022/04, 31 March 2009, para. 42.
[53] *Moiseyev v. Russia*, Application no. 62936/00, 9 October 2003, paras 209, 219-223.

basis. The Human Rights Committee has further clarified that vague or overly broad charges may undermine the effectiveness of the right to defence.[54] These guarantees form part of the broader right to a fair trial and must be assessed cumulatively with other procedural safeguards. Article 235 of the CPC reflects these international standards by requiring indictments to set out the factual circumstances underpinning the charges, as well as relevant mitigating and aggravating circumstances, thereby ensuring legal certainty and procedural fairness.

i. Individualization of Charges and Consideration of Mitigating Circumstances in War Crimes Indictments

The OSCE observes that indictments filed by the SPO for charges of war crimes[55] have demonstrated discernible improvements in their compliance with the requirements of Article 235 of the CPC over the past years, particularly with respect to the description of the charged conduct. Notwithstanding this progress, the OSCE has identified two persisting concerns: the need for clearer individualization of charges and the lack of prosecutorial identification of mitigating circumstances.

First, in the indictments available for review that involved multiple defendants, the OSCE observed concern regarding the lack individualization of the charges and the charged conduct as they relate to each accused. Such individualization is essential to enable each defendant to understand, with sufficient precision, the nature of the allegations and the case to be answered. While this shortcoming is less pronounced in indictments involving two accused, it becomes markedly more problematic in cases involving three or more defendants, where the lack of differentiation risks obscuring individual responsibility.

Of the five indictments involving multiple defendants that were available to the OSCE for review, three (*i.e.,* 60 per cent of that subset) were identified as insufficiently individualized. While the number of indictments is limited, these three indictments collectively charged approximately 60 individuals, thereby drastically amplifying the fair trial implications of the identified deficiencies.

In one case, a large number of defendants were charged under the mode of liability of joint criminal enterprise. While this form of liability is inherently collective, international standards nonetheless require a high degree of individualized factual pleading. The collective nature of the allegation does not relieve the prosecution of the obligation to specify, with respect to each accused, the alleged role and contribution to the joint criminal enterprise, the material facts supporting that contribution, and the basis on which the accused is alleged to have shared the

[54] UN Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/GC/32 para. 31. Available at: https://digitallibrary.un.org/record/606075?ln=en&v=pdf [accessed 12 June 2026]

[55] This section is based on an analysis of the 27 indictments available to the OSCE. Indictments for the other 21 cases were not available to the OSCE for various reasons, including confidentiality.

common criminal purpose. This requirement flows from the accused's right to be informed promptly and in detail of the nature and cause of the charges, as guaranteed by Article 14(3)(a) of the ICCPR and Article 6 (3)(a) of the ECHR, and as consistently affirmed in the international criminal jurisprudence.[56]

A second concern identified by the OSCE relates to the manner in which mitigating circumstances are addressed in the indictments reviewed. Although the assessment of mitigating circumstances is ultimately a matter for the trial panel at the sentencing stage, and while such circumstances may not exist or be identifiable in every case when the indictment is filed, Article 235 of the CPC requires that the prosecution identify any such circumstances that are known or reasonably apparent at that stage. In practice, 89 per cent of the indictments reviewed (24 out of 27) did not identify concrete mitigating circumstances, but instead relied on a standard formulation merely inviting the court to take into account all mitigating and aggravating circumstances in accordance with the applicable laws. While this does not, in itself, establish that mitigating circumstances existed in each case, the frequent reliance on generic wording raises concern as to whether the requirement under Article 235 is being meaningfully addressed. The absence of case-specific information may limit the court's ability to fully assess the circumstances of the accused and may also be relevant at the pre-trial stage, given that the indictment frequently serves as the basis for requests for detention on remand.

ii. Mode of Liability Referred to in the Indictments

A review of the 27 indictments available to OSCE monitors indicates that more than 70 per cent of accused persons are charged under the mode of liability of co-perpetration. While this approach is not uncommon in war crimes prosecutions, given that such offences are often committed within organised structures or groups, the OSCE observes that in a majority of cases charged under co-perpetration (approximately 75 per cent), the identity of the alleged co-perpetrator(s) remains unknown in the indictment.

In a limited number of indictments, additional information is provided regarding the alleged co-perpetrators, such as their positions, ranks, or general location. However, in most cases, the indictments refer only to unidentified co-perpetrators, without further specification. This lack of precision creates challenges for the defence in adequately preparing its case, as the charges remain vague with respect to the alleged joint conduct. At the same time, it also presents difficulties for the

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[56] ICTY, *Prosecutor v. Kupreškić et al*., Appeals Chamber, Judgement, 23 October 2001, para. 88; *Prosecutor v. Kvočka et al.,* Appeals Chamber, Judgement, 28 February 2005, paras 28, 42–54; *Prosecutor v. Krajišnik*, Appeals Chamber, Judgement, 17 March 2009, para. 215; ECtHR: Mattoccia v. Italy, Application no. 23969/94, 5 July 200, paras 60, 65.

prosecution, as the attribution and delineation of individual criminal responsibility in the context of armed conflict is inherently complex.

