



**Organization for Security and Co-operation in Europe
MISSION IN KOSOVO**

Execution of Judgments

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EXECUTIVE SUMMARY

Lengthy delays and procedural deficiencies in the execution of civil and criminal judgments in the courts of Kosovo undermine the right to a fair trial within a reasonable time and compromise the rule of law. In particular, civil execution cases involving judgments for unpaid utility bills are particularly problematic, both because of their large numbers and because of inaccuracies in the execution proposals the utility companies present to the courts. Even more problematic are cases involving public entities as judgment debtors. All too often, when ordered to implement judgments against themselves, municipalities or other public entities seek to delay execution with groundless appeals and objections. Even worse, they often simply disregard such judgments.

With regard to the execution of criminal judgments, there is often delay between the time of an oral and a written judgment, which results in a delay before a judgment is ready to be executed. Incorrect addresses for defendants often result in difficulty locating a convicted person when a term of imprisonment or a fine becomes final and executable. There is also a lack of training for clerks responsible for executing these judgments.

In response to these findings, the OSCE calls on Kosovo institutions to take prompt action to amend the legislative framework in order to streamline civil execution procedures. Civil judges must also take a more active role in management of execution proceedings. In criminal cases, criminal judgments should include the date on which they are signed by the judge. Finally, the Kosovo Judicial Council (KJC) should actively assist with and report on court compliance with relevant provisions of the National Backlog Reduction Strategy.

1. INTRODUCTION

The Organization for Security and Co-operation in Europe (OSCE) Mission in Kosovo is concerned that the large and growing backlog of execution cases in Kosovo is compromising the right of litigants to a fair trial within a reasonable time, thus violating both the domestic legal framework and international human rights law. Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, argued in 2009 that "[f]lawed execution of final court decisions must be seen as a refusal to accept the rule of law and is a serious human rights problem".¹ In its Kosovo 2010 Progress Report, the European Commission finds that the "low level of enforcement of court decisions is a major impediment to creating confidence in judiciary". The report notes that "unexecuted verdicts have dented public confidence in the capacity, professionalism and fairness of the judiciary, thereby limiting effective access to justice".²

Execution of judgments is also an indicator of judicial independence:

"Constitutional guarantees of the separation of powers and judicial independence enable judges to protect individual rights and freedoms enshrined in law. However, these constitutional guarantees and legal protections lose their significance when judicial decisions are not enforced. Moreover, if individuals lack confidence in the enforceability of judgments, they may be less likely to rely on courts to resolve disputes and may turn to other unofficial or private ways [of] seeking justice as a result. Over time, failure to effectively enforce judgments will undermine credibility of the legal system and the rule of law".³

In Kosovo, judgments in both civil and criminal cases, once final, are executed by court-based enforcement agents, who include both judges and clerks.⁴ In civil cases, the execution procedure is initiated by a creditor in order to obtain satisfaction of a right which has already been recognized in a final court judgment or in an authentic document. In criminal cases, execution of criminal sanctions commences automatically, as soon as the decision by which the criminal sanction is imposed becomes final and there is no legal impediment to its execution.

According to statistics published by the Kosovo Judicial Council (KJC), there were a total of 89,201 civil judgments awaiting execution in municipal courts in Kosovo at the end of December 2009. During the course of the ensuing twelve-month period, another 26,568 civil execution cases entered the system, while the courts completed a total of 10,992 cases, resulting in a total of 104,777 unexecuted civil judgments as at the end of December 2010. This represents a net increase, over the course of the year, of 15,576 cases, or approximately

¹ Thomas Hammarberg, Council of Europe Commissioner for Human Rights; *Flawed Enforcement of Court Decisions Undermines the Trust in State Justice*, 31 August 2009. http://www.coe.int/t/commissioner/Viewpoints/090831_en.asp (accessed 27 September 2011).

² European Commission, *Kosovo* 2010 Progress Report (*Under UNSCR 1244/1999)*, SEC(2010) 1329, Brussels, 9 November 2010, accompanying the *Communication from the Commission to the European Parliament and the Council on the Enlargement Strategy and Main Challenges 2010-2011*, COM(2010) 660, p. 11.

³ ABA-CEELI, *Survey of Legislative Frameworks for the Enforcement of Judgments*, CEELI Research Paper Series, Washington, D.C., July 2003, p. 1.

⁴ The differing regimes of personnel allocation for civil and criminal executions will be detailed later in the report.

17.46%. In 2010, civil courts therefore completed a total of approximately 9.49% of the 115,769 total number of cases pending before them during the year.

The numbers on the criminal side of the equation, while considerably smaller, are still significant. According to the KJC statistics, there were a total of 12,858 criminal judgments awaiting execution in municipal courts in Kosovo at the end of December 2009. During the course of the following twelve-month period, another 6,222 criminal execution cases entered the system, while the courts completed a total of 5,651 cases, resulting in a total of 13,429 unexecuted criminal judgments as at the end of December 2010. Interviews conducted by the OSCE with execution clerks report that the vast majority of these judgments impose a monetary fine. This was a net increase, over the course of the year, of 571 cases, or approximately 4.44%. In 2010, criminal courts therefore completed a total of approximately 29.62% of the 19,080 total number of case pending before them during the year.⁵

The right to execution of a judgment is an integral part of the right to a fair trial within a reasonable time. This report canvasses the legal framework, both internationally and domestically, applicable to the execution of civil and criminal judgments; the report also reviews the provisions of the National Backlog Reduction Strategy⁶ introduced by the KJC in November 2010 and its implementation by the courts to date. The report goes on to review the civil execution practice of courts in Kosovo; it highlights findings in two types of civil execution cases: those involving the collection of unpaid utility bills and those involving public entities as judgment debtors. The report also highlights the shortcomings in the process for execution of criminal sanctions against persons convicted of crimes in Kosovo.

