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

Adjudication of family law cases in Kosovo: Case management issues

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EXECUTIVE SUMMARY

Courts in Kosovo are failing to properly or adequately adjudicate cases involving dissolution of marriage, and cases involving custody of and access to children. Such failure violates the legal framework in Kosovo and may also violate international human rights standards, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Convention on the Rights of the Child (CRC). Serious deficiencies in case management practices, particularly in relation to summoning and evidentiary issues, result in lengthy delays in the hearing of these cases. Shortcomings in evidentiary procedure mean that family law cases are all too often decided in the absence of the best evidence, often in the absence of the evidence of the parties themselves; in some instances, they are decided in the absence of any relevant evidence at all.

Centres for Social Work (CSWs) frequently fail to comply in a timely manner, and sometimes fail to comply at all, with requests from the court for assistance with reconciliation procedures or for opinions on the issue of child custody. The Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) identifies this too as a case management issue; CSW assistance with reconciliation procedures and child custody reports are both mandatory under domestic law in Kosovo, and it is incumbent on courts making such requests to follow up with the CSWs until they have complied with the requests. Further, inaccuracies and omissions in court record-keeping in family law proceedings mean that the parties are many times left without a reliable record of what occurred in the proceedings, and insufficiently reasoned judgments mean parties are all too often left without a clear understanding of what the court ordered with respect to a particular request or why the court made the decisions it did.

As part of its mandate to improve the performance of the Kosovo judiciary and the access to justice for all Kosovo inhabitants, the OSCE periodically reports on thematic areas within the justice sector where systematic human rights concerns have been identified. As this report demonstrates, the volume of relevant cases, the deficiencies in adjudication identified, and the impact on individuals – particularly women and children – make the proper and timely adjudication of family law cases a priority for Kosovo.

INTRODUCTION

The Organization for Security and Co-operation in Europe Mission in Kosovo (OSCE) is concerned that serious shortcomings in the handling of family law cases in the courts in Kosovo may violate both international human rights standards and the legal framework in Kosovo.

The field referred to as "family" law is a broad one, encompassing not only such widely-litigated issues as divorce, alimony, child custody and access, but also issues related to paternity and maternity, apprehension and foster care of children, child adoption, marriage, out-of-wedlock cohabitation, annulment, as well as issues concerning relationships between siblings and between children and their grandparents and other members of the extended family. This report does not purport to cover the entire field of family law, but instead focuses on a number of serious procedural issues in the adjudication of marital disputes and child custody cases in the courts in Kosovo. These include lengthy delays in the resolution of cases, shortcomings with respect to the hearing of witnesses and the adduction of evidence, deficiencies in managing the mandated role of Centres for Social Work (CSWs)[1] in these cases, inaccurate court record-keeping practices, and insufficiently reasoned judgements.[2] All of these problems can be traced back to a failure to implement a comprehensive and proactive case management strategy for these proceedings.

This report first canvasses the applicable international human rights standards, particularly Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and Articles 3, 9 and 12 of the Convention on the Rights of the Child (CRC). Subsequently, the report reviews the relevant provisions from the domestic law, including the Family Law[3] and the Law on Contested Procedure (LCP).[4] Finally, this report reviews the results of OSCE monitoring of family law proceedings. It identifies a number of systemic problems arising out of deficient case management practices and examines, in the context of family law cases, the continuing problem of insufficiently reasoned judgements.

The report concludes that the majority of problems identified in the report could be remedied with the development and implementation of a comprehensive, proactive family law case

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1 The Centers for Social Work (CSWs) are government bodies operating in each municipality in Kosovo under the auspices of the Department of Labour and Social Welfare. Their role is set out at Article 7 of the Law on Social and Family Services.

2 Since February 2008, the justice system in the Mitrovicë/Mitrovica region has been functioning only in a limited capacity. The region has thus been left without a fully functioning judicial system. Hence, Mitrovicë/Mitrovica region presents its own unique problems vis-à-vis the adjudication of family law cases. These, however, will not be canvassed in the present report. Instead, this issue will be discussed in an updated report on the status of the justice system. Similarly, issues involving the application of substantive as opposed to procedural provisions of the Family Law will not be discussed in this report but will instead form the subject matter of a separate monthly report.

3 Family Law in Kosovo, No. 2004/32, as promulgated by UNMIK Regulation 2006/7, 16 February 2006 (Family Law).

4 Law No. 03/L-006 on Contested Procedure, published in Kosovo Official Gazette Year III/No. 38 20 September 2008, (LCP), which courts in Kosovo began applying on 6 October 2008. See also Law on Contested Procedure, Official Gazette of the Socialist Federal Republic of Yugoslavia No. 4/1977, 36/1980, and 66/1982 of 12 February 1982, with amendments from 1998 (1982 Law on Contested Procedure). Many provisions in the LCP remain substantially similar to those in the 1982 Law on Contested Procedure.

management strategy, and concludes with a number of detailed recommendations to the courts, the Kosovo Judicial Institute and the CSWs.

Statistics provided to the OSCE by the district courts reveal significant numbers of ongoing family law proceedings in Kosovo. At the beginning of 2009, there were a total of 707 family law cases filed in previous years which were still awaiting resolution. During 2009, a further 1,855 family law cases were commenced. A total of 1,444 family law cases were resolved by the end of 2009, leaving a total of 1,118 family law cases still awaiting resolution as the year ended.[5] Full statistics for 2010 are not yet available. However, it is clear from the 2009 statistical data that there were significantly more new cases filed than there were existing claims resolved, a scenario which, if repeated in 2010 will result in a growing backlog of these cases before the district courts in Kosovo.

THE LEGAL FRAMEWORK

A) International human rights standards

European Convention on Human Rights (ECHR)

Article 6

Article 6(1) of the ECHR provides that, in the determination of his or her "civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."[6]

The case law of the European Court of Human Rights (ECtHR) establishes that family law cases fall within the rubric of "civil rights" for the purposes of Article 6(1).[7]

- ***Right of access to a court***

The ECtHR has noted that "in civil matters one can scarcely conceive of the rule of law without there being a possibility of having access to the courts."[8] The "principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally 'recognised' fundamental principles of law", and "the same is true of the principle of international law which forbids the denial of justice."[9] The ECtHR has held that Article 6(1) must be read in light of those principles.

> "It would be inconceivable, in the opinion of the Court, that Article 6 para. 1 (art. 6-1) should describe in detail the procedural guarantees afforded to parties in a pending lawsuit and should not first protect that which alone makes it in fact possible to benefit from such guarantees, that is, access to a court. The fair, public and expeditious characteristics of judicial proceedings are of no value at all if there are no judicial proceedings."[10]

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5 Statistics were provided to OSCE monitors in September 2010 by staff of the five district courts.
6 Article 6(1), ECHR.
7 *Golder v UK*, ECtHR Judgment of 21 February 1975, paragraph 33; and *Airey v. Ireland*, ECtHR Judgment of 9 October 1979, paragraph 26.
8 Ibid., paragraph 34.
9 Ibid., paragraph 35.
10 Ibid.

The right of access implies access in fact as well as in law.[11] Hindering "the effective exercise of a right may amount to a breach of that right, even if the hindrance is of a temporary character."[12] The ECHR guarantees "not rights that are theoretical or illusory but rights that are practical and effective […]. This is particularly so of the right of access to the courts in view of the prominent place held in a democratic society by the right to a fair trial."[13] The right of access may be infringed not only when the applicant is unable to institute proceedings, but also when proceedings, once instituted, are delayed by the courts for a lengthy period.[14] The right of access implies a positive obligation to have in place a "coherent system" regulating access to the courts.[15] The system must afford potential litigants "a clear, practical and effective opportunity" to institute proceedings. The right of access also includes a positive obligation to serve documents on parties and to keep parties informed of hearing dates and of decisions taken in the proceedings.[16]

- ***Fair and public hearing***

The right to a fair hearing includes the right to a reasoned judgment. The ECtHR has held that while authorities enjoy considerable freedom in the choice of the appropriate means to ensure that their judicial systems comply with the requirements of Article 6(1), their courts must "indicate with sufficient clarity the grounds on which they based their decision."[17] In a recent judgement, the ECtHR reiterated that "judgments of courts and tribunals should adequately state the reasons on which they are based."[18]

> "Article 6[1] obliges courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision […]. Even though a domestic court has a certain margin of appreciation when choosing arguments in a particular case and admitting evidence in support of the parties' submissions, an authority is obliged to justify its activities by giving reasons for its decisions […]. A further function of a reasoned decision is to demonstrate to the parties that they have been heard. Moreover, a reasoned decision affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice […]."[19]

- ***Within a reasonable time***

Article 6(1) requires that cases be completed within a reasonable time. The ECtHR has held that this requirement "underlines the importance of rendering justice without delays which

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[11] Ibid., paragraph 26. See also *Silver and others v UK*, ECtHR Judgment of 25 February 1983, paragraphs 80–82.

[12] Ibid. See also Campbell and *Fell v UK*, ECtHR Judgment of 28 June 1984, paragraph 107.

[13] *Airey v. Ireland*, ECtHR Judgment of 9 October 1979, paragraph 24.