International criminal tribunals have developed detailed criteria that were further refined through extensive jurisprudence to address modes of liability applicable to crimes committed in the context of armed conflict. These include, *inter alia*, the doctrine of Joint Criminal Enterprise as developed by the ICTY and the concept of Common Plan or Common Purpose under the International Criminal Court framework. These doctrines establish clearly defined legal elements, evidentiary thresholds to be met by the prosecution, and corresponding avenues for defence challenges.[57]

In this regard, the OSCE considers that the Supreme Court should provide further clarification and guidance on the applicable modes of liability for war crimes. This would contribute to greater legal certainty, reduce ambiguity in charging practices, and help ensure that both the charges and any resulting sentences accurately reflect the conduct alleged.

D. Challenges Regarding Evidence in War Crimes Trials

The 2025 prosecution's Strategy on War Crimes places particular emphasis on the obligation of prosecutors and investigators to take all necessary measures, in accordance with the CPC, to secure, preserve, and present evidence in a manner that ensures its admissibility before the courts.[58] This focus is consistent with international standards governing evidence in war crimes trials, which require a flexible approach to admissibility coupled with careful judicial assessment of relevance, probative value, and reliability.[59] It also aligns with the OSCE's trial-monitoring observations, which have repeatedly identified challenges relating to access to evidence, its timely disclosure, and the judicial assessment of its credibility and weight in war crimes proceedings.

The OSCE has identified challenging areas regarding the evidence presented during war crimes trials, as detailed below.

i. Credibility and Probative Value of Witness Testimony

War crimes cases tried before the Special Department often rely heavily on witness testimony, as only limited contemporaneous forensic evidence is available from the time of the events. Therefore, the importance of testimony in the panel's assessment

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[57] *See* for example, ICTY: *Prosecutor v. Brđanin* (Appeals Chamber, Judgement, 3 April 2007); *Prosecutor v. Kvočka et al.* (Appeals Chamber, Judgement, 28 February 2005); Antonio Cassese, *International Criminal Law*, 2nd ed. (Oxford University Press, 2008), *see* in particular Chapter 12: "Modes of Liability", section on Joint Criminal Enterprise.
[58] *Strategy of War Crimes,* pp. 11–12
[59] Amongst others, *see* ICCPR article 14, ECHR article 6; ICTY, *Kupreškić et al*., Appeals Chamber, Judgement, 23 October 2001, para. 39.

is particularly noticeable. In cases where inconsistencies, discrepancies or changes in testimony arise, the court must therefore carefully examine the reliability and credibility of the facts and identifications provided by witnesses,[60] taking into account the passage of time, the circumstances in which prior statements were given, and any other relevant contextual factors.

The OSCE has observed several instances in which witnesses who had previously provided statements changed aspects of their testimony once on the stand.[61]

For example, in one case, the defence counsel challenged the testimony of a witness who, during the hearing, stated that the criminal acts could be attributed to the defendant by placing the defendant on the crime scene. However, in prior statements, the witness had not identified the perpetrator of the acts and had never mentioned the accused by name.

As noted by the Court of Appeals, the probative value of the evidence must be analysed in detail, and contradictions, ambiguities, and inconsistencies must be taken into consideration.[62] The passage of time may also affect the reliability of witness statements, a fact often raised by witnesses during their testimony.

Indeed, in one case, a witness explained that they had difficulty identifying the accused as the person responsible for the acts, because many years had passed and the defendant had undergone physical changes. In the same case, another witness identified individuals who had been beaten by the defendant, but the names of the victims differed from those they had mentioned previously. When questioned about this discrepancy, the witness attributed it to the passage of time.

There have been instances in which the Court of Appeals returned a case to the Basic Court for retrial on the basis of significant contradictions in the testimony of witnesses and injured parties.[63] While the OSCE is pleased to note the weight given by the Appellate Court to the need for reliable and credible testimony, it is important to recall that retrials cause delays and require significant additional resources. Thus, the OSCE considers that the assessment of the reliability and credibility of evidence provided by witnesses should be thoroughly addressed at the first-instance level. Furthermore, the prosecution should ensure that the witnesses called to testify are relevant and credible before relying on them in the indictment and when seeking detention on remand.

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[60] As reiterated by the Special Department of the Court of Appeal, in its ruling dated 30 September 2024.

[61] In assessing this fact, the OSCE does not have access to the evidence, and bases this observation on comments made by the parties during the hearing.

[62] Court of Appeals decisions: aps.nr.45/2024, 2022:113806, of 29 November 2024 (pp.6-10) and aps.nr.27/24, 2021:276857, of 4 November 2024 (pp. 9-19).