The report concludes with a number of recommendations to the Assembly of Kosovo, court presidents and judges, the Kosovo Judicial Institute (KJI) and the KJC aimed at remedying observed shortcomings in civil and criminal execution procedure and thereby reducing the backlog of pending execution cases.⁷

⁵ Kosovo Judicial Council (KJC) Secretariat, Department of Statistics; *Report for 2010: Statistics on Regular Courts*, p. 18. http://www.kgjk-ks.org/repository/docs/RAPORTI_VJETOR_Pergjithshem_2010_ANGLISHTFinal_485268.pdf (accessed 27 September 2011).

⁶ Kosovo Judicial Council (KJC), *National Backlog Reduction Strategy*, issued 11 November 2010, pursuant to Law No. 03/L-122, on the Composition of the Kosovo Judicial Council and UNMIK Regulation No. 2005/52 on the establishment of the Kosovo Judicial Council, based on the Strategic Plan of the Kosovo Judiciary for the period 2007-2012. <http://www.drejtesia-ks.org/repository/docs/National%20Backlog%20Reduction%20Strategy%20-%20English.pdf> (accessed 27 September 2011).

⁷ The OSCE has previously reported on deficiencies in the execution of civil judgments in Kosovo. OSCE report *Kosovo: First Review of the Civil Justice System* (June 2006), pp. 44–47. <http://www.osce.org/kosovo/19401> (accessed 27 September 2011) and the OSCE report *Delays in the Execution of Final Court Judgments violate domestic law and the right to a fair trial* (September 2007), pp. 3–4. <http://www.osce.org/kosovo/28297> (accessed 27 September 2011).

2. LEGAL FRAMEWORK

A) International Human Rights Standards⁸

Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (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”.⁹

The European Court of Human Rights (ECtHR), which adjudicates legal issues arising out of domestic cases involving both civil and criminal matters, has held that execution proceedings must be viewed as “an integral part of the ‘trial’ for the purposes of Article 6”.¹⁰ The right to a fair trial, the Court held, would:

“be illusory if a [...] domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. It would be inconceivable that Article 6[1] should describe in detail procedural guarantees afforded to litigants – proceedings that are fair, public and expeditious – without protecting the implementation of judicial decisions; to construe Article 6 as being concerned exclusively with access to a court and the conduct of proceedings would be likely to lead to situations incompatible with the principle of the rule of law”.¹¹

In the above-cited case, the ECtHR held that where a domestic court had refrained, for more than five years, from “taking the necessary measures to comply with a final, enforceable judicial decision”, the relevant institutions had deprived the provisions of Article 6[1] “of all useful effect” and in doing so had violated the claimant’s right to a fair trial.¹²

In 2003, the Committee of Ministers of the Council of Europe (Committee) issued a Recommendation on the enforcement of civil and criminal judgments.¹³ In its Recommendation, the Committee noted that authorities “have a duty to ensure that all persons who receive a final and binding court judgment have the right to its enforcement”. The Committee further noted “the risk that without an effective system of enforcement, other forms of ‘private justice’ may flourish and have adverse consequences on the public’s confidence in the legal system and its credibility”.¹⁴ Furthermore, stressing the relevance of a timely execution of judgments in criminal cases, the European Commission for the Efficiency

⁸ Eight enumerated standards of international human rights, including the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Council of Europe, along with the body of case law under each of the eight standards, are directly applicable in Kosovo, and in case of conflict, have priority over Kosovo law: see UNMIK Regulation No. 1999/24 on the Applicable Law in Kosovo, section 1.3(b), UNMIK Regulation No. 2001/9 on A Constitutional Framework for Provisional Self-Government in Kosovo, Section 3.2(b) and Articles 22(2) and 53 of the 2008 Kosovo constitution.

⁹ See Article 6(1), ECHR, ETS 5, 4 November 1950, entered into force 3 September 1953.

¹⁰ *Hornsby v. Greece*, ECtHR Judgment of 19 March 1997, paragraph 40. *Burdov v. Russia*, ECtHR Judgment of 7 May 2002, paragraphs 33–38.

¹¹ *Ibid.*

¹² *Ibid.*, para. 45.

¹³ *Recommendation (2003)17 of the Committee of Ministers to member states on enforcement*, issued pursuant to Article 15.b of the Statute of the Council of Europe, adopted by the Committee of Ministers on 9 September 2003 at the 851st meeting of the Ministers’ Deputies. <https://wcd.coe.int/wcd/ViewDoc.jsp?id=65531&Site=COE> (accessed 27 September 2011).

¹⁴ *Ibid.*, preamble paragraphs.

of Justice recommends ensuring the enforcement of sentences as a way to “improve confidence in the criminal justice system and reduce crime”.¹⁵

In 2010, the Consultative Council of European Judges (CCJE) issued an Opinion (2010) on the Role of Judges in the Enforcement of Judicial Decisions.¹⁶ In its Opinion, the CCJE notes that:

“the effective enforcement of a binding judicial decision is a fundamental element of the rule of law. It is essential to ensure the trust of the public in the authority of the judiciary. Judicial independence and the right to a fair trial (Article 6 of the ECHR) is in vain if the decision is not enforced”.¹⁷

Dealing specifically with the role of judges in enforcing decisions in civil proceedings, the CCJE is of the view that enforcement of a decision should “not require the commencement of entirely fresh proceedings” and that enforcement procedures should “not permit reopening of the merits of the original judicial decisions.” However, it notes that a judge might retain the “power to suspend or postpone enforcement to take account of the particular circumstances of the litigants, for example to give effect to Article 8 of the ECHR”.¹⁸ Finally the CCJE notes that if:

“the rule of law is to be maintained and litigants’ trust in the judicial system is to be ensured, enforcement activities must be proportionate, fair and effective. For example, tracing and attachment of the defendants’ assets should be made as effective as possible, while taking account of the applicable provisions on human rights, protection of personal data and the need for judicial review”.¹⁹

The CCJE recommends that “the Council for the Judiciary, or any other relevant independent body, publish regularly a report on the effectiveness of enforcement, including data on delays and their causes, as well as on different enforcement methods. A special section should deal with the enforcement of judicial decisions against public entities”.²⁰

¹⁵ *The Users of the justice system vis-à-vis the slowness of justice: how to remedy? Two symbolic situations*, issued by the working party n° 2 of European Commission for the Efficiency of Justice, Strasbourg 17 September 2003.