[14] *Kutić v Croatia*, ECtHR Judgment of 1 March 2002, paragraphs 24–33; *Multiplex v Croatia*, ECtHR Judgment of 10 July 2003, paragraphs 41–55; and *Aćimović v Croatia*, ECtHR Judgment of 9 October 2003, paragraphs 28–42. See also *Ganci v Italy*, ECtHR Judgment of 30 October 2003, paragraphs 27–31; *Marini v Albania*, ECtHR Judgment of 18 December 2007, paragraphs 141–146; and *Dubinskaya v Russia*, ECtHR Judgment of 13 July 2006, paragraphs 39–46.

[15] *De Geouffre de la Pradelle v France*, ECtHR Judgment of 16 December 1992, paragraphs 34 and 35.

[16] *Sukhorubchenko v Russia*, ECtHR Judgment of 10 February 2005, paragraphs 53 and 54; and *Dubinskaya v Russia*, ECtHR Judgment of 13 July 2006, paragraphs 42–46.

[17] *Hadjianastassiou v. Greece*, ECtHR Judgment of 16 December 1992, paragraph 33.

[18] *Tatishvili v Russia*, ECtHR Judgment of 22 February 2007, paragraph 58.

[19] Ibid.

might jeopardise its effectiveness and credibility."[20] All proceedings covered by Article 6(1) are subject to the reasonable time requirement.[21] The ECtHR has held that "[t]he reasonableness of the length of the proceedings must be assessed in the light of the particular circumstances of the case […], having regard to the complexity of the case" as well as the conduct of both the applicant and the competent authorities.[22]

In assessing the complexity of the case, the ECtHR will look at the volume and complexity of the evidence,[23] the number of parties involved,[24] the need to obtain an expert opinion[25] or evidence from abroad,[26] and the complexity of the legal issues in the case.[27] As to the conduct of the applicant, he or she is "required only to show diligence in carrying out the procedural steps relating to [him or her], to refrain from using delaying tactics and to avail [himself or herself] of the scope afforded by domestic law for shortening the proceedings." The applicant "is under no duty to take action which is not apt for that purpose".[28] The court is not responsible for delay occasioned by the conduct of the applicant. A litigant is entitled to make full use of his or her procedural rights; however, where doing so delays the proceedings, the court will not be held responsible for that portion of the delay.[29] However, even where some measure of responsibility for the delay rests with the parties, this factor cannot exclude the responsibility of the judicial system authorities.[30]

Authorities will be held responsible when the delay is found to be attributable their administrative or judicial systems. Authorities have been held responsible for delays in civil and administrative courts in performing "procedural acts of a purely routine character",[31] in the scheduling of hearings by the court,[32] in the presentation of evidence by an administrative body,[33] and for "difficulties occasioned by the lack of coordination between the various authorities concerned".[34] Even where the length of each stage of the proceedings might not, looked at individually, appear to be unreasonable, the overall duration of the proceedings may still be found to be excessive and may as such be found not to meet the reasonable time requirement.[35]

In assessing whether a particular delay was reasonable, the ECtHR also considers what is at stake in the litigation.[36] Particular expedition is required in cases concerning, *inter alia,*

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20 *H v France*, ECtHR Judgment of 24 October 1989, paragraph 58.
21 *König v Germany*, ECtHR Judgment of 28 June 1978, paragraph 96.
22 *H v France*, ECtHR Judgment of 24 October 1989, paragraph 50. See also *König v Germany*, ECtHR Judgment of 28 June 1978, paragraph 99; and *Pedersen and Baadsgaard v Denmark*, ECtHR Judgment of 17 December 2004, paragraphs 45–51.
23 *Eckle v Germany*, ECtHR Judgment of 15 July 1982, paragraphs 80–81.
24 *Neumeister v Austria*, ECtHR Judgment of 27 June 1968, paragraph 21.
25 *Wemhoff v Germany*, ECtHR Judgment of 27 June 1968, paragraph 8.
26 *Neumeister v Austria*, ECtHR Judgment of 27 June 1968, paragraph 21.
27 Ibid.
28 *Unión Alimentaria Sanders SA v Spain*, ECtHR Judgment of 7 July 1989, paragraph 35.
29 *König v Germany*, ECtHR Judgment of 28 June 1978, paragraph 105.
30 *Bock v Germany*, ECtHR Judgment of 29 March 1989, paragraph 41.
31 *Guincho v Portugal*, ECtHR Judgment 10 July 1984, paragraph 36.
32 *König v Germany*, ECtHR Judgment of 28 June 1978, paragraphs 110–111.
33 *H v UK, ECtHR* Judgment of 8 July 1987, paragraph 81. The administrative body in question was a County Council whose function it was to provide social worker support services to the applicant.
34 *Wiesinger v Austria*, ECtHR Judgment of 30 October 1991, paragraph 64.
35 *Uhl v Germany*, ECtHR Judgment of 10 February 2005, paragraphs 33.
36 *Frydlender v France*, ECtHR Judgment of 27 June 2000, paragraph 43 states "the 'reasonableness' of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the

employment,[37] civil status,[38] child custody and access,[39] maintenance,[40] health,[41] social security,[42] reputation[43] and title to land.[44]

Authorities have a positive duty "to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time".[45] This duty exists regardless of cost.[46]

Authorities will not be held liable for a "temporary backlog of court business" if it "takes appropriate remedial action with the requisite promptness." However, a chronic overload" cannot be used to "justify an excessive length of proceedings.[47] Authorities may be held liable where they have chosen to deal with a backlog of cases by giving priority to the most urgent or important among them, if the result of such a system is that non-urgent cases remain inactive for lengthy periods.[48] A system of prioritising cases based on urgency or importance may serve as a short term, provisional expedient.[49] However, where such a system "becomes a matter of structural organisation", the backlog can no longer be

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following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute."

37 *Buchholz v Germany*, ECtHR Judgment of 6 May 1981, paragraph 52 states "what was at stake in the litigation was of great importance for Mr. Buchholz: what was involved was either reinstatement in his employment or an award of compensation in the event of the contract being terminated."

38 *Sylvester v Austria*, ECtHR Judgment of 3 February 2005, paragraph 32 states: "The Court reiterated that, in cases relating to civil status special diligence is required in view of the possible consequences which the excessive length of proceedings may have, notably on enjoyment of the right to respect for family life […]."

39 *Hokkanen v Finland*, ECtHR Judgment of 23 September 1994, paragraph 72, states that "it is essential that custody cases be dealt with speedily" however it also noted that ECtHR "sees no reason to criticise the District Court for having suspended the proceedings twice in order to obtain expert opinions on the issue before it." See also *H v UK*, ECtHR Judgment of 8 July 1987, paragraphs 87–90. In this case the subject of the applicant's complaint related to adoption and access; paragraph 85 states that "[…]the Court considers it right to place special emphasis on the importance of what was at stake for the applicant in the proceedings in question. Not only were they decisive for her future relations with her own child, but they had a particular quality of irreversibility […]. In cases of this kind the authorities are under a duty to exercise exceptional diligence since […]there is always the danger that any procedural delay will result in the de facto determination of the issue submitted to the court before it has held its hearing."

40 *Kubiznakova v the Czech Republic*, ECtHR Judgment of 21 June 2005, paragraph 27.

41 *Bock v Germany*, ECtHR Judgment of 29 March 1989, paragraph 49.

42 *Deumeland v Germany*, ECtHR Judgment of 29 May 1986, paragraph 90.

43 *Pieniążek v Poland*, ECtHR Judgment of 28 September 2004, paragraph 28 states that the "applicant's action concerned the protection of her personal rights, i.e. her good name and reputation. Therefore, […] what was at stake in the litigation at issue was undoubtedly of significant importance to the applicant and required that the domestic courts show diligence and expedition in handling her case.."

44 *Poiss v Austria*, ECtHR Judgment of 29 September 1987, paragraphs 58 and 60; and *Hentrich v France*, ECtHR Judgment of 22 September 1994, paragraph 61.

45 *Süssmann v Germany*, ECtHR Judgment 16 September 1996, paragraph 55. Further, authorities may be held liable not only for any delay in the handling of a particular case in the operation of a generally expeditious system for the administration of justice, but also for a failure to increase resources in response to a backlog of cases and for structural deficiencies in its system of justice that cause delays. See Harris, O'Boyle & Warbrick, *Law of the European Convention on Human Rights*, 2nd ed., Oxford University Press, 2009, pp. 278–284.

46 *Airey v. Ireland*, ECtHR Judgment of 9 October 1979, paragraph 20.

47 *Klein v Germany*, ECtHR Judgment of 27 October 2000, paragraph 43. See also Harris, O'Boyle & Warbrick, *Law of the European Convention on Human Rights*, 2nd ed., Oxford University Press, 2009, p. 282.

48 *Zimmermann and Steiner v Switzerland*, ECtHR Judgment of 13 July 1983, paragraph 29. The applicant's case had remained stationary for a period of nearly three and a half years.

49 *Süssman v Germany*, ECtHR Judgment 16 September 1996, paragraph 60.

considered temporary and the responsible authorities will be liable if they do not adopt more effective measures to remedy the situation.[50]

Article 8

In addition to Article 6, Article 8 may be relevant when considering whether, in the adjudication of a family law claim, there has been compliance with the ECHR. Article 8 guarantees everyone "the right to respect for his private and family life, his home and his correspondence"[51] and provides that

> "[t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."[52]

The ECtHR has on many occasions reiterated that "the essential object of Article 8 is to protect the individual against arbitrary action by public authorities" and that, in addition, there are "positive obligations inherent in effective 'respect' for family life."[53]

The ECtHR has applied Article 8 guarantees to an extensive range of issues. Under the rubric of protecting "family life", Article 8 has been found to apply, *inter alia,* to cases involving marriage and breach of marriage, paternity, abortion, artificial insemination and other forms of reproductive technology, apprehension and foster care of children, child adoption, relationships between siblings and between grandparents and grandchildren, and custody of and access to children.