[63] Ibid.

ii. Live Testimony, Prior Recorded Statements, and Constraints in Securing Evidence from Outside Kosovo

The use of pre-recorded witness statements is permitted under Articles 119 and 256 of the CPC and may be justified in specific and limited circumstances. Nevertheless, the OSCE has observed a recurring preference for prior recorded statements over live testimony, particularly where witnesses reside outside of Kosovo. This raises concerns in war crimes proceedings, where witness testimony often plays a central role in establishing the facts, especially in the absence or limited availability of documentary evidence. Live testimony should remain the preferred form of evidence wherever possible, as it enables the court to directly assess the credibility and reliability of witnesses.

The OSCE has observed that prior statements relied upon in such circumstances were often recorded by authorities outside the institutional control of the Special Department and under conditions that were, in some cases, insufficiently documented or unknown to the trial judges. Several witnesses who had provided earlier recorded statements have modified or clarified their accounts when testifying in court, underscoring the importance of live examination in assessing credibility.

In one case, a witness explained discrepancies between their in-court testimony and a statement given in 2005 by noting that no professional interpreter had been present and that their children had assisted with interpretation. Following clarification by the presiding judge, the witness confirmed that their testimony before the court reflected the accurate account of events.

These concerns are compounded where witnesses and evidentiary material are located outside Kosovo[64] and functional regional co-operation is significantly limited.[65] While such constraints affect the work of the prosecution, their impact is equally acute for the defence, whose ability to present an effective case may also depend on access to witnesses and documentary evidence located outside Kosovo. Defence counsel have repeatedly raised concerns that witnesses are unwilling or unable to travel to Prishtinë/Priština due to security concerns, and that alternative means of testimony, such as video link, are not always practically available in the absence of functional regional legal assistance. These obstacles directly engage the principle of equality of arms and the right of the accused to examine witnesses under international fair trial standards. While addressing these co-operation issues ultimately requires political and diplomatic engagement, the OSCE encourages the exploration of legal and practical avenues to enhance regional co-operation in high-priority cases, to ensure that both the prosecution and the defence are able to

[64] European Commission, Kosovo 2024 Report p.29
[65] EULEX, (2024) Justice monitoring report, p. 43, available at: https://www.eulex-kosovo.eu/eul/repository/docs/(01.08.2025)eu-rule-of-law-mission-justice-monitoring-report-2024.pdf [accessed 12 June 2026]

effectively present their cases and that proceedings comply with international fair trial guarantees.

At the same time, the OSCE's monitoring indicates that the issue is not solely one of co-operation, but also of witness protection and confidence. The legal framework in Kosovo provides for witness-protection safeguards, including under the *Law on Witness Protection* and the relevant provisions of the CPC.[66] Yet practical challenges remain in ensuring that those safeguards are perceived as sufficient by witnesses in sensitive war crimes proceedings. The OSCE has observed that some witnesses have expressed reluctance to testify due to fears of increased scrutiny and security-related concerns. In some cases, the Special Department has responded by holding hearings in closed session, indicating awareness of these concerns; however, the persistence of such fears remains relevant when assessing both the availability of witnesses and the feasibility of securing live testimony.

OSCE trial monitoring further indicates that both courts and parties remain constrained in their ability to address these difficulties in practice. In one case, two prosecution witnesses residing outside of Kosovo were deemed unavailable to testify, and the prosecution proposed that their prior investigative statements be read into the record to avoid prolonging the proceedings. Despite the defence's objection, the court admitted the statements and incorporated them into the hearing record. In another case, the defence counsel informed the court that most proposed witnesses resided outside Kosovo and were unwilling to appear in person, proposing instead testimony by video link or, alternatively, the submission of notarized statements taken where they reside. The court indicated that video-link testimony would require initiation through formal channels within the Ministry of Justice, while both the prosecution and the court rejected the use of notarized statements on the grounds that they are incompatible with the CPC.

Under Article 6(1) and Article 6(3)(d) of the ECHR, the accused has the right to a fair trial and, in particular, to examine or have witnesses examined. The ECtHR has consistently held that convictions should not be based solely or decisively on statements from witnesses whom the defence has had no opportunity to examine, and that adequate counterbalancing measures must be in place where such evidence is admitted.[67] Courts should, wherever possible, prioritize live testimony and make fuller use of available alternative measures, including video-link testimony where appropriate, to ensure that witnesses can be examined and effectively challenged through cross-examination, in line with the rights of the defence and the overall fairness of the proceedings. While the OSCE recognizes that some witnesses may no longer be available to testify and that practical constraints may arise, courts

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[66] Official Gazette (1 September 2011) Law No. 04/L-015 on Witness Protection. Available at: https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2758 [accessed 12 June 2026] as referred to at article 223 of the CPC, in addition with the protection offered in Chapter XIII of the CPC.