[https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CEPEJ\(2003\)21&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CEPEJ(2003)21&Sector=secDGHL&Language=lanEnglish&Ver=original&BackColorInternet=eff2fa&BackColorIntranet=eff2fa&BackColorLogged=c1cbe6) (accessed 27 September 2011).

¹⁶ Consultative Council of European Judges (CCJE), Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, CCJE 2010(2) Final, Strasbourg, 19 November 2010. [https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE\(2010\)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/wcd/ViewDoc.jsp?Ref=CCJE(2010)2&Language=lanEnglish&Ver=original&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864) (accessed 27 September 2011).

¹⁷ CCJE, Opinion No. 13 (2010) on the Role of Judges in the Enforcement of Judicial Decisions, CCJE (2010)2 FINAL, Section III. The role of the judge in the enforcement of judicial decisions in civil matters, issued at Strasbourg on 19 November 2010.

¹⁸ Ibid, paragraph 24. Article 8 protects the right to respect for private and family life. The CCJE note at paragraph 8 that execution procedures “must be implemented in compliance with fundamental rights and freedoms” including those articulated in Article 8.

¹⁹ Ibid, paragraph 25.

²⁰ Ibid, paragraph 23.

B) Domestic Law

Civil Legislation

Civil execution proceedings in Kosovo are regulated by the Law on Executive Procedure²¹, except in cases where a specific law otherwise provides.²² This law contemplates an execution procedure overseen by a designated execution judge and implemented by designated execution clerks, with the assistance of the Kosovo police where necessary.²³ The law also contemplates an expeditious procedure; it provides that the court has a duty to “act with urgency” in execution cases.²⁴ Further, it provides that the court must process execution cases in the order it receives them, unless “the nature of the credit or special circumstances” require something different.²⁵

Pursuant to the Law on Executive Procedure, a decision on execution does not become executable until all objections have either become time-barred or run their course.²⁶ Only where a decision on execution is not objected to or appealed from within the applicable limitation period, or where all possible objections and appeals have been exhausted, will it become executable.²⁷ Such decision becomes final when an appeal is not permitted by law, is time-barred or is refused.²⁸

The “right to fair and impartial trial” is embedded in Kosovo’s legal framework.²⁹ In a recently issued judgment, the Kosovo constitutional court echoed the above-cited ECtHR jurisprudence when it noted that the right to institute proceedings before a court in civil matters, would be illusory “if the Kosovo legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party”.³⁰

²¹ Article 1(1), Law No. 03/L-008 on Executive Procedure, 15 July 2008. This law also regulates the execution of decisions in administrative law cases, and the execution of minor offence cases involving the payment of money: Article 1(2).

²² Two laws which provide otherwise are the Law No. 03/L-182 on Protection against Domestic Violence, 10 August 2010, and Law No. 02/L-17 on Social and Family Services, as promulgated by UNMIK Regulation No. 2005/46, 14 October 2005. The Law on Protection against Domestic Violence sets up a regime whereby protection orders are issued by the municipal courts but are executed, where necessary, by the Kosovo police; see Articles 3 and 18–20. The Law on Social and Family Services deals with the execution of certain orders. It contemplates the assistance of the Kosovo police in the execution of guardianship orders involving vulnerable adults; it also vests the execution of protection orders involving such adults in Social Services Officers in the employ of the Centres for Social Work.

²³ Chapter IV, Law on Executive Procedure. See also Articles 2 and 9. Regarding Kosovo police assistance, see Article 267.

²⁴ Article 5, *Ibid.*

²⁵ *Ibid.*

²⁶ Article 12.6 and Article 13, Law on Executive Procedure. Law No. 2004/32 on Family, promulgated by UNMIK Regulation No. 2006/7, 16 February 2006, creates two exceptions to this rule, the first in respect of decisions “about temporary measures to provide financial maintenance and accommodation for the spouse” (Article 71) and the second in respect of decisions concerning “temporary measures for protection, education and placement of children” (Article 344). An appeal from such decisions will not stop their execution.

²⁷ Article 13, Law on Executive Procedure.

²⁸ Article 13.2 and 13.3, Law on Executive Procedure.

²⁹ Article 31, constitution of Kosovo adopted 9 April 2008, entered into force 15 June 2008. See also Chapter 3, UNMIK Regulation 2001/9 on the Constitutional Framework for Provisional Self-Government in Kosovo, promulgated 10 June 2001.

³⁰ Kosovo constitutional court, Judgment (Ref. No.: AGJ 75/10) issued in Prishtinë/Priština, 17 December 2010, in Case No. KI 08/09, *The Independent Union of Workers of IMK Steel Factory in Ferizaj*, constitutional review of the decision of the municipal court of Ferizaj/Uroševac, *Decision C No. 340/2001*, dated 11 January 2002, paragraph 61.

The cited case before the constitutional court involved the legal efforts, made over a period of many years by the 912 applicants, former employees of a socially-owned enterprise which had since been privatized, to recover wages they had lost as a result of their illegal dismissal from employment.³¹ The applicants had obtained a final judgment from the municipal court of Ferizaj/Uroševac on 11 January of 2002. However, their judgment remained unexecuted nearly nine years after it became final. The applicants argued that the 2002 judgment had become *res judicata*³² and they were entitled to have it executed.