Convention on the Rights of the Child (CRC)

The CRC contains a number of provisions of relevance to the adjudication of family law cases. Article 3(1) provides that

> "[i]n all actions concerning children, whether taken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."[54]

Article 9 requires authorities to ensure that

> "[…] a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one

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[50] *Zimmermann and Steiner v Switzerland*, ECtHR Judgment 13 July 1983, paragraph 29. See also *Guincho v Portugal*, ECtHR Judgment 10 July 1984, paragraph 40.

[51] Article 8(1), ECHR.

[52] Article 8(2), ECHR.

[53] See, *inter alia*, *Bajrami v Albania*, ECtHR Judgment 12 December 2007, paragraphs 53–55 and 66–68. The ECtHR held that: "Irrespective of the non-ratification by Albania of relevant international instruments in this area, the Court finds that the Albanian legal system, as it stands, has not provided any alternative framework affording the applicant the practical and effective protection that is required by the State's positive obligation enshrined in Article 8 of the Convention" (paragraph 67 of the judgment). The judgment referred to the Hague Convention on Child Abduction of 25 October 1980.

[54] Article 3(1), CRC.

involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence."[55]

Article 9 provides that in such proceedings, "all interested parties shall be given an opportunity to participate in the proceedings and make their views known."[56] Authorities must "respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."[57] Article 12 deals with the right of the child to be heard. It requires that authorities "assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."[58] It provides that "the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body in a manner consistent with the procedural rules of national law."[59]

B) Domestic law

General provisions

The Family Law "regulates engagement, marriage, relations between parents and children, adoption, custody, protection of children without parental care, family property relations and special court procedures for disputes of family relations."[60] "Family" is defined as "a vital community of parents and their children and other persons of the kin"[61] and "the natural and fundamental nucleus of society".[62] The regulation of family relations is based on the principles of "equality between husband and wife [and] mutual assistance between them and family members",[63] "protection of children's rights and the responsibility of both parents for the growth and education of their children"[64] and the obligation of parents and children to provide "each other assistance and consideration for the entire span of their lives".[65] Children of unmarried parents "enjoy the same rights and have the same obligations as children born from parents who were married at the time of [their] birth."[66]

Marriage

Marriage is defined as "a legally registered community of persons of different sexes, through which they freely decide to live together with the goal of creating a family".[67] Spouses are equal "in all personal and property relations" that characterise the marriage.[68] Marriage "is

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55 Article 9(1), CRC.
56 Article 9(2), CRC.
57 Article 9(3), CRC.
58 Article 12(1), CRC.
59 Article 12(2), CRC.
60 Article 1, Family Law.
61 Article 2(1), Family Law.
62 Article 2(2), Family Law.
63 Article 3(1), Family Law.
64 Article 3(2), Family Law.
65 Article 3(3), Family Law.
66 Article 3(4), Family Law.
67 Article 14(1), Family Law. Article 14(2) provides that "[m]en and women, without any limitation due to race, nationality or religion, have the right to marry and found a family as well as they are equal to marriage, during marriage and at its dissolution."
68 Article 42(1), Family Law.

entered into for the entire lifespan."[69] Spouses "are obliged to be faithful to one another and reciprocally assist, respect and financially support one another", especially in circumstances where one spouse "is lacking a sufficient material basis for living."[70]

Breach of marriage

Courts dealing with situations where there has been a breach of a marriage must have regard to the general principle that "the institution of marriage shall be preserved."[71] To that end, "spouses to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counselling, reconciliation procedures […] or otherwise, to save the marriage."[72] However, "a marriage which has irretrievably broken down should be brought to an end" and this should take place "with minimum distress to the parties and to the children affected", "in a manner designed to promote as good a continuing relationship between the parties and any children affected as possible in the circumstances" and "without costs being unreasonably incurred in connection with the procedures to be followed in bringing the marriage to an end".[73] Further, "any risk of harm or violence to spouses and to children should be avoided."[74]

Divorce

A marriage "may be dissolved by divorce only upon decision of a court."[75] Either "one spouse or both by mutual agreement may request a divorce" by making an application to "the competent court".[76] A divorce may be requested "when marital relations have seriously and continuously become disordered or when due to other reasons the marriage has irretrievably broken down."[77] A spouse or spouses may not bring an application for divorce "during the pregnancy of the wife and until their joint child becomes one year old."[78] Where there exist children of the marriage, a proposal for divorce by mutual agreement must contain "a written agreement of care-taking, educating and feeding the joint children, as well as a written proposal on how personal contacts between the child and both of the parents shall be guaranteed in future."[79]

Reconciliation efforts

A court shall not grant a divorce until there have been reconciliation efforts "guided by the court in special sessions".[80] This requirement shall not apply, however, when one of the spouses lacks capacity,[81] when one or both spouses resides abroad,[82] or when the place of

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[69] Article 42(2), Family Law.
[70] Article 42(3), Family Law.
[71] Article 59(1), Family Law.
[72] Article 59(2), Family Law.
[73] Article 59(3), Family Law.
[74] Article 59(4), Family Law.
[75] Article 68(1), Family Law.
[76] Article 68(2), Family Law. But see Article 68(4), which provides that even where it is not brought by mutual agreement, an application for divorce will be considered to have been so brought if the respondent spouse "expressly declares not to reject the soundness of the requests" made in the application.
[77] Article 69(1), Family Law. "Other reasons" include "unbearable life of spouses, adultery, assassination against the life of the spouse, serious maltreatment, ill-intended and unjustifiable abandonment, incurable mental illness and continuous incapacity to act, unreasonable interruption of factual cohabitation for more than one year and divorce by mutual agreement": Article 69(2), Family Law.
[78] Article 70(1), Family Law.
[79] Article 70(2), Family Law.
[80] Article 76(1), Family Law.
[81] Article 76(1).1, Family Law.
[82] Article 76(1).2, Family Law.

residence of one of the spouses is unknown.[83] The court shall not finalise the divorce until after the special sessions have taken place and the court has concluded that "reconciliation was not achieved."[84]

Where the spouses have minor children, the Family Law contemplates that the reconciliation procedure is to be conducted by the CSW, who shall apply "social work and other professional methods" and shall utilise marriage and family counsellors and other professional services.[85] The CSW shall assess the current "living and developing conditions" of the minor children, and shall "protect the children's interests" by taking "all necessary measures" to ensure that the "education, security and financial maintenance" are properly taken into account in any agreement between the spouses.[86] Reconciliation procedures conducted by CSWs shall not last more than three months, unless the spouses so agree. The CSW shall "without delay" submit a written report to the court "on the results of the reconciliation procedures."[87]

Procedural matters

The LCP sets out the procedural rules to be followed in cases concerning "civil justice disputes of physical and legal persons," unless procedural rules are provided for by a more specific law.[88]

- ***Prior to the preparatory session***

The court shall, as soon as it receives the claim, initiate preparations for the main hearing. Such preparations shall include examining the claim, taking steps to serve the claim on the respondent and to obtain his or her response to it, holding a preparatory session and setting a date for the main hearing session.[89] If, after examining the claim, the court concludes that it is "unclear",[90] "incomprehensible or incomplete" it may "summon the person making the [claim] to correct or supplement [it]."[91] If the court determines that the claim is not within the court's jurisdiction, has already been dealt with by way of a "contractual agreement from the arbitral case settlement", is already before the court *(lis pendens)*, has already been tried *(res judicata)*, or was filed out of time, the court may dismiss the claim outright.[92] The court shall send the claim, "jointly with the official documents", to the respondent within 15 days of it being filed.[93] The respondent has a further 15 days from receipt of the claim to respond to

[83] Article 76(1).3, Family Law.
[84] Article 77(2), Family Law.
[85] Article 80(1), Family Law. The procedures utilized shall be "supported by the principle of free will and co-operation.": Article 80(2), Family Law.
[86] Article 82, Family Law.
[87] Article 83, Family Law.
[88] Article 1, LCP.
[89] Article 386, LCP.
[90] Article 390, LCP.
[91] Article 102, LCP.
[92] Article 391, LCP.
[93] Article 394, LCP. See also Articles 103–115, LCP.

it.[94] The response must either accept or dispute the claim.[95] The response must be clear, comprehensible and complete.[96]

- ***Service of court documents on a party***

Court documents are served by mail, but "[s]ervice may also be effected through an official of the court or through a registered and authorized legal person for conducting of communication services." The documents "shall be served directly to the addressee in the court or through any other form that is determined by the law."[97] The LCP makes specific provision for service of documents upon legal persons,[98] persons or institutions and legal persons headquartered outside of Kosovo, and persons who enjoy immunity[99] and imprisoned persons.[100] Where a party has a legal representative or an authorized representative, service may be effected on that representative[101] or, in the case of a legal representative, on an employee of his or her office.[102] Service may be effected "every day from 7:00–20:00 at the residence or the workplace of the receiving person or at the court premises where the person is present [there]", and where service cannot be so effected, "then it may be presented at any other time or place."[103]

Where the addressee "is not found where the service is to be effected, the person effecting the service shall find out when and where that person may be found and shall leave […] a written notice directing the addressee of the document to be in his or her dwelling or workplace on a particular day and hour in order to receive the document."[104] If the addressee is "not found at home", the document may also be "given to any member of his/her household, who must accept the document." Alternatively, the document "shall be left with a neighbor, if he or she consents to accept it."[105] Where the addressee refuses service "without any legal justification", service may be effected by leaving the document at the home or workplace of the addressee or attaching it to "the door of the home or workplace."[106] Service may also be effected by posting the document on the court notice board.[107]

- ***The preparatory session***

"Whenever […] possible, "the court shall consult with the parties before scheduling the preparatory session.[108] However, as a rule," the court shall convene a preparatory session

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[94] Article 395(1), LCP. Article 395(2) requires the court to inform the respondent, at the time it delivers the claim, of his or her obligation to respond within the specified time, and of the "procedural consequences" of failing to do so.