[67] ECtHR, *Al-Khawaja and Tahery v. the United Kingdom* (GC), nos. 26766/05 and 22228/06, Judgment of 15 December 2011, paras 106, 147.

should assess with particular caution requests to substitute live evidence with prior recorded statements, especially where the defence has had no prior opportunity to challenge that evidence and where the circumstances in which the statements were obtained are unclear or inadequately documented.

The OSCE has noted instances of good practice. In certain cases, the Panel has declined to admit prior recorded testimony on the grounds that the requisite procedural safeguards were not in place at the time the statements were taken.

For instance, in one case, the prosecution proposed that three witnesses not be examined in court and that their prior statements be read into the record. The Panel rejected this proposal, noting that the witnesses had been questioned in the absence of defence counsel, thereby failing to meet the minimum standards required to ensure the admissibility and fairness of such evidence.

E. Issues Specific to *In absentia* Proceedings

i. Legal Standards for *in absentia* Trials

International Standards

The physical presence of the accused as an essential component of the right to a fair trial is enshrined in the ICCPR.[68] Nonetheless, the conduct of trials *in absentia* may be permissible in exceptional circumstances, provided that adequate procedural safeguards are observed to ensure a fair equilibrium between the rights of the accused and the interests of justice. This principle has been consistently affirmed by the ECtHR under Article 6 of the ECHR.[69] The ECtHR has recognized that *in absentia* proceedings are not, as such, incompatible with the Convention and may serve the legitimate interest of ensuring the effective administration of justice and preventing impunity, provided that the accused has been duly informed of the proceedings and retains the right to an effective remedy, including a retrial.[70]

This principle was further reiterated by the Council of Europe in its opinion concerning the conduct of trials *in absentia* in Kosovo.[71]

[68] International Covenant on Civil and Political Rights (16 December 1966**),** Article 14. Available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights [accessed 12 June 2026]

[69] Council of Europe, European Commission for Democracy through Law (Venice Commission) (19 June 2020), "*Opinion on certain provisions of the draft criminal procedure code, namely trial in absentia (Article 306) and suspension of officials from office (art. 177)*", Opinion No. 985 / 2020, p. 5.

[70] *Colozza v. Italy*, application no. 9024/80, judgment of 12 February 1985; *Sejdovic v. Italy* [GC], Application no. 56581/00, judgment of 1 March 2006; *Medenica v. Switzerland*, Application no. 20491/92, judgment of 14 June 2001. *See* also Hermi v. Italy [GC], no. 18114/02, judgment of 18 October 2006.

[71] Council of Europe, European Commission for Democracy through Law (Venice Commission), p. 5.

Local Standards

The current structure of Article 303 of the CPC has undergone a lengthy process of amendment and review, culminating in its present form. The question of the appropriate role and legitimacy of trials *in absentia* in Kosovo has been the subject of longstanding debate. To better understand the existing safeguards and outstanding issues surrounding the current Article 303, it is useful to briefly trace the key stages that led to the first indictment filed *in absentia* on 2 May 2023.

In July 2019, amendments to the then-applicable CPC entered into force, allowing trials *in absentia* for criminal offences against international humanitarian law and other serious crimes committed between January 1990 and June 1999.[72] However, the procedural requirements introduced by these amendments were lengthy and cumbersome, making the practical implementation of trials *in absentia* virtually impossible. A second amendment, effective from June 2021, further simplified the procedural requirements governing such trials. Subsequently, in August 2022, the new CPC [73] was adopted, introducing Article 303, which extends the provision for trials *in absentia* to further categories of criminal offences. Another aspect of the procedural safeguards enshrined in Article 303 is the right to a retrial upon request of the accused once they are located. At the present time, no person tried *in absentia* has been found, and thus this safeguard has not yet been implemented.

ii. Uncertainty Regarding the "Reasonable efforts" to Notify the Accused

Under the current CPC, before an indictment can be filed *in absentia*, specific procedural steps must be taken to ensure that the single judge or trial panel is satisfied that "*reasonable efforts have been made to notify the accused of the trial and to secure the presence of the accused*."[74] These efforts include:

- Issuance of a summons;
- Issuance of a warrant;
- Verification of the defendant's address; and
- Issuance of an arrest warrant.

To illustrate the detailed steps taken by the prosecution, one case provides an example in which an arrest warrant was granted on 8 February 2018:[75]

- On 27 March 2018, the prosecution was notified that the arrest warrant could not be executed as the defendant did not live at the latest registered address. Two days later, a Kosovo-wide wanted notice was issued;

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[72] Official Gazette (23 November 2023) Law No. 06/L-091 on amending and supplementing the criminal procedure code No.04/L-123. Available at: https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=20500 [accessed 12 June 2026]

[73] Ibid.

[74] Ibid. article 303(7)

[75] This information comes from the indictment filed by the SPO in 2023.