The court ruled in favour of the applicants, holding that the right to a fair and effective trial, as guaranteed by both the constitution and the ECHR, had been violated by the failure to execute the judgment. The court held that:

“the rule of law is one of the fundamental principles of a democratic society and presupposes respect for the principle of legal certainty, particularly as regards judicial decisions that have become *res judicata*. No party is entitled to seek for a review of a final and binding judgment merely for the purpose of obtaining a rehearing and fresh determination of the case. [...] Were that not the case, the reversal of final decisions would result in a general climate of legal uncertainty, reducing public confidence in the judicial system and consequently in the rule of law. The competent authorities are, therefore, under a positive obligation to organise a system of enforcement of decisions that is effective both in law and in practice and ensures their enforcement without undue delay.

“In the Court’s opinion, the execution of a judgment given by any court must, therefore, be regarded as an integral part of the right to a fair trial [...]. In the instant case, the Applicants should not have been prevented from benefiting from the decision, which had become *res judicata*, given in their favour”.³³

The court concluded that, by failing for such a long period of time to enforce the judgment, “the appropriate authorities have deprived the provisions of Article 31 of the constitution and Articles 6 and 13 of the ECHR of all useful effect”.³⁴

Criminal Legislation

The right to a fair and impartial trial applies equally to civil and criminal trials.³⁵ Criminal execution proceedings in Kosovo are regulated by the Kosovo Code of Criminal Procedure³⁶ and the Law on Execution of Penal Sanctions.³⁷

³¹ The municipal court of Ferizaj/Uroševac, in *Decision C No. 340/2001, dated 11 January 2002*, reasoned that the dismissal was illegal because, while the applicants’ employment had been terminated due to absence from work, in fact the applicants were absent because they had been prohibited from going to work.

³² *Res judicata* refers to an issue that has been definitively settled by judicial decision. See *Black’s Law Dictionary*, Eighth Edition (United States, Thomson West, 2004), p. 1336.

³³ *Ibid*, paragraphs 62–63.

³⁴ *Ibid*, paragraph 64.

³⁵ See footnote 31.

³⁶ Provisional Criminal Procedure Code of Kosovo, promulgated by UNMIK Regulation No. 2003/26, 6 July 2003, with subsequent amendments. On 27 November 2008, Kosovo promulgated the Law No. 03/L-003 on Amendment and Supplementation of the Kosovo Provisional Code of Criminal Procedure No. 2003/26, which left the code substantially the same as the 2003 law, though a section on guilty plea agreements was

A judgment in a first instance criminal court is announced by the presiding judge immediately after it is rendered by the court.³⁸ This oral announcement is then followed with a written judgment. The written judgment is required “to be drawn up in writing within fifteen days of its announcement if the accused is in detention on remand and within thirty days in other instances”.³⁹

Criminal judgments can be executed only when “its service has been effected and if there are no legal obstacles to its execution”.⁴⁰ One legal obstacle to an execution is that a judgment is not final until “it may no longer be contested by an appeal or when no appeal is permitted.”⁴¹ It is at this procedural stage, at the point of a final judgment, when a defendant is defined as a “convicted person”⁴² and a sanction can be imposed.

C) Recent Developments in the Normative Framework

The KJC issued the National Backlog Reduction Strategy (the Strategy) in November 2010. The Strategy was intended to deal with the backlog of civil, criminal and execution cases, and contained a number of action points dealing specifically with the execution of civil and criminal judgments. Concerning civil execution cases, these included the signing of memoranda of understanding (MoU) between the KJC and the Kosovo police⁴³, the central bank⁴⁴ and the business registration office⁴⁵. The Strategy contemplated that the KJC would, within two years of the issuance of the Strategy, issue a decision “on the organization of the execution system in future (judicial, public, private, etc.)”.⁴⁶ Court presidents were required, within two weeks of the issuance of the Strategy, to assign working groups within each court to address the “reduction of backlogs of (civil/criminal) execution cases in every municipal court and commercial court”.⁴⁷ The Strategy contemplated that the working group would immediately begin “electronic inventorying” and “categorization” of all civil and criminal execution cases⁴⁸ and the “assignment of time limits for case processing (according to

added, an article on the length of police-ordered detention was amended, and the name of the code was changed to Kosovo Code of Criminal Procedure, hereinafter KCCP.

³⁷ Law No. 03/L-191 on Execution of Penal Sanctions, 22 July 2010.

³⁸ Article 392(1), KCCP.

³⁹ Article 395(1), KCCP.

⁴⁰ Article 135(2), KCCP.

⁴¹ Article 135(1), KCCP.

⁴² Article 151(4), KCCP.

⁴³ The Strategy, p. 10, point 7.a. This MoU will “regulate the collaboration between [the] parties [to the MoU] for a more efficient and faster aid from the police, such as assistance in the field, verifying the address, etc.”

⁴⁴ The Strategy, p. 5, point 2.f. This MoU “will regulate cooperation related to identification and freezing of bank accounts, issuing of fines and other sanctions for failure to comply with court order [sic] or cooperate, processing of cases submitted by banks, etc.”

⁴⁵ The Strategy, p. 11, point 7.e. This MoU of understanding will “regulate cooperation between [the] parties [to the MoU] in case of deregistration of business or requests for information related to a particular business which is a debtor in execution procedure.”

⁴⁶ The Strategy, p. 12, point 10. The explanatory note for this point reads: “The KJC must decide on the most suitable system of execution for Kosovo.”

⁴⁷ The Strategy, p. 22, point 1. Point 2 envisages the “[i]dentification of support staff that can help in the execution and issuing of assignment order by court president.”