[95] Article 396(1), LCP. Where the respondent disputes the claim, he or she "should state all facts and present all evidence" in support of his or her position: Article 396(2), LCP.

[96] Article 397, LCP. Where the response is unclear, incomprehensible or incomplete, the court shall, as with a similarly defective claim, summon the respondent to correct or supplement the response within the prescribed time limit, in default of which correction or supplement, the court may dismiss the claim.

[97] Article 103, LCP. See also Article 115, which provides for further alternatives for service via the post office.

[98] Article 104, LCP.

[99] Article 105, LCP.

[100] Article 106, LCP.

[101] Article 107, LCP.

[102] Article 108, LCP.

[103] Article 109, LCP.

[104] Article 110, LCP.

[105] Article 111(1), LCP. Where service of a document is to be effected at a person's workplace and the person is not found there, the document "may be served on a person employed at that same workplace, if he or she consents to accept the document": Article 111(2), LCP.

[106] Article 112, LCP.

[107] Article 114, LCP.

[108] Article 400(3), LCP.

within 30 days of receiving the response."[109] The preparatory session is mandatory, except where the court concludes that "there is nothing contentious between the parties" or where, because the case "is not complicated", the court decides there is no need for such a session.[110] The court shall use the preparatory session to clarify[111] the issues presented by the claim and the response, and to streamline those issues[112] prior to the main hearing session. The court shall decide during the preparatory session whether expert opinion evidence is required on any issue and if so shall set a deadline for its receipt.[113] Where the claimant fails to appear for the preparatory session, although duly summoned, the claim will be considered withdrawn;[114] where the respondent fails to appear, although duly summoned, the session will continue in his or her absence.[115] Where appropriate, the court shall use the preparatory session to assist the parties to resolve some or all of the issues between them through "intermediation"[116] or "court settlement".[117]

Before the preparatory session concludes, the court shall issue an order scheduling the main hearing session.[118] The order shall list the issues remaining to be resolved at the main hearing session, the evidence expected to be adduced on each of those issues and the persons who will be called to testify.[119] The court must also decide whether the main hearing session is to be an "open door" session, or whether it will be closed to the public.[120] The main hearing session should "as a rule" be held within 30 days of the conclusion of the preparatory session.[121]

- ***The main hearing session***

After opening the main hearing session, the judge shall take note of those present, and shall investigate "reasons if someone is not attending the session."[122] The court then determines whether there are any "procedural obstacles" to proceeding with the hearing.[123] The main hearing session shall be conducted orally and evidence adduced "directly in front of the court".[124] The main hearing session shall be "done correctly and regularly with no unnecessary postponement."[125] Where it is necessary to postpone the session, it cannot "be

[109] Article 400(4), LCP. Where the respondent has not filed a response, the court may convene the preparatory session anytime after the deadline for filing the response has passed: Article 400(2), LCP.
[110] Article 401, LCP.
[111] Articles 403–405, LCP.
[112] Articles 406(1) and 406(2), LCP.
[113] Article 407(1), LCP. The parties should receive the expert's written opinion "at least seven (7) days before the main hearing session": Article 407(2), LCP.
[114] Article 409(1), LCP.
[115] Article 409(2), LCP.
[116] Article 411, LCP.
[117] Articles 412–419, LCP.
[118] Article 420(1) (a), LCP.
[119] Article 420(1) (b) to (d), LCP.
[120] Article 448, LCP.
[121] Article 420(2), LCP. However, the court may decide to hold the main hearing session "immediately after the preparatory session": Article 420(3), LCP.
[122] Article 423(2), LCP. Where the claimant fails to appear for the main hearing session, although duly summoned, the court will consider that he or she has discontinued the claim. Exceptionally, the claimant may request the process to continue in his or her absence: Article 423(3), LCP. Where the respondent fails to appear for this hearing session, although duly summoned, the session will continue in his or her absence: Article 423(4), LCP.
[123] Article 424(1), LCP. The court may postpone the session if it decides "that the legal conditions to hold the session are not fulfilled" or if anticipated evidence cannot be adduced at the session: Article 437, LCP.
[124] Article 427, LCP.
[125] Article 426(1), LCP.

postponed indefinitely",[126] nor for more than 30 days except where specifically provided by law.[127] If the session is postponed, the judge must "take all measures to eliminate the circumstances that caused it, so in the next session the contentious matter can be resolved."[128] The main hearing session shall as a rule be "held publicly."[129] Exceptionally, hearings may be partly or entirely closed to the public.[130] Where the hearing will be a "closed door hearing", the court shall issue an order so stating, with reasons, and the order itself shall be public.[131]

- ***Judicial powers of investigation and evidentiary procedure***

Where the divorce is by mutual agreement, the court may not investigate the facts supporting the proposal except in limited circumstances involving the needs of "joint minor children" of the marriage.[132] However, the facts "on which the party bases its request in marital disputes may be considered contestable by the court, even when such facts are no longer considered contestable by the parties."[133]

Parties must adduce the evidence necessary to support their own case and answer the opposing party's case.[134] Parties must "present all the facts on which they base their claim and propose the evidence which establishes such facts."[135] A decision shall not be based on evidence to which the parties have not been given the opportunity to respond.[136] The court shall rule on the admissibility of each piece of evidence "truthfully and cautiously".[137] Each piece of evidence shall be examined both "individually and collectively."[138] Evidence shall as a rule be adduced "during the hearing session".[139]

Witnesses must be able to offer testimony that is relevant to the matters in issue in the case.[140] The party proposing a witness shall provide the court beforehand with the witness's name, address and a summary of his or her testimony. Witnesses shall be questioned first by the party who called them, and then by the other party.[141] The court may question the witness at any time.[142] The witness shall always be asked how he has come to know the things he is

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[126] Article 441(1), LCP.
[127] Article 441(2), LCP. The judge must inform the presiding judge of all postponements and the latter must keep "records for all postponements of all judges": Article 441(3).
[128] Article 441(4), LCP.
[129] Article 444(1), LCP. Only adults may be present, however: Article 444(2), LCP.
[130] A hearing may be closed to the public where, inter alia, "private details" from the lives of the parties, or the lives of other people involved in the process will be revealed: Article 445(c), LCP.
[131] Article 447(1), LCP. The Family Law also provides for certain hearings to be closed to the public; Article 75 provides that the public is excluded from "marital dispute" procedures, Article 335 provides that the public is excluded from "all litigation for financial maintenance and alimony" and Article 345 excludes the public from "litigation for the verification or refusal of paternity" and "disputes for custody of the minor child".
[132] Article 84, Family Law.
[133] Article 85(1), Family Law.
[134] Article 428, LCP.
[135] Article 7(1), LCP.
[136] Article 7(3), LCP.
[137] Article 8(1), LCP. The ruling shall be "based on the results of the entire proceeding."
[138] Article 8(2), LCP.
[139] Article 324(1), LCP. However, where the evidence "cannot be brought to the court", or where doing so would "cause huge expenses", the evidence may be adduced in a location other than the courtroom, via the procedure of "spot observation". Such "spot observation" may be done "alongside with an expert": Articles 326 and 327, LCP.
[140] Article 339(1), LCP. Witnesses called by the court must appear and testify.
[141] Article 348(1), LCP.
[142] Article 348(2), LCP.

testifying about.[143] Parties may testify in the capacity of witnesses, subject to court approval.[144] Children under the age of 14 can be called as witnesses "only when it is necessary to solve the case."[145] Expert evidence may be adduced, either on the court's own motion or at the request of the parties.[146] The expert shall appear in court to give his or her "opinion and conclusion."[147]

- ***Appointment of temporary representatives***

In circumstances where the failure to do so would "cause damaging consequences to one or both parties",[148] the court shall appoint a temporary representative to represent the interests of the respondent. Such circumstances include cases where the whereabouts of the respondent are unknown,[149] and cases where the respondent is "out of country".[150] A temporary representative may be appointed as early as necessary in the preparatory phase of the case, where so doing would assist in the resolution of the case.[151]

- ***Role of the Centres for Social Work (CSWs) in marital disputes***

The Family Law contemplates that the CSWs will play an important role in both assisting and advising the courts in the adjudication of certain types of marital disputes.[152] Where there are minor children of the marriage, the CSWs shall conduct the reconciliation procedures.[153] In addition, where it is called upon to decide unresolved issues involving the "custody, care and education of children", the court, before deciding, shall "hear the opinion and proposal"[154] of the CSW.