- About two months later, the prosecution filed for an international wanted notice, and 15 days later, the court issued the order, which was sent to the Ministry of Justice;
- On 6 June 2018 (10 days later – and around six months after the start of the investigation), the prosecution suspended the investigation due to non-presence of the defendant;
- On 17 May 2022 (almost four years after the suspension of the investigation), the prosecution decided to re-open the investigation following proposed changes to the law introducing Article 303 of the CPC related to trials *in absentia*;[76]
- On 19 May 2022, the prosecution sent a summons for an interview to the Belgrade authorities to be delivered to the defendant, as it was established that this was the latest residence of the defendant. The prosecution did not receive any response, and the defendant did not appear on the day of the scheduled interview;
- On 20 September 2022, the prosecution requested – and the Court approved – an order to declare the defendant as wanted for investigation for a period of six months in the Official Gazette and subsequently in the media;
- On 2 October 2023 (about a year later), the SPO filed an indictment *in absentia* against the defendant;
- On 21 February 2024, the initial hearing was held *in absentia*. No further hearing has taken place since.

This example illustrates the multiplicity of procedural steps required from the various institutions involved, underscoring the need for enhanced co-ordination and co-operation among the SPO, the Special Department, the Ministry of Justice, the police, and the media. In addition, challenges related to regional co-operation may further contribute to delays and uncertainty in the conduct of the proceedings.

While the SPO has filed 20 indictments *in absentia* since May 2023, only seven have led to the holding of an initial hearing, and only three trials have been completed. Thus, there is limited data available regarding the Special Department's expectations on the reasonableness of efforts.

The scope and interpretation of what constitutes "reasonable efforts" remain at the core of the legal and practical challenges surrounding trials *in absentia*. The concept of "reasonable efforts" includes two parallel criteria: first, the procedural actions that must be undertaken, and secondly, the timeline of the procedural actions. While the procedural actions criteria were clarified by Article 303 (7) of the CPC, there is a need for greater clarity regarding the timeframe within which summonses and warrants

[76] Official Gazette (17 August 2022) Code No.08/L -032, Criminal Procedure Code.

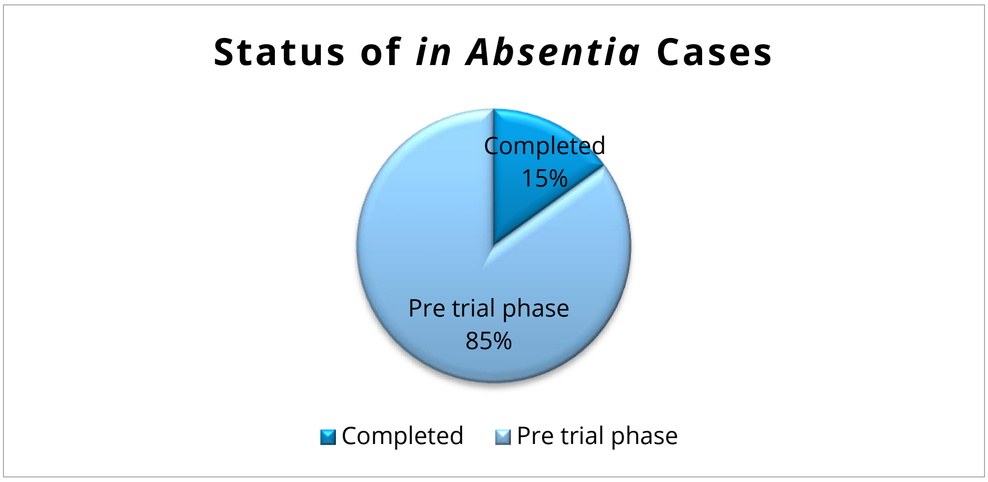
must be issued, or the extent of public outreach required to inform the accused and call upon them to surrender to the court.

Of note, the Court of Appeal, through a decision,[77] provided more detailed guidance to the Basic Court on what constitutes "reasonable efforts" to inform an absent defendant, including specific procedural steps to ensure proper notification and safeguard the rights of the defence.[78] This development is a positive step toward clarifying the standard of "reasonable efforts".

Nonetheless, the OSCE particularly emphasizes that further clarification is required regarding the concrete application of the standard of "reasonable efforts" in light of the increasing number of *in absentia* indictments that remain at the pre-trial stage. In this regard, the issuance of further detailed guidance – establishing timelines and specifying procedural steps – would play a key role in addressing these challenges by enhancing legal certainty and enabling the parties to advance *in absentia* proceedings more effectively.

iii. Delays and Outcome of Trials held *in absentia*

As mentioned previously, since Article 303 came into force, the SPO has filed 20 indictments *in absentia*, however, 85 per cent of these indictments have remained at the pre-trial phase, and only 15 per cent have led to a final verdict (*see* chart below). Notably, all cases that have gone to trial and for which a verdict was rendered have led to a guilty verdict with a sentencing of 15 years, the highest possible sentence for war crimes cases in Kosovo.