⁴⁸ The Strategy, p. 23, point 3. Cases are to be categorized “according to case type or creditor”. The categorization is to be done “in coordination with the SEAD project.” The *Systems for Enforcing Agreements and Decisions* [SEAD] program is a project operating in Kosovo under the auspices of the United States Agency for International Development (USAID). The project focuses on “improving the ability of citizens, businesses and the judicial system to use and enforce contracts and obligations, and to

categories)”⁴⁹. The Strategy also contemplated an amendment to the Law on Executive Procedure to transfer from the court to the creditor the duty of properly ascertaining the debtor’s address.⁵⁰ Concerning criminal execution cases, the Strategy contemplated the creation of an inventory of criminal execution cases which would clearly display the applicable limitation dates for each case.⁵¹ Finally, the Strategy contemplated increased use of plea agreements and mediation procedures which, if systematically applied, should assist in reducing the number of criminal execution cases added to the system in future.⁵²

The Strategy’s provisions concerning civil execution cases, if fully implemented, should be sufficient to effect a reduction in the backlog of those cases. However, an interview with a representative from the KJC revealed that implementation of these portions of the Strategy has been inconsistent.⁵³ As of the end of October 2011, none of the contemplated MoU had been signed, and less than half of the courts had assigned the mandated working groups.⁵⁴ In those courts where working groups have been assigned, very little work has been done to create the electronic case inventory contemplated by the Strategy.⁵⁵ To date, there has been no amendment to the Law on Executive Procedure; however, a new draft law has been submitted to the Assembly of Kosovo.⁵⁶ Finally, in relation to the call for increased use by the courts of mediation procedures in criminal execution cases, the OSCE was advised that as of October 2011, mediators had not yet started work in this area.⁵⁷

Issues of continuing concern in the implementation of the Strategy include the scope of a court’s duty in execution cases where a debtor’s address or whereabouts is unknown⁵⁸ and a court’s authority vis-à-vis the sequestration of assets⁵⁹. In addition, courts would benefit from guidelines concerning circumstances in which they would be permitted to adjudicate execution cases other than in temporal order.⁶⁰ The Strategy envisages that the supreme court provide clarification, in the form of a legal opinion, on these issues. Such a legal opinion, once obtained, should assist the courts in effecting a further reduction in the backlog of civil execution cases.

The KJC, in its most recent report on “Progress on the work achieved by the Kosovo Judiciary in Implementation of National Backlog Reduction Strategy”⁶¹, published on 28 October 2011, detailed the steps undertaken by the KJC, courts and other relevant

enforce court judgments in a timely and just manner.” <http://www.seadprogram.com> (accessed 8 November 2011).

⁴⁹ The Strategy, p. 23, point 5.a.

⁵⁰ The Strategy, p. 29, point 1. It is foreseen that this amendment would be made “within the first year of the implementation” of the Strategy.

⁵¹ The Strategy, points 1(b) and 2.

⁵² The Strategy, p. 16, points 1(a), (b) and (c).

⁵³ Representative, KJC Judicial Audit Unit, Prishtinë/Priština, Kosovo, personal interview, 11 October 2011.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Website of the Assembly of Kosovo, <http://www.assembly-kosova.org/?cid=2,194&filter=4>, (accessed 8 November 2011).

⁵⁷ Representative, Secretariat of the Kosovo Mediation Commission, Prishtinë/Priština, personal interview, 10 November 2011.

⁵⁸ The Strategy, p. 27, point 2.

⁵⁹ The Strategy, p. 27, point 3. The explanatory point for this note reads: “[i]n order to unify the different court practices as relates to the sequestration of collateral that has been transferred to a third party, a legal opinion of the supreme court is required to clarify how courts should act in these cases.”

⁶⁰ The Strategy, p. 27, point 5.

⁶¹ KJC, Report no. 3/8, 2011 (1 July – 30 September 2011).

stakeholders to address the issue of backlog of cases. According to the report, “the Kosovo Judiciary, from 1 January till 30 September 2011, has completed a total of 33.82% from the overall number of backlog”.⁶² This shows that while some commendable progress has been made in dealing with the overall backlog of civil, criminal and execution cases, implementation of the Strategy has in some aspects been slow, and remains an ongoing process.

3. EXECUTION OF CIVIL JUDGMENTS IN KOSOVO

Of the 104,777 unresolved civil execution cases in the system at the end of 2010, the largest number – 47,509, or 45% of the total cases – are in Prishtinë/Priština region. Pejë/Peć region has the second largest number, at 30,155, or 29% of the total cases. Prizren region is in third place, with a total of 16,381, or 16% of the unresolved civil execution cases. Fourth and fifth place are held respectively by Gjilan/Gnjilane region, at 8448 cases, or 8% of the total, and Mitrovicë/Mitrovica region, at 2,284, or 2% of the total number of unresolved civil execution cases in Kosovo.⁶³

In most municipal courts, one or two judges are responsible for handling the civil execution caseload.⁶⁴ The execution judges are assisted in their work by one or more execution clerks, although the number of clerks assigned varies considerably from court to court. Between December 2010 and February 2011, the OSCE interviewed execution judges and clerks in all 22 functioning municipal courts in Kosovo⁶⁵ to obtain information concerning execution proceedings. Most execution judges reported that the large backlog of civil execution cases created a “bad”, “very bad” or “very difficult” work situation for them; judges in two municipal courts used the term “catastrophic” to describe the situation *vis-à-vis* the backlog.

When asked to enumerate the biggest obstacle or obstacles to their work, both execution judges and execution clerks reported that the number of cases assigned to them was unrealistically large. Both also were of the view that a greater number of execution clerks should be hired to adequately address the backlog. Additionally, new judges and clerks identified a lack of specific training in execution procedures, and a lack of experience in execution cases, as impediments to the effective performance of their duties. Execution clerks also noted a lack of adequate working space, telephones and IT equipment. Judges and clerks in a majority of courts noted that incorrect debtor addresses, particularly in utility bill cases, was a large problem. A number of those interviewed identified the lack of a designated execution vehicle, and a lack of storage space for items seized from debtors as obstacles to the execution of judgments.