In civil proceedings involving children, the court "may request the relevant [CSW] to conduct inquiries and to provide an expert assessment of the social circumstances of the person in question and to make recommendations for their future well being."[155] Upon receipt of such a request, the CSW Director shall "cause such inquiries to be made by a Social Services Officer approved for the purpose and furnish the Court with reports accordingly." Such reports must

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[143] Article 348(3), LCP.
[144] Article 373, LCP.
[145] Article 339(3), LCP.
[146] Articles 356 and 357, LCP.
[147] Article 359(1), LCP.
[148] Article 79(1), LCP.
[149] Article 79(3) (a), LCP.
[150] Article 79(3) (b), LCP.
[151] Article 387(1) (q), LCP. This power exists from "the moment when the charges are raised".
[152] Article 14 and 7.2, Law No. 2005/02-L17 on Social and Family Services, as promulgated by UNMIK Regulation 2005/46, 14 October 2005. Article 1.3 defines the custodian body as "the function within the Centre for Social Work that is responsible for protection of children." The Albanian language text refers to the custodian body as "organi i kujdestarisë," a phrase which is translated into "guardianship authority" and "custodian body" seemingly interchangeably in the Kosovo legal framework. Article 6, of Family Law states: "(1) Protection and family assistance shall be governed by the competent body of the municipal administration which is responsible for issues of social assistance. (2) The Custodian Body is an administrative municipal body competent for social issues. It shall be comprised of a group of experts with professional work experience in the specific field of duty. (3) The Custodian Body may also be a body (group of experts as mentioned above) of a specific social institution […]. (4) The Custodian Body, participating in the procedures, is authorized to present motions for the protection of children's rights and interests, to present facts that parties have left out, to suggest administration of necessary evidence, to exercise legal remedies, and undertake other contentious actions. The court is obliged to summon the Custodian Body participating in the procedures, to all court session, and serve it with all the decisions."
[153] Article 80(1), Family Law.
[154] Article 140(2), Family Law.
[155] Article 14(1), Law on Social and Family Services.

be submitted to the court within 21 days of the request being made, unless otherwise specified in the request.[156] The court shall not make a final disposition "in a case where such a report is required until it has given due consideration to its content and recommendations."[157]

- ***Court record keeping***

A record shall be kept "of each action undertaken in the course of [a] court proceeding."[158] A record shall also be kept of "important statements and notices that are made by the parties or other participants out of the course of the court proceeding."[159] The record shall be kept by the recording clerk[160] and shall include "the name of the court, the place where the action began and ended, the object of dispute, the names and surnames of the parties and other persons present, and the names of legal representatives or authorized representatives."[161] The record should also include "essential information about the content of the action undertaken."[162]

- ***The written judgement of the court***

The LCP details what must be included in the written judgement of a court.[163] The judgement must contain, *inter alia,* a summary of the case,[164] the disposition[165] and a justification, or reasons, for the disposition. The justification must contain the "requests of parties, facts submitted and proposed proofs, which of the facts are validated, why and how they were validated, if they were validated according to the proof which proofs were used and how they were validated."[166] The court must specifically indicate which provisions of the law were used in deciding each of the matters in issue.[167] Judgements which fail to conform to these requirements violate the LCP and may be accordingly struck.[168]

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[156] Article 14(2), Law on Social and Family Services. It should be noted that, pursuant to Article 293(1), LCP, the court has the power to impose, as a means of enforcing CSW compliance with its requests, a fine of up to €1,000 on "the expert who without justification doesn't hand his opinion within the deadline set, or who without reason doesn't attend the session for which was invited [sic] regularly."

[157] Article 14(3), Law on Social and Family Services.

[158] Article 134(1), LCP.

[159] Article 134(2), LCP. However, "[t]he record shall not be kept for less important statements and notices for which shall be kept an official note in the file."

[160] Article 134(3), LCP.

[161] Article 135(1), LCP.

[162] Article 135(2), LCP. Such essential information should include "especially whether the proceeding was undertaken behind open or closed doors", the statements and proposals of the parties, the evidence adduced by them, the statements of witnesses and experts, and the "decisions rendered by the court while proceeding but also the decision rendered after completion of the main proceedings of the matter."

[163] Article 160(1), LCP.

[164] Article 160(2), LCP. The summary should include "the name of the court, the name of the judge, the names of the parties and their address [sic], the names of their legal representatives, [a] brief narrative of the contesting [sic] issue and the amount, the ending day of the main hearing, the narrative of the parties and their legal representatives and with proxy that were present in the session of the kind as well as the day when the verdict was issued."

[165] Article 160(3), LCP. The disposition "consists of: decision which approves or rejects special requests dealing with the issue at stake and accessing requests, decision for existence or non-existence of the proposed requests to compensate it with statement of claim as well as the decision on procedural expenses."

[166] Article 160(4), LCP.

[167] Article 160(5) LCP.

[168] Article 181(1), LCP, read together with Article 182(2) (n), LCP.

CASE MANAGEMENT OF FAMILY LAW PROCEEDINGS

The OSCE is concerned that serious deficiencies in family law case management practices are leading to violations of both the legal framework in Kosovo and international human rights standards. Inadequate case management practices manifest themselves in a number of systemic problems; most important among these are chronic delays in the resolution of cases. Also of concern are shortcomings related to the adducing of evidence and the hearing of witnesses, inadequate management of the role of CSWs in family law proceedings, a failure to keep accurate and complete court records, and a failure to provide judgements which are sufficiently reasoned.

A) Delays

Delays in the resolution of cases are endemic in the courts in Kosovo; they are by far the most frequently observed result of poor family law case management practices. These delays result from a number of factors, including the failure to properly examine the claim upon receipt, the failure to serve the claim upon the respondent within the mandated timeframe, the failure to conduct preparatory proceedings as contemplated by law or at all, and the failure to set a date for the main hearing session. Ancillary factors include the failure of the courts to request reports from the CSWs in a timely manner, or to follow up on those requests, once made, to see that the reports are delivered within the time frame contemplated by the law, the failure of parties to appear for hearings even when duly summoned and, where one or more of the parties to a proceeding are represented, the failure of legal representatives to effectively discharge their professional duties. Even the most straightforward divorce case may be subject to repeated delays, as in the following case example.

> On 1 December 2008, the petitioner filed a claim in the district court requesting the dissolution of her marriage. The petitioner and the respondent had no children. The main hearing session was convened for the first time on 22 June 2009. The petitioner's authorised representative, a lawyer, appeared at the hearing on her behalf. The respondent did not appear; the judge ruled that, there being no evidence he had been properly summoned, the legal requirements to hold the hearing were not fulfilled. The hearing was accordingly postponed. On 17 September 2009, when the session reconvened, the petitioner's lawyer again appeared; however, the session could not proceed because the judge was away at a seminar. Hearing sessions scheduled for 28 October 2009 and 15 December 2009 were adjourned due to the respondent's continuing failure to appear and the lack of evidence to show that he had been properly summoned. At the 15 December 2009 hearing session, the judge noted that summoning receipt had in fact been signed by someone else – apparently the respondent's brother. The judge ordered the police to ascertain whether the respondent was indeed living in the municipality named in the claim. The petitioner's lawyer requested that the court appoint a temporary representative to represent the respondent's interests. The judge refused this, noting that the police had not yet had an opportunity to respond to the court's order. Hearing sessions scheduled for 25 January 2010 and 11 March 2010 were also adjourned due to the respondent's continuing failure to appear and the continuing lack of evidence of proper summoning. At the 25 January 2010 hearing session, it appeared that the police had not yet complied with the order to ascertain the respondent's place of residence, and the court forwarded a second order in this regard. At the 11 March 2010 hearing

session, the court noted that the police had now learned that the respondent was residing in Germany, at an unknown address. On petitioner's request the court issued a decision appointing a temporary representative for respondent. The court also ordered that the CSW be notified of the court's decision, and that the decision be published in a daily newspaper and posted on the court's notice board. On 11 May 2010, the hearing session reconvened with both the petitioner's lawyer and the respondent's temporary representative present in the courtroom. However, the court noted that the petitioner's lawyer had not published the decision on the appointment of the temporary representative in a daily newspaper, and adjourned the hearing session so that this could be done. When the hearing session reconvened on 24 June 2010, the petitioner's lawyer and the respondent's temporary representative both appeared and the hearing session finally commenced. The petitioner's lawyer proposed the hearing of two witnesses. The first witness testified uneventfully; however, the second witness did not have the required identification, and the hearing session was again adjourned. When the hearing reconvened on 26 July 2010 the second witness did not appear. A third witness was proposed in his place and testified. After closing arguments, the court issued a judgement dissolving the marriage.

The above case example illustrates the deficiencies observed in the case management practices observed by the OSCE in numerous cases before. Ultimately, the hearing of this claim was postponed a total of eight times over a thirteen-month period. The majority of these postponements were caused by summoning failures. A temporary representative could – and should – have been appointed much earlier in the proceedings. The failure in this appointment resulted in a further half a year's delay in the resolution of this very straightforward divorce case. The second to last postponement – which arose out of the alleged failure of the petitioner's lawyer to publish the decision appointing the temporary representative in a daily newspaper – was particularly egregious in that it was not the petitioner's lawyer's responsibility to publish this decision. It was the court's obligation to publish this decision, and its failure to do so delayed the proceedings by another month and a half. The final postponement resulted from the witness appearing to testify without proper identification. This problem could have been avoided through the proper use of preparatory proceedings to identify, summon and prepare witnesses to give evidence.