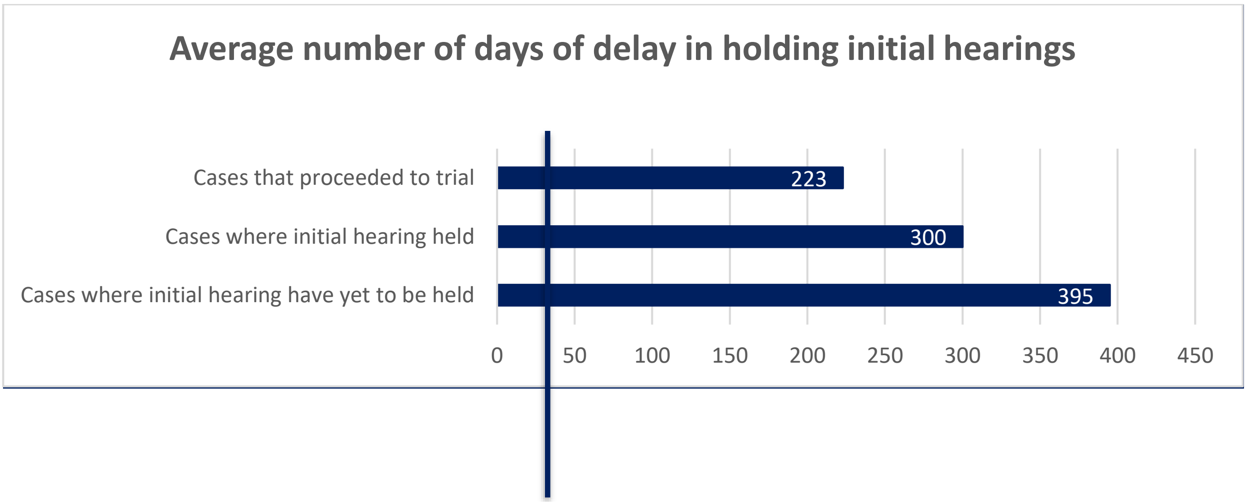


[77] Decision made public on 27 February 2026.

[78] According to Article 303(8) CPC, reasonable efforts include the notification procedures under Articles 172 and 173 CPC, a thorough information campaign calling on the accused to surrender, and publication of the summons and indictment on the websites of the State Prosecutor and competent court, as well as in the Official Gazette. In addition, the Court of Appeals in its judgement provided that a trial *in absentia* may proceed only if the court has made reasonable efforts to secure the defendant's presence, the defendant has been effectively notified of the proceedings, there is clear evidence that the defendant is evading justice, and the rights of the defence have been fully respected.

The delays observed between the filing of the indictment and the holding of the initial hearing appear significant. Under the CPC, where the accused is not in detention, the initial hearing is required to take place within 30 days of the filing of the indictment.[79] In *in absentia* cases that proceeded to trial, the average time elapsed between the filing of the indictment and the initial hearing is 223 days, exceeding the maximum time limit prescribed by the CPC by more than sevenfold.

The situation appears even more concerning in pre-trial *in absentia* cases. In cases where an indictment was filed and the initial hearing was held, the elapsed time amounts to an average of 300 days. In cases where an indictment has been filed between 2023 and 2025 but an initial hearing has yet to be held, an analysis shows that an average of 395 days elapsed between the filing of the indictment and the reference date of this report (31 December 2025), indicating that these cases continue to age without initial hearings being scheduled.[80] The chart below[81] illustrates these extended delays in comparison with the CPC requirement to hold the initial hearing within 30 days of filing the indictment (red line).



While the OSCE notes that priority is accorded to cases involving accused persons in detention, it observes that, in *in absentia* proceedings, the timely consideration of victims' rights, particularly the right to be heard and to have their situation taken into account, remains an important element of the proceedings. Delays at the initial stage may raise concerns regarding the proper administration of justice and may affect victims and the public's perception of the fairness of the process. In this context, the OSCE encourages the holding of initial hearings within the time limits prescribed by the CPC for all criminal cases.

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[79] Official Gazette (17 August 2022) Code No.08/L -032, Criminal Procedure Code, Article 236 (4) and (5)

[80] This average is based on 13 *in absentia* cases where indictments were filed between May 2023 and 31 December 2025 in which no initial hearing was held.