Cases involving unpaid utility bills comprise the majority of civil execution cases in every region of Kosovo. In Gjilan/Gnjilane region, such cases make up 60% of the total number of civil execution cases; in Prizren region, they comprise 55%. In Pejë/Peć region, 70% of the total number of civil execution cases involve unpaid utility bills, and in Prishtinë/Priština

⁶² Ibid, p. 4.

⁶³ KJC, *Report for 2010: Statistics on Regular Courts*, p. 18, *supra*, note 5.

⁶⁴ An exception is Prizren region, where one municipal court has five civil execution judges and a second municipal court has four. A third municipal court has three execution judges.

⁶⁵ Two of the five municipal courts in Mitrovicë/Mitrovica region, Zubin Potok and Leposavić/Leposaviq are not currently functioning; a third – Mitrovicë/Mitrovica municipal court – functions in a limited capacity but does not deal with execution cases.

region, which has more unresolved civil execution cases than the other four regions of Kosovo combined, 65% involve judgments for unpaid utility bills. Out of the 104,777 civil execution cases that remained unresolved at the end of 2010, approximately 65,000 arose out of judgments for unpaid utility bills.⁶⁶ The following two case examples are typical of those observed by the OSCE court monitors.

The creditor applied in a municipal court for an order requiring the debtor to pay the amount of 679.68 Euros within eight days. The court granted the creditor's proposal and sent the decision to be served on the debtor at an address provided by the creditor. The decision was returned to the court as the address proved to be incorrect. The court ordered the creditor to provide the correct address within seven days, failing which it would be deemed to have withdrawn its execution proposal. The creditor did not provide the court with the correct address within the seven days as ordered.

The creditor applied in a municipal court for an order requiring the debtor to pay the amount of 2,590.97 Euros within seven days. The court granted the creditor's proposal and sent the decision to be served on the debtor at an address provided by the creditor. The decision was returned to the court as the address proved to be incorrect. The court ordered the creditor to provide the correct address within seven days, failing which it would be deemed to have withdrawn its execution proposal. The creditor did not provide the court with the correct address within the seven days as ordered.

These cases were then deemed withdrawn by the creditor. To pursue collection, the execution process would have to start again by filing a new proposal. The OSCE has observed that there are a large number of cases similar to those case examples illustrated above, all of which involve the Post and Telecommunications of Kosovo, the Kosovo Energy Corporation or other public utility providers as judgment creditors. Furthermore, the OSCE observed that the creditors often file execution proposals containing incorrect debtor addresses. These types of errors needlessly frustrate court attempts to execute the judgment, and are compounded by the creditors' failure to respond to court requests to correct them. In a court system already seriously overburdened with execution cases, these errors and failures, which appear to be entirely within the control of the creditor, are concerning.

Cases in which the judgment debtor is a public entity present special challenges for execution.⁶⁷ The following case example illustrates the difficulties faced by an ordinary citizen attempting to execute a civil judgment against a large public entity.

The debtor had built a power station on land owned by the creditor. On 6 October 2006, the creditor obtained judgment in a municipal court in Gjilan/Gnjilane region

⁶⁶ KJC, *Report for 2010: Statistics on Regular Courts*, p. 18, *supra*, note 5; information obtained from interviews with judges and execution clerks, *supra*, p. 4 of this report.

⁶⁷ The European Commission, in its *Kosovo 2010 Progress Report*, notes that some municipalities "have continuously refused to comply with court decisions": *supra*, note 2, p. 11. See also the US Department of State, *2009 Human Rights Report: Kosovo*, which notes continuing problems with execution of civil court orders where a public entity was the subject of the order. The 2009 report noted, "For example, following a May 19 settlement agreement, the Deçan/Deçane municipality publicly stated it would not amend the municipal cadastral records regardless of the eventual decision of the supreme court's special chamber for the Kosovo Trust Agency. The case is related to a land dispute between several defunct state-owned enterprises and Visoki Deçani Monastery." <http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136039.htm> (accessed 27 September 2011).

obliging the debtor to give up possession of the land and return it to the creditor within 15 days. The debtor appealed the judgment; on 5 February 2008, the district court dismissed the appeal as groundless. On 26 June 2008, the creditor, noting that the debtor had failed to voluntarily implement the judgment, applied for execution. On 4 July 2008, the court issued a decision granting the creditor's proposal. Between August 2008 and December 2010, the debtor filed two objections, one request for postponement, one request for the laying of criminal charges, one request for a re-hearing of the merits of the case, and one request that the execution judge be removed from the case. All of these objections and requests were ultimately dismissed as groundless. As of February 2011, the 2006 judgment remained unexecuted.

More than four years after obtaining judgment, the creditor in this case was no closer to having his land returned to him than he was on the day the judgment was issued. The delays in executing the judgment were brought about solely by the debtor's many appeals, objections and requests – all of which were ultimately found to be groundless. Such continuing delay violates the creditor's right to a fair trial within a reasonable time. Further, the conduct of the debtors in pursuing groundless appeals, objections and request may constitute an abuse of the court process. The Law on Executive Procedure does not appear to contemplate this situation. It does not provide a mechanism for imposing penalties on judgment debtors who seek to delay proceedings by filing multiple appeals, objections and/or requests which are ultimately found to be groundless.

The following case presents an even more egregious set of facts.