Despite the direction provided by ECtHR case law concerning the need for particular expediency in the resolution of child custody cases, even these cases are not immune to systemic delays, as the following case example illustrates:

> On 22 April 2009, the petitioner filed a claim seeking custody of two minor children from his factual relationship[169] with the respondent. The children had remained in the care of the petitioner following the parties' separation, and had had no contact with the respondent. The respondent had since married another person. A preparatory hearing session scheduled for 22 July 2009 was adjourned when neither party appeared. There was no evidence to show that either had been properly summoned. The hearing reconvened on 31 July 2009; the petitioner appeared but the respondent did not. Attempts to summon the respondent had not succeeded because the summons

[169] A "factual relationship," as defined by the Family Law, is the "relationship between the husband and the wife who live in a couple, characterized by a joint life that represents a character of stability and continuation. A factual relationship (out-of-marriage relationship) is equal with the marital status on the aspect of rights and obligations for caretaking, reciprocal financial support, and property rights." Article 39(1) and (2), Family Law.

was directed to an old address. The court ordered that the respondent be summoned at her new address. The hearing session reconvened on 28 August 2009; the petitioner appeared and the respondent did not. Attempts to serve her had proved equally unsuccessful at the new address. The court ordered that the CSW provide the respondent's correct address. At hearing sessions on 8 September 2009 and 18 September 2009, the petitioner appeared and the respondent did not. Because no summoning receipt had been returned to the court, it was not possible to ascertain whether she had been properly summoned. At the 18 September 2009 session, the court decided to postpone the hearing until the petitioner provided the court with a new address for the respondent and ordered the petitioner to do so within three days. The petitioner provided the new address, and the court again convened a main hearing session on 13 October 2009. However, the petitioner had since moved, and had not provided the court with his new address; as a result, he did not receive the summons, and did not appear. The respondent again failed to appear; however, on this occasion there was evidence to show that she had finally been properly summoned. The hearing session reconvened on 29 October 2009 with neither party present. The court still did not have the petitioner's new address; thus, once again, he had not received the summons and remained unaware of the hearing session. The hearing could not proceed in the absence of the petitioner and was again postponed. The hearing session reconvened on 10 November 2009. The petitioner appeared while the respondent once again failed to appear, although properly summoned. Because the respondent had not justified her absence, the court decided to proceed without her being present.

In the above case example, poor case management practices resulted in needless, lengthy delays before the case was finally heard on its merits. Had the court properly examined the claim upon receipt, with a view toward dealing proactively with the issue of summoning, and had proper use been made of preparatory proceedings, most of these delays could have been avoided. The LCP gives the courts a number of options in dealing with precisely the sort of summoning problems encountered in this case, and yet the court made only the most limited and belated use of these.[170] The court did not seek the assistance of the CSW in locating the respondent until after she failed to appear on three successive occasions. Alternative means of summoning the respondent, either by publishing notice of the hearing in a daily newspaper or posting it on the courts' notice board, were not used.

On 4 January 2008, the petitioner filed a claim requesting a divorce from the respondent and custody of the couple's only child, a daughter then aged 16 years. In 2003, while still living with the respondent, the petitioner began a factual relationship with another woman, with whom he had three children. As a result the parties wished to divorce. Custody of their daughter was the only issue. Due to deficiencies in the drafting of the claim, it was rejected by the court on 5 March 2008. The petitioner filed a corrected version of the claim on the same date. On 12 March 2008, the court requested the CSW prepare a report on the issue of child custody. The CSW did not respond to this request, and the court made a second request, on 16 January 2009**.** The CSW forwarded its report to the court on 9 February 2009. On 7 April 2009, the court held a reconciliation session; the parties advised the court that they did not wish to reconcile and that the marriage was over. The court ruled the reconciliation procedure unsuccessful and scheduled the main hearing session for the same day. The court reviewed the CSW report, which stated that custody of the daughter (who by then was

[170] Service of court documents is discussed at pages 13–14 of this report.

age 17 and would reach age 18 in another five days) should be awarded to the respondent. The court granted the divorce as requested and awarded custody of the child to the respondent.

In the above case example, most of the delay was attributable to the CSW, which failed to respond to the court's original request for a report. This too, however, is a case management issue. The court, having issued the request to the CSW, had an obligation to monitor CSW compliance with the request.[171] Given the age of the child, there was a particular urgency in getting the matter resolved, beyond the usual expediency required in child custody cases. Indeed, had the hearing been held even five days later, the child would have turned 18 and the custody proceedings would have been moot.

The OSCE has recently reported on the use of preparatory proceedings in contested civil proceedings in Kosovo.[172] In that report, it was noted that although obliged to do so by law, courts adjudicating contested civil proceedings frequently fail to send a copy of the claim to the respondent for reply prior to holding the first session, and fail to use preparatory proceedings for their nominal purpose – to prepare the case for the main hearing. At times, as the OSCE observed, courts embark on preparatory sessions even when the preconditions necessary for the holding of these sessions are not present. While such problems are not unique to cases involving marital disputes, they are often exacerbated by the particular challenges presented by marital dispute litigation.

B) Witnesses and evidence

The OSCE is concerned with deficiencies it has monitored in both the hearing of witnesses and in the adduction of evidence in family law proceedings in Kosovo. With regard to the hearing of witnesses, in some cases, litigants were not given the opportunity to be heard as witnesses in their own cases, either in support of their own allegations, or in response to the allegations of the opposing parties. In other cases, witnesses' testimony was not subject to adequate – or in some cases any – cross examination. With regard to adduction of evidence, in some cases, the court refused to allow litigants to adduce relevant evidence. In other cases, the court permitted the adduction of clearly irrelevant – and sometimes prejudicial – evidence by a litigant. The OSCE observed an instance where a judge took steps to obtain evidence on his own initiative, outside of the court proceedings.

> The petitioner filed a claim requesting custody of the two minor children, born from her factual relationship with the respondent. The petitioner alleged that the respondent had ill treated her during the relationship and had compelled her under threat to abort their third child. She alleged that, following the abortion, she had fled the relationship and sought refuge with her brothers, leaving the children temporarily in the care of the respondent. The petitioner requested that the minor children be allowed to testify as to the particulars of her ill treatment at the hands of the respondent. The respondent denied the petitioner's allegations and alleged that she suffered from a "possible

[171] It should be reiterated here that, pursuant to Article 293(1), LCP, the court has the power, as a means of enforcing CSW compliance with its requests, to impose a fine of up to €1,000 on "the expert who without justification doesn't hand his opinion within the deadline set, or who without reason doesn't attend the session for which was invited [sic] regularly."

[172] OSCE Report *Preparatory Proceedings in Contested Civil Cases,* (June 2010), http://www.osce.org/documents/mik/2010/06/44942_en.pdf (accessed 22 November, 2010).

> mental disease" and that he had only remained in the relationship with her because of threats from her brothers. Aside from the respondent himself, no witnesses were called to testify in the case. The respondent was asked in cross examination whether he had ever reported the brothers' threats to the police and he replied in the affirmative. After the main hearing session had concluded, the judge stated, "off the record" but in the presence of the OSCE monitor, that he would take steps to obtain the police report "through the court's official channels." The judge's statement was not recorded in the court minutes. The court subsequently issued a judgement rejecting the petitioner's claim and ordering that custody of the two minor children remain with the respondent. In its judgement, the court noted that the respondent's testimony was confirmed by "the submission offered from the police station which proves that the respondent was threatened by the brothers of the [petitioner]".

In this case, the petitioner made serious allegations concerning the conduct of the respondent; the respondent in turn made serious allegations concerning the mental health of the petitioner. Clearly, the veracity of these allegations was relevant to the key issue examined before the court – the custody of the minor children. Despite this, the court failed to summon the petitioner to testify, and thus heard only the respondent's version of events. The judgement does not indicate that the court considered the petitioner's request that the minor children be allowed to testify in the case. The children were very young (six and four years of age at the time of the main hearing session); as such, it is unlikely that the judge would have decided to hear from them; however, given what was at stake, the court should have dealt with this issue clearly in its reasons. It would also appear that the court did not consider requesting either a CSW report or other expert opinion evidence which might have assisted it in resolving the issue of child custody. Further, the court clearly relied on the submission from the police station to corroborate the testimony of the respondent. However, this evidence was obtained after the hearing had concluded and thus the parties were not given any opportunity to respond to it in any fashion.

The OSCE has also observed deficiencies related to the hearing of children as witnesses. In some cases, children are not given the opportunity to be heard in matters that affect them, in clear violation of both international human rights standards and the legal framework in Kosovo.

> On 27 March 2008, the petitioner filed a claim requesting the dissolution of his marriage, and custody of the three children of the marriage, twin daughters aged sixteen years and a son aged fifteen years. The parties had separated in 2004; the children initially resided with the petitioner but in 2005 went, on their own accord, to live with the respondent. A reconciliation hearing session was convened and the respondent appeared; she advised the court that there was no possibility of reconciliation. The petitioner failed to appear at the session. The court issued a decision referring the case to the CSW for further reconciliation procedures. These were ultimately unsuccessful, and the CSW returned the file to the court with the recommendation that the respondent be awarded custody of the three minor children. The CSW noted in its report to the court that the petitioner had been uncooperative throughout, and recommended that his contact with the minor children be "based on agreement in accordance with the wish of the children for contact." A number of further adjournments followed, all due to the failure of the respondent to appear. Eventually, the court, on the request of the petitioner's lawyer, decided to proceed with the main hearing session in the absence of the respondent. The petitioner and his

> brother both testified. The petitioner informed the court that, since the preparation of the CSW report, both of his daughters had married. He also informed the court that his son had returned to live with him but enjoyed unhindered contact with the respondent. The court issued judgement the same day, dissolving the marriage and awarding custody of the son to the petitioner. The judgement was subsequently appealed by the respondent, on the grounds that she had never been properly summoned and thus did not know that the main hearing session had been scheduled. The appeal has not yet been heard on its merits.