[81] The chart below is based on *in absentia* cases for which the OSCE was able to obtain both the date of filing of the indictment and the date of the initial hearing.

iv. The Protection of the Rights of the Victims

One of the aims of *in absentia* trials is to bring justice to victims and to allow for compensation. It was also mentioned as a tool for transitional justice by fostering reconciliation and ensuring accountability to fight impunity.[82] Pursuant to the Law on Compensation of Crime Victims,[83] victims may apply for compensation even in cases where the perpetrator is unreachable by law enforcement authorities.[84]

Under Article 10 of the Law on Compensation of Crime Victims, a victim or their family members may submit a compensation claim on the victim's behalf, including claims for psychological suffering resulting from the loss of a family member, loss of the right to maintenance, and funeral expenses.[85] An application must be submitted within three years of receipt of the final and binding judgement and receipt of notification of the existence of the circumstances referred to in Article 9, namely that the perpetrator is unreachable by law enforcement authorities.[86]

The OSCE supports access to compensation for victims of war crimes, including victims recognized through *in absentia* proceedings. However, in light of the significant delays in obtaining final judgements and the limited number of *in absentia* cases that have resulted in such judgements, the OSCE is concerned that, in practice, this important component of *in absentia* proceedings is not effectively accessible to victims of war crimes. The OSCE, therefore, encourages reducing delays in *in absentia* proceedings and ensuring that indictments filed *in absentia* lead to final judgements.

v. The Right to Adequate Defence

One of the novelties of Article 303(7) in comparison with the previous amendments permitting trials *in absentia* – is its explicit reference to the mandatory defence under Articles 11 and 56 of the CPC, applied *mutatis mutandis*. Under these provisions, the absent accused must be represented by a court-appointed defence counsel. This right is further protected by Article 6(3) of the ECHR, which refers to the right of everyone charged with a criminal offence to be effectively defended by a lawyer as a basic feature of a fair trial.[87] Positively, the OSCE monitors have reported that all the accused tried *in absentia* have indeed been assigned a defence counsel to represent them in proceedings.

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[82] IBA Report (2016) on the 'Experts' Roundtable on trials *in absentia* in international criminal justice, p.2. available at: https://www.ibanet.org/document?id=Experts-roundtable-trials-in-absentia [accessed 12 June 2026]

[83] Official Gazette (2 Novemeber 2022) Law No. 08/L-109 on Crime Victim Compensation. Available at: https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=66178 [accessed 12 June 2026]

[84] Official Gazette (November 2022) Law on Crime Victim Compensation article 9 section 5.1.4. Available at: https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=66178 [accessed 12 June 2026]

[85] Ibid article 10.

[86] Ibid article 29(2).

[87] ECHR Article 6(3)c); see *Neziraj v Germany*, Application no. 30804/07, (2012), para 50; *Van Geyseghem v. Belgium* [GC], no. 26103/95.

However, although this provision expressly protects the accused, the precise scope of what constitutes an “adequate defence” within the framework of mandatory defence under Article 56 of the CPC remains insufficiently defined. When a defendant does not appoint counsel, an independent defence counsel is assigned, and under Article 11(3) of the CPC, such counsel must have “the experience and competence commensurate with the nature of the offence.”[88] In the context of war crimes proceedings, this requirement implies that the appointed counsel must have experience with cases of comparable complexity. Moreover, given the procedural particularities and consequences *of in absentia* trials, it would be crucial for the counsel’s expertise to also encompass the defence of accused persons tried *in absentia*.

The OSCE notes that, in practice, the Kosovo Bar Association (KBA) appoints counsel according to a rotational or sequential list order, intended to distribute appointments fairly among the registered lawyers.[89] Moreover, given the novelty of *in absentia* proceedings and the relatively limited number of war crimes cases that have proceeded to trial, few defence counsel currently possess the level of experience and competence necessary to fully safeguard the protections envisaged under Article 11 of the CPC. The OSCE suggests that, to the extent possible, the KBA ensures the appointment of counsel with the requisite expertise, and further suggests providing practical training, available in both Serbian and Albanian languages, to enable counsel to develop the competencies necessary to guarantee that defendants tried *in absentia* have access to a full and effective defence.

Furthermore, the interaction between Articles 11, 56, and 303 of the CPC generates interpretive ambiguity regarding the right of the defence counsel appointed for defendants tried *in absentia* to seek extraordinary legal remedies.[90] Article 56(1.5) of the CPC explicitly links the requirement of mandatory defence for *in absentia* trials to Article 303 of the CPC; however, the reference to extraordinary legal remedies appears only in Article 56(1.4), without any specific mention of defendants tried *in absentia*.[91]

According to interviews and discussions between the OSCE and judicial stakeholders, this intersection creates uncertainty as to whether defence counsel may pursue exceptional remedies on behalf of an accused tried *in absentia*, for instance by filing

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[88] CPC, article 11.
[89] OSCE (2022) Report on The Right to Effective Representation in Criminal Proceedings and the Ex Officio Appointment System pp. 15-16. Aavailable at: https://omik.osce.org/sites/default/files/f/documents/8/0/523952.pdf (accessed on 8 June 2026) [accessed 12 June 2026]
[90] Article 419 of the CPC provides for extraordinary legal remedies that allow final criminal judgements to be challenged only under strictly defined, exceptional circumstances. These remedies include reopening of criminal proceedings, extraordinary mitigation of punishment, and protection of legality.
[91] For context, the definition of an extraordinary legal remedy is provided in Article 374 (1.6) and further elaborated throughout Chapter XXI of the CPC.

an appeal to the Supreme Court, a remedy otherwise available to other accused persons.[92]

Clarification of this issue, including the scope and limitations of the counsel's role when representing *in absentia* defendants, is needed. The OSCE encourages ensuring that defence counsel appointed for the accused tried *in absentia* have full access to all extraordinary remedies.