In January 2009, the claimant, a 16-year-old secondary school student was verbally warned by school authorities that she would have to choose between wearing her headscarf and attending school; she was advised that if she persisted in wearing her headscarf to school, she would be removed from her classes. Following this warning, the claimant stopped attending classes. In April 2009, she commenced an administrative procedure, in an effort to compel the Department of Education of the municipality where she resided to allow her to return to her classes while wearing her headscarf. This procedure was unsuccessful; as a result, in September 2009, the claimant brought a proceeding in the supreme court against the Department of Education. On 19 October 2009, the supreme court ruled that it did not have jurisdiction to consider the matter and referred the case to the district court. On 17 November 2009, the district court found in favour of the claimant, ruling that there was no legal basis for the Department of Education to have threatened the claimant with removal from her classes, and obliging the department to allow her to return. The Department of Education has not appealed this ruling, but has to date refused to implement it. In an interview with the OSCE, municipal officials advised that they did not care what the court had ruled, and were adamant that they had no intention of re-admitting the student to classes so long as she wore her headscarf.⁶⁸

⁶⁸ The claimant subsequently brought an application before the constitutional court requesting “an assessment of the constitutionality of the non-execution of [the district court judgment]”. In a resolution issued on 30 September 2011, the court found that the claimant's application was inadmissible because she had not exhausted all available remedies prior to bringing her application; specifically the court held that the claimant ought to have submitted a proposal for execution to the municipal court in Vitia. See Arijeta Halimi, Constitutional Review of alleged non-execution of Judgment of the district court of Gjilan CN.nr.24/09 of 17 November 2009 and alleged violation of the Applicant's human rights, case no. KI 36/11, paras. 56-68.

The comments of the municipal officials interviewed by the OSCE display what can only be described as a complete disregard for the authority of the courts. While the issue at the heart of the case is clearly a contentious one, and is one about which the parties have divergent views, it is nonetheless an issue that the court has ruled on. The Department of Education could have appealed the decision; it opted not to do so. Instead, by its own admission, it intends to simply disregard the decision. The continuing delay in the implementation of the decision violates the claimant's right to a fair trial within a reasonable time, and contributes to the ongoing violation of her right to an education.⁶⁹ Practically speaking, if the decision is not implemented very soon, the opportunity to implement it may be lost forever; the claimant, 16 at the time of the relevant events, is now 19 years old and will soon pass beyond the age when she would normally be expected to attend secondary school. These facts, indeed, would suggest that the case is of an urgent nature and is one which, under ECtHR jurisprudence, institutions are obligated to treat with particular dispatch.⁷⁰

4. EXECUTION OF CRIMINAL JUDGMENTS IN KOSOVO

In contrast to the numerous difficulties encountered with civil judgments, there are substantially fewer difficulties encountered with the execution of criminal judgments. As stated in the introduction of this report, 2010 had a net increase of approximately 17.46% of unexecuted civil cases compared to only a net increase of 4.44% of unexecuted criminal cases.

This section of the report focuses on three difficulties related to the execution of criminal judgments. First, there is often a delay between the court's oral announcement and a written judgment. Second, incorrect addresses of defendants often results in difficulty in locating a convicted person when a judgment that imposes an imprisonment term or fine becomes final. Finally, there is a lack of training for clerks responsible for executing these judgments.

A written judgment must indicate the day that the court's decision was orally announced.⁷¹ However, there is no requirement to include in the written judgment when the court's decision was put in written form.

The OSCE has previously reported on the excessive delays between a court's oral announcements and written judgments.⁷² The OSCE continues to observe delays. In some cases, months transpire before an oral announcement is converted into a written judgment. When a court's decision is put into the form of a written judgment the judge signs the document without a signature date. The lack of a signature date creates the impression it was signed on the date of the oral announcement. This makes it difficult to monitor whether a court is in compliance with the code's time requirements of a judgment "being drawn up in

⁶⁹ See Article 28, Convention on the Rights of the Child, UN General Assembly Resolution 44/25, 20 November 1989, entered into force 2 September 1990.

⁷⁰ In assessing whether a particular delay is reasonable, the ECtHR considers what is at stake in the litigation. See, inter alia, *Frydlender v France*, ECtHR Judgment of 27 June 2000, paragraph 43. See also *Buchholz v Germany*, ECtHR Judgment of 6 May 1981, paragraph 52 and *Sylvester v Austria*, ECtHR Judgment of 3 February 2005, paragraph 32.

⁷¹ Article 396(2), KCCP.

⁷² OSCE Report *Four Years Later: Follow up of March 2004 Riots Cases before the Kosovo Criminal Justice System* (July 2008), pp. 11–12. <http://www.osce.org/kosovo/32700> (accessed 27 September 2011).

writing within fifteen days of its announcement if the accused is in detention on remand and within thirty days in others instances.”⁷³

Only when monitors review court files at different time periods, or ask judges directly, can the OSCE estimate the time period over which court decisions are put in written judgments. The following examples illustrate observed breaches of the code, breaches that could not be observed without such active monitoring:

In a case before the district court in Pejë/Peć involving a defendant charged under the Criminal Code of Kosovo⁷⁴ with the commission of criminal offence of trafficking in persons⁷⁵ and rape⁷⁶, the oral announcement of the court’s decision was made on 25 October 2010. As of 24 February 2011, the written judgment had not been issued.

In a case before the district court in Prishtinë/Priština, a defendant was tried for the alleged commission of criminal offence of endangering public traffic.⁷⁷ The oral announcement was on 26 November 2010, but it took almost three months to issue a written judgment. It was issued on 18 February 2011.

In a case before the district court in Pejë/Peć involving three defendants charged with trafficking in persons⁷⁸, the court’s decision was orally announced on 23 December 2010. As of 24 February 2011, the written judgment had not been issued.

In addition, when a judgment imposing an imprisonment term or fine becomes final, incorrect addresses often result in difficulty in locating defendants. The OSCE has observed that incorrect addresses – addresses not identifying where the defendant is currently at – create an obstacle to the execution of sanctions. If there is a delay in serving the defendant with documents, it will delay executing a final judgment or imposing a sanction.⁷⁹ According to many municipal courts’ execution staff, the collection of an exact address of the parties is the main obstacle in the execution of judgments.⁸⁰

In late 2010 and early 2011 the OSCE contacted the municipal execution clerks that implement the execution of judgments. The execution clerks stated that they were understaffed and do not have sufficient training. Many municipal courts’ execution clerks were also not aware of the new law regulating the execution of criminal judgments. Neither knowledge nor copies of the Law on Execution of Penal Sanctions⁸¹ had reached these

⁷³ Article 395(1), KCCP.