The alleged change of circumstances in the situation of the three minor children – from all three children living with the wife, to both girls married and the son living with the husband – between the date of the CSW report and the date of the main hearing session some thirteen months later, ought to have caused the court some concern. As such, the court ought to have looked for some corroboration of the father's testimony. At a minimum, there should have been an updated report from the CSW. However, the respondent ought to have been summoned in the capacity of a witness, to give her version of events, and further, the children ought to have been heard. The minor children were, at the time of the main hearing session, 16 and 17 years of age, and as such certainly could have made their views known to the court.

Most, if not all, of these deficiencies can be traced back to shortcomings in case management practices in the courts in Kosovo. The proper examination of claims by the court upon receipt would flag most evidentiary issues for proactive action. And the proper use of preparatory proceedings would allow the court to tackle these issues at an early stage.

C) Centres for Social Work – related concerns

As discussed earlier in this report,[173] the Family Law contemplates that the CSWs will be involved in assisting and advising the courts in the adjudication of certain types of marital disputes. The involvement of CSWs is required in proceedings for the verification of paternity or maternity, divorce proceedings in which the spouses have minor children and in which formal reconciliation procedures are mandated, and claims for custody of minor children. However despite these requirements, the OSCE has observed that courts often fail to involve CSWs in such proceedings.

> The husband and wife filed a claim for dissolution of their marriage by mutual agreement. In their proposal, they requested that the wife be awarded custody of their minor children. The couple had three children, aged 15, 13 and 8 years at the time the claim was filed. When the court convened for the purpose of holding a reconciliation session, the parties advised the court that they did not wish to reconcile, and proposed that the court instead hold the main hearing session. The court decided to immediately hold the main hearing session; after reviewing nothing more than the marriage certificate of the parties and the birth certificates of the three children, the court issued a judgement the same day dissolving the marriage and awarding custody of the children to the wife in accordance with the parties' joint proposal. The husband was ordered to pay alimony to the wife for the support of the children.

[173] See p. 17 *supra*.

On these facts, the court was obliged to conduct a formal reconciliation procedure. Given that there were minor children involved, the court ought to have referred the parties to the CSW for conduct of the procedure. The court also should have requested a report from the CSW on the issue of child custody, and ought not to have made a final decision in the case until it had received the report and given due consideration to its content and recommendations.

In the case cited below, the failure to obtain a CSW report was even more egregious, given the serious nature of the allegations the parties had made about each other, and the potential impact of these allegations, if true, on their ability to adequately discharge their duties as a custodial parent of minor children.

> The petitioner sought custody of her minor children. The petitioner and the respondent had lived in a factual relationship and had two children together. The petitioner alleged that the respondent had abused her repeatedly over the course of the relationship and that, as a result, she left him, leaving the children temporarily in his care. She argued that, because the respondent worked in Slovenia "on an occasional basis" and had recently married, he was not in a position to care for the children. She noted that the respondent's parents were unemployed and that his father was ill, and thus that the parents would not be able to assist in caring for the children. The respondent denied having abused the petitioner and alleged that the petitioner suffered from a mental disease which made her unable to properly care for the children. The respondent argued that while his father was indeed ill, his mother, younger sister and new wife were already caring for the children and could continue to do so. The respondent also argued that he generated enough income from his work to support the children. At the main hearing session, the petitioner appeared via her authorised representative and the respondent appeared in person. Without ever requesting a CSW report concerning the issue of child custody, the court issued a judgement in which it rejected the petitioner's claim and ordered that custody of the two minor children remain with the respondent.

The OSCE has also monitored cases in which the CSW failed to respond, in a timely manner or at all, to referrals from the court for reconciliation procedures and requests from the court for reports in child custody cases.[174]

> The petitioner sought custody of his minor child. The petitioner and the respondent had divorced the previous year. At the time of the divorce, the respondent had been awarded custody of the child. The petitioner alleged that, since the divorce, the respondent had not respected the parties' agreement concerning access to the child. He alleged that the respondent has mistreated the child, had made him hate and fear the petitioner and his family, and had isolated the child from them. He argued that custody of the child should be transferred to him. In the alternative, the petitioner requested that the alimony he was obligated to pay be reduced. The respondent denied the petitioner's allegations. The respondent also informed the court that an execution procedure was currently before the court concerning the petitioner's unpaid alimony. She argued that if the petitioner could not afford to pay the alimony payments, he

[174] The OSCE has previously reported on the role and performance of the CSWs in judicial proceedings. See: OSCE Reports *Centres for Social Work in Civil Proceedings* (March 2010), http://intranet/n/s/documents/monitoring/6/10032309_1491_en.pdf (accessed 22 November, 2010) and; *Judicial Proceedings Involving Domestic Violence* (November 2009), http://intranet/n/s/documents/monitoring/6/09112543_1346_en.pdf (accessed 22 November, 2010)..

would be unable to afford to care for the child as a custodial parent. The court decided to postpone the preliminary hearing session in order to "request, once more, the report from the Centre for Social Work". The preliminary hearing reconvened the next month. A submission from the CSW, received by the court that same day, informed the court that the CSW was not in a position to submit the requested report "because of the sickness of the officer in charge of the case." The court decided to again postpone the hearing, and to "again urge the Centre for Social Work […] to submit the report." The next scheduled hearing session, some six weeks later was again adjourned, because the CSW report had still not yet been received; the court decided to "once more, urge the Centre for Social Work […] to submit the report." The hearing session reconvened two weeks later; the CSW report, finally received by the court, was read aloud. The report contained no advice or guidance for the court on the issue of child custody. The legal representative for the respondent objected to the report, arguing that it "failed to answer the most essential question with regard to the decision on the custody of the child." The court agreed, and refused to allow the CSW report to be adduced in evidence. The same day, the court issued a judgement rejecting the petitioner's claim and ruled that the custody of the minor child would remain with the respondent.

The CSW in this case failed to respond to the court's request within the timeframe contemplated by the Family Law. Its report, when eventually produced, failed to respond adequately to the issue at the heart of the proceedings, that being the custody of the minor children. It was the responsibility of the CSW to provide timely and relevant expertise upon the request of the court. However, this is also a case management issue, in as much as it is the responsibility of the court to follow up with the CSWs as necessary, to ensure timely and adequate compliance with its requests. In this case, when it learned that the CSW worker to whom the case had been assigned was, because of illness, unable to complete the report within the mandated timeframe, the court should have instructed the CSW to transfer the case file to another worker for completion of the report. And when the report was finally received by the court and discovered to be deficient, the court should have returned it to the CSW for the necessary revisions.

D) Inaccurate and incomplete court records

Both international human rights law and the legal framework in Kosovo require that courts function openly and transparently.[175] A complete and accurate written record of all court proceedings is the foundation of a transparent justice system. To this end, the LCP mandates that a record be kept "of each action undertaken in the course of [a] court proceeding."[176] Despite this requirement, the OSCE has observed that, in many proceedings, court records are both inaccurate and incomplete.

In the following case example, the record fails to note that the judge was in fact absent for the entire hearing session.

[175] The public character of proceedings "protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained." *Malhous v. Czech Republic*, Judgment 12 July 2001, paragraph 55.

[176] Article 134(1), LCP.

> The parties filed a joint claim for divorce by mutual agreement. The parties had married in Germany five years previously and had no children. At the main hearing session, both parties appeared via their respective authorised representatives. The proceedings were conducted by a professional associate rather than by a judge, which is a violation of the law. At the conclusion of the hearing, the professional associate issued a judgement dissolving the marriage. The trial record, however, contains the name of the judge rather than the name of the professional associate. Anyone not present in the courtroom during the hearing would be misled into believing that the proceedings had been adjudicated by the judge.

It is particularly important that the court record note whether or not a hearing has been open to the public. As outlined earlier in this report, the LCP mandates that the court record contain "essential information about the content of the action undertaken", including "especially whether the proceeding was undertaken behind open or closed doors".[177] Yet in a significant number of cases monitored by the OSCE, such information is either incorrectly recorded or is missing altogether. For example:

> The petitioner sought revision of an earlier order awarding custody of the minor child to the respondent. The respondent disputed the claim. A preliminary hearing session was convened, but then postponed, because a required CSW report had not been received. Although the court records did not indicate that any previous request(s) to the CSW had been made, the record from the preliminary session stated that the court was to "request, once more, the report from the Centre for Social Work." The preliminary hearing session reconvened, and was again postponed, on two further occasions, because the report had still not been received. When the preliminary hearing session reconvened, the report of the CSW was noted to have been received. After hearing the parties' submissions on the report, the court ultimately decided to refuse to allow the report to be adduced in evidence and issued a judgement rejecting the petitioner's claim. Although the hearing had moved from a preliminary to a main session on that date, the court record failed to reflect this fact. Further, although child custody proceedings are required to be held behind closed doors, the court record fails to indicate whether these particular proceedings were in fact closed to the public.