5. Conclusions

The findings of this report indicate that courts in Kosovo have made important strides in consolidating their role in war crimes adjudication. Nonetheless, significant structural and procedural challenges continue to affect the conduct of proceedings before the Special Department of the Basic Court of Prishtinë/Priština.

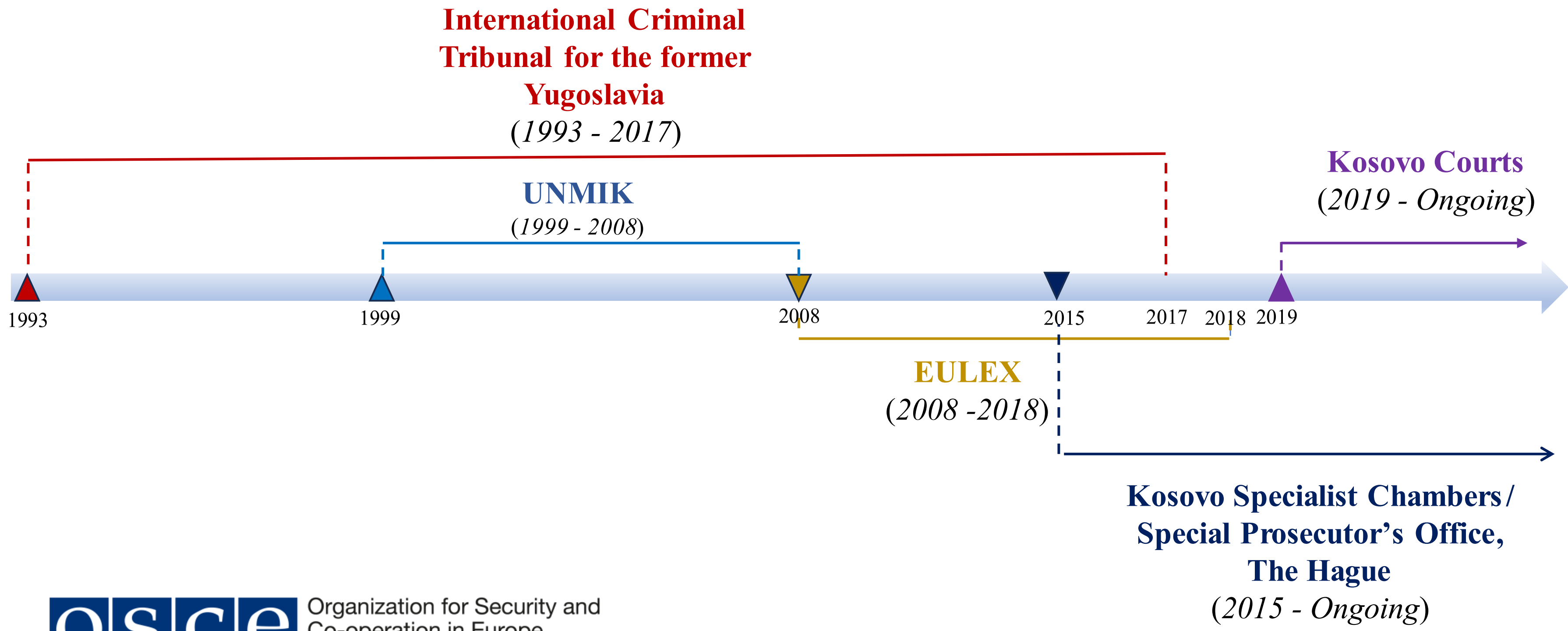
Prolonged delays, recurring difficulties related to witness attendance, disclosure and translation of evidence, and uncertainty in the application of procedural safeguards, particularly in trials conducted *in absentia*, have a cumulative impact on the efficiency, consistency, and fairness of proceedings. These challenges are compounded by capacity constraints within prosecutorial and judicial institutions and by limited regional co-operation, which continues to affect access to evidence and witnesses located outside Kosovo.

At the same time, the OSCE acknowledges the efforts undertaken by judicial actors to apply international fair trial standards in complex and sensitive cases, as well as recent initiatives aimed at strengthening the applicable framework through strategic planning and legislative reform.

The recommendations set out in this report are intended to support these efforts by addressing persistent shortcomings observed through trial monitoring. Their effective implementation will require sustained political commitment, adequate resourcing, enhanced institutional co-ordination, as well as continued engagement with regional and international partners. Addressing these issues remains essential to ensuring accountability, safeguarding the rights of the accused and victims, and reinforcing public trust in the administration of justice.

[92] Interview with defence counsel on 25 November 2025; Roundtable with Judges and Prosecutors on 5 November 2025.

Historical Overview



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