⁷⁴ Provisional Criminal Code of Kosovo, promulgated by UNMIK Regulation No. 2003/25, 6 July 2003, with subsequent amendments. On 6 November 2008, the Kosovo Assembly promulgated Law No. 03/L-002 on Supplementation and Amendment of the Kosovo Provisional Criminal Code of Kosovo, which left the code substantially the same as the 2003 law, with only a section on guilty plea agreements added and the name of the code changed to Criminal Code of Kosovo, hereinafter referred to as CCK.

⁷⁵ Article 139 CCK.

⁷⁶ Article 193 CCK.

⁷⁷ Article 297, paragraph 5 in conjunction with paragraph 3 and 1 of CCK.

⁷⁸ Article 139 of CCK.

⁷⁹ OSCE Report *Kosovo Review of the Criminal Justice System “The administration of justice in the municipal courts”* (March 2004), p. 15. <http://www.osce.org/files/documents/9/1/27770.pdf> (accessed 25 July 2011).

⁸⁰ Interviews of the OSCE with the administrators of municipal courts in multiple regions, conducted in November and December 2010.

⁸¹ Law No. 03/L-191 on Execution of Penal Sanctions, 22 July 2010.

clerks.⁸² Although a critical component for the effective implementation of the law, many of the clerks were still referring to and operating under UNMIK Regulation 2004/46 on the Law on Execution of Penal Sanctions.⁸³

5. CONCLUSION

This report has highlighted lengthy delays and procedural deficiencies in the execution of civil and criminal judgments in the courts of Kosovo. Execution cases involving judgments for unpaid utility bills have been identified as being particularly problematic, both because of their large numbers and because of inaccuracies in the execution proposals the utility companies present to the courts. A second category of execution cases which has been identified as being even more problematic involves public entities as judgment debtors. In cases monitored by the OSCE, where a municipality or other public entity finds itself in the position of having to implement a judgment against it, all too often this entity seeks to delay execution with groundless appeals and objections or, even worse, simply disregards the judgment.

The execution of civil and criminal court judgments is an integral part of the fundamental human right to a fair trial within a reasonable time. When, as is the case in Kosovo today, civil judgments are not executed within a reasonable time, the right to a fair trial is violated and the rule of law is compromised. Lengthy delays in the execution of civil judgments cause a growing backlog of these cases. The delay and backlog problems are compounded when the two types of cases identified as most problematic involve public entities. Where public entities, in their role as judgment creditors, overwhelm the judgment execution system with incomplete or inaccurate documentation, they signal a worrisome carelessness concerning, and ultimately a lack of respect for, the functioning of their justice system. When public entities, in their role as judgment debtors, stonewall execution attempts or simply ignore judgments against them, they signal something much more worrisome: a disregard for the rule of law.

In criminal judgments, there are often delays between the time of an oral and a written judgment, which results in a delay before a judgment is ready to be executed. Incorrect addresses for defendants often create obstacles to locating defendants when a term of imprisonment or a fine becomes final and executable. There is also a lack of training for clerks responsible for executing these judgments.

The competent institutions in Kosovo are “under a positive obligation to organise a system of enforcement of decisions that is effective both in law and in practice and ensures their enforcement without undue delay”.⁸⁴ This positive obligation necessitates a proactive approach to the problems currently faced by the justice system in clearing up the backlog of execution cases. The KJC’s National Backlog Reduction Strategy is a good initiative and has the potential to have a significant impact in reducing the backlog of execution cases.

⁸² Staff at the execution office of some courts were not aware that the Law in force for execution of penal sanctions is the Law on Execution of Penal Sanctions and not the UNMIK Regulation No. 2004/46. Interviews of the OSCE with the execution clerk of municipal courts conducted in November and December 2010.

⁸³ UNMIK Regulation No. 2004/46 on the Law on Execution of Penal Sanctions, promulgated on 19 November 2004.

⁸⁴ *Supra*, note 30, paragraph 62.

However, in order to have this impact, it will need to be promptly and efficiently implemented. At the time of writing of this report, although certain progress had been made in reducing the overall backlog of cases by Kosovo courts, implementation of the Strategy appeared to be proceeding slowly. Particularly in relation to its provisions addressing execution cases, further progress needs to be made to ensure that the Strategy can successfully reduce the backlog of execution of judgments in Kosovo.

6. RECOMMENDATIONS

To the Assembly of Kosovo:

- Consider amending the Law on Execution Procedure to create an expedited procedure for execution of judgments in utility payment cases
- Consider amending the Law on Executive Procedure to create penalties for the filing, by a judgment debtor, of groundless appeals, objections and/or requests
- Consider amending the Law on Executive Procedure to transfer from the court to the creditor the duty of properly ascertaining the debtor's address, as per the recommendation of the National Backlog Reduction Strategy.

To court presidents:

- Assign the working groups as mandated by the National Backlog Reduction Strategy, and oversee the immediate commencement of their work.

To civil judges:

- Become familiar with the recent judgment in the constitutional court case *The Independent Union of Workers of IMK Steel Factory in Ferizaj*, constitutional review of the decision of the municipal court of Ferizaj/Uroševac⁸⁵, particularly that portion of the judgment which obliges courts in Kosovo to execute decisions “without undue delay”
- Consider making use of the monetary penalties and other sanctions contemplated in the Law on Contested Procedure to bring the parties in execution procedures into compliance with the law.

To criminal judges:

- Judges should include in written judgments the date that judgments are signed.
- Judges should verify that a defendant's address is properly collected.

⁸⁵ Ibid.

To the Kosovo Judicial Institute:

- Continue training judges and execution clerks in civil and criminal execution procedures.
- Training should explain the importance of the proper collection of addresses for trial participants, particularly for defendants.