E) Insufficient reasoning of decisions

As noted earlier in this report, a reasoned decision is a requirement pursuant to both international human rights law and the legal framework in Kosovo.[178] Adequate reasoning clearly informs litigants of the manner of and reasons for the court's decision. As the ECtHR has noted, a reasoned decision also "affords a party the possibility to appeal against it, as well as the possibility of having the decision reviewed by an appellate body. It is only by giving a reasoned decision that there can be public scrutiny of the administration of justice […]."[179]

Despite the requirement in law for a reasoned decision, the OSCE has monitored many cases in which decisions are insufficiently reasoned. In some cases, courts failed to review the

[177] Article 135(2), LCP. Court record-keeping is discussed at p. 17 of this report.
[178] See pp. 6–7, *supra*, for a discussion of the ECHR requirements, and p. 18, *supra*, for a discussion of the requirements contained in the LCP.
[179] *Tatishvili v Russia*, ECtHR Judgment of 22 February 2007, paragraph 58.

evidence adequately or at all, to find facts upon which a decision could be based, or to indicate the applicable legislative provision(s). For example:

> The petitioner filed a claim for dissolution of his marriage to the respondent. The parties had lived together for only six months after the marriage before the relationship broke down and they separated. They attempted reconciliation several times, without success. There were no children of the marriage. Both parties were living abroad for purposes of work at the time the claim was filed. The respondent supported the petitioner's claim and requested that the court dissolve the marriage. At the main hearing session, both the petitioner and the respondent appeared via authorized representatives. Since both parties were abroad, the court dispensed with the reconciliation session. Given the respondent's lack of opposition to the claim, the court also decided to treat the claim as a mutual proposal for dissolution of the marriage with agreement and, in a judgement issued orally at the conclusion of the session, the marriage was ordered dissolved. No reasons were given at this hearing session.

The two decisions – to dispense with the reconciliation session, and to treat the claim as a mutual proposal – were both made in accordance with the legal framework in Kosovo as it pertains to the adjudication of divorce claims. However, the failure of the court to either provide a reasoned judgement or to cite the relevant provisions of the law violates both the Law on Contested Procedure[180] and the ECHR.[181]

The failure to provide reasons for the judgement or to cite the relevant provisions of the law is an even more serious shortcoming when it takes place in the context of a child custody case, as the following case example illustrates.

> The petitioner filed a claim for dissolution of his marriage to the respondent, and requested that custody of their minor child, aged 16 years at the date the claim was filed, be awarded to him. The respondent agreed that the marriage was over and consented to its dissolution. However, the respondent disputed the petitioner's request for custody of the child. The CSW's provided an opinion recommending that custody be awarded to the respondent. The court subsequently issued a judgment awarding custody to the respondent. However, the judgment also ordered the petitioner to give the respondent unhindered contact with the child. This instruction made it appear as though the petitioner, rather than the respondent, had been awarded custody of the child.

The error in this judgement leaves uncertainty as to whether it was the petitioner or the respondent who was ultimately awarded custody of the minor child. Had the judgement been properly reasoned, as is required by law, it would have been obvious whether or not the court intended to award custody to the respondent. However, in the absence of reasons, it is not possible to ascertain this with any certainty.

The following case example deals with the issue of child access and again illustrates the problems that can arise when a judgement is not adequately reasoned.

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[180] Articles 160(5) and 175, LCP.
[181] Article 6(1), ECHR and the jurisprudence decided thereunder. See notes 17–19, *supra*.

> The parties submitted a claim for divorce by mutual agreement. They had been married for 24 years and had five children, only one of whom was still a minor. The petitioner was residing temporarily in Switzerland and the respondent resided in Kosovo. The parties proposed jointly that their marriage be dissolved, that the custody of their minor child, a son aged 12, be awarded to the petitioner, and that the respondent be entitled to unhindered access to the child. The respondent waived her right to alimony, and the parties waived their right to appeal the court's decision. A CSW opinion ordered by the court supported the parties' proposal, and noted that the child had expressed a desire to go to Switzerland with the petitioner. The court issued a judgement immediately following the conclusion of the main hearing session, ordering the dissolution of the marriage, awarding custody of the minor child to the husband and ordering the husband to pay alimony to the wife in the amount of €100 per month. There was no mention in the judgement on the issue of the wife's access to the minor child.

In this case, the court's failure to adequately reason its judgement in relation to the access issue is troubling. Did the court intend the mother to have access to the child, as the parties clearly contemplated in their joint proposal? The evidence adduced at the hearing suggests that the child's father – now the custodial parent – may in fact be taking the child to Switzerland. If so, how will this affect the mother's entitlement to access to the child? A reasoned judgement would have assisted the parties – and other readers of the judgement – to understand the court's decision on these matters.

CONCLUSION

Proceedings monitored by the OSCE reveal significant, systemic problems in the adjudication of family law cases in the courts in Kosovo. OSCE monitoring of family law proceedings has identified five issues of particular concern; these are: lengthy delays in the resolution of even the most straightforward marital dispute claims, serious shortcomings in the hearing of witnesses and the adducing of evidence, inadequate judicial oversight of the role of CSWs in family law cases, inaccurate and incomplete court record-keeping and insufficiently reasoned judgements.

Effective adjudication of family law proceedings requires a comprehensive, proactive approach to case management. Such an approach must encompass the entire lifespan of a family law proceeding, commencing the day the claim is filed and continuing until the final disposition of the case. Such an approach, effectively implemented, would reduce or eliminate the types of delays observed by the OSCE and would contribute to resolving the other procedural problems that are the subject of this report. The adjudication of family law cases presents its own unique challenges in any legal jurisdiction. However, this is even more the case in Kosovo, where one and sometimes both of the parties to a case are often residing abroad. These challenges, however, are not insurmountable. They can and indeed must be met if the courts are going to comply with both the domestic law and the relevant international human rights standards.

An effective case management strategy for family law cases is crucial to the rule of law. When courts in Kosovo fail to adequately manage these proceedings, the efficacy of the justice system as a whole is thereby diminished. It is clear that the work of courts in Kosovo is hampered by significant logistical constraints and will continue to be so hampered for the short term. However, a comprehensive, proactive management strategy for family law proceedings can help eliminate the waste of court and judicial resources that seems to almost invariably result when these cases are poorly managed. A comprehensive, proactive case management strategy would also serve as an effective safeguard of the right of parties in family law cases, as guaranteed in Articles 6 and 8 of the ECHR, and of the rights of children involved in family law cases, as guaranteed in Articles 3, 9 and 12 of the Convention on the Rights of the Child.

The Family Law in Kosovo, as noted earlier in this report, defines the family as “a vital community” and as “the natural and fundamental nucleus of society”. It mandates that the dissolution of a marriage and all attendant legal proceedings take place “with minimum distress to the parties and to the children affected”, and that these proceedings should be accomplished in such a manner as to promote a good “continuing relationship between the parties and any children affected” and “without costs being unreasonably incurred in connection with the procedures”. Family law proceedings have the potential to impact and define the core content of individuals’ private and family life. The initiation of family law proceedings by parties triggers a corresponding positive obligation by institutions to safeguard family members’ rights in accordance with international human rights standards. Much is at stake for those individuals when a family comes before a court seeking dissolution of a marriage, and/or custody of or access to a child. The courts in Kosovo must meet the challenge of adjudicating those issues in the best manner possible for all of the stakeholders.

RECOMMENDATIONS

To the courts:

- Develop and implement a comprehensive, proactive case management strategy for use in family law proceedings;
- Make full use of preparatory proceedings to streamline the issues in the case;
- Deal proactively with anticipated summoning issues, particularly where one or both of the parties are residing abroad;
- Deal proactively with anticipated evidentiary issues, bearing in mind the requirements of the LCP and guidelines provided by the ECtHR case-law;
- Where the involvement of the CSW is mandated for reconciliation procedures or preparation of a report on child custody or access, make the necessary referrals and/or requests as early in the proceedings as is possible;
- Canvass with the parties at an early stage in the proceedings whether expert evidence in addition to a CSW report is needed to resolve child custody or access issues;
- Ensure that a complete and accurate court record is kept for each family law proceeding, and that any errors or omissions in the record are corrected as soon as they are discovered;
- Where appropriate, consider making use of the relevant provisions of the Law on Contested Procedure to impose monetary fines or other legal measures on expert witnesses or authorised representatives;
- Ensure that judges presiding in family proceedings, particularly those proceedings involving child custody and access issues, provide properly reasoned judgements.

To the Kosovo Judicial Institute (KJI):

- Continue to train both sitting judges and judicial candidates on the following:
  - the role of the courts in the resolution of family law disputes;
  - the application of the Family Law and the Law on Contested Procedure;
  - the importance of implementing effective and comprehensive case management strategies;
  - the importance of making full use of preparatory proceedings in civil matters, including family law cases;
  - the proper use of evidentiary procedure in family law proceedings; and
  - the importance of delivering properly reasoned judgements in family law proceedings.

To the Centres for Social Work (CSWs):

- Ensure that CSW officials respond to requests for assistance from the court within the timeframes contemplated by the relevant legislation;
- Where expert opinions are requested, ensure that CSW officials provide opinions that are responsive to the issues raised.