

Monitoring Department

Legal System Monitoring Section

Different Communities before the Kosovo Justice System

**A preliminary statistical overview of punishments and trial
outcomes in district, municipal, and minor offences courts**

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EXECUTIVE SUMMARY

The present report is a preliminary statistical overview of three offences (unlawful weapon possession, theft, and disturbing public peace and order) adjudicated by district, municipal, and minor offences courts in Kosovo. The purpose of the report is to compare punishments and trial outcomes in cases involving Kosovo Albanian defendants and defendants from other communities.

The Organization for Security and Co-operation in Europe's Mission in Kosovo (OSCE) considered more than 1,000 cases involving similar offences committed by defendants belonging to different Kosovo communities. It then compared the trial outcomes and the punishments in cases involving Kosovo Albanians against cases involving Kosovo non-Albanians. In addition, the OSCE compared the trial outcomes and the punishments in cases involving Kosovo Albanians against cases involving Kosovo Serbs, Roma, Ashkali and Egyptians,¹ and Kosovo Bosniaks.²

The comparisons are based on three indicators: the acquittal/conviction or liability rate, the type of punishment, and the average punishment.

The OSCE found that the average outcome of cases involving Kosovo Albanian defendants did not differ significantly from those involving defendants from other communities. However, the OSCE also noted that some indicators varied depending on the defendant's ethnicity. But, these differences were not consistently in favour or against one specific group.

The OSCE cannot exclude the possibility that factors such as the wealth or status of the defendant, the quality of the defendant's attorney, or whether the defendant was a repeat offender affected the results (guilty or not-guilty, or amount of fine or imprisonment). Nevertheless, the results here should be viewed as the starting point for more in depth statistical analysis.

In conclusion, the data analysed does not show a clear tendency of the Kosovo judiciary to favour a particular community in Kosovo in terms of punishment.

¹ Roma, Ashkali, and Egyptians are distinct communities in Kosovo. However, due to the small sample size of each individual community and shared problems, the OSCE analysed the data related to these three communities in one.

² Defendants from other communities account for small percentages, and due to the limited sample size the OSCE did not analyse them as distinct communities in this report.

1. INTRODUCTION

The purpose of this report is to assess whether there are differences in punishments and trial outcomes in cases involving Kosovo Albanian defendants and defendants from other communities.

International standards widely prohibit all forms of “discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”³

Kosovo domestic law establishes similar standards. According to the 2004 Anti-Discrimination Law, “there shall be no direct or indirect discrimination against any person or persons, based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social origin, property, birth or any other status.”⁴ Thus, belonging to a specific ethnic group should not be a factor in assessing criminal punishment.

The report contains a statistical overview of sanctions imposed by district, municipal, and minor offences courts in Kosovo, in cases involving both Kosovo Albanian and Kosovo non-Albanian defendants. Statistics are based on information provided to the OSCE by court employees. It does not account for the specific facts of each individual case, but rather aims to identify average trends.

1.1. Methodology

Data analysis is divided into three parts, mirroring the three-level jurisdiction of the Kosovo courts: district courts, municipal courts, and minor offences courts.⁵

1.1.1. Offences

In order to compare similar cases, the OSCE evaluated a specific offence for each court:⁶

- Unauthorised ownership, control, possession or use of weapons (“Unlawful possession of weapons”, Article 328(2) of the Provisional Criminal Code of Kosovo)⁷ for district courts;
- Theft (Article 252(1) of the Provisional Criminal Code) for municipal courts; and
- Disturbing public peace and order (Article 18 of the Law on Public Peace and Order)⁸ for minor offences courts.

³ European Convention on Human Rights, Article 14. See also Article 26, International Covenant on Civil and Political Rights: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”

⁴ See Article 2(a), Anti-Discrimination Law, No. 2004/3, 19 February 2004,, promulgated by UNMIK Regulation No. 2004/32, 20 August 2004.

⁵ For more information on minor offences courts see the OSCE Report, *Review of the Criminal Justice System: The protection of witnesses in the criminal justice system, the Administration of justice in minor offences courts, Juveniles in criminal proceedings* (2006), pages 19-22.

⁶ The OSCE selected offences that occur relatively frequently in Kosovo to obtain a larger sample of cases.

⁷ Provisional Criminal Code of Kosovo, promulgated by UNMIK Regulation No. 2003/25, 6 July 2003 (“Provisional Criminal Code”).

The OSCE only considered cases involving defendants charged solely with one of the mentioned offences, and thus excluded cases where the defendant was charged with multiple crimes. In addition, the OSCE only considered non-aggravated offences, and consequently excluded cases of aggravated theft⁹ and aggravated unlawful possession of weapons¹⁰ from the data sample.

The period covered is from April 2004 (the date of entry into force of the Provisional Criminal Code) until March 2008.

To increase statistic reliability, the OSCE examined a large number of cases (702 involving Kosovo Albanians and 355 involving Kosovo non-Albanians, for a total of 1057 cases). The non-functioning of the courts in three northern municipalities after February 2008 made it impossible to obtain data from the municipal and minor offences courts in Mitrovicë/Mitrovica, Leposavić/Leposaviq, and Zubin Potok. This resulted in comparatively few cases involving Kosovo non-Albanian defendants in municipal and minor offences courts.¹¹

1.1.2. Defendants' ethnicity

The OSCE considered a random sample of cases, and did not pre-select cases based on a particular defendant's ethnicity.

As detailed in Table 1, the OSCE analysed cases involving the alleged offences of unlawful possession of weapons (district courts), theft (municipal courts), and disturbing public peace and order (municipal courts):

Table 1

	Cases involving Kosovo Albanians	Cases involving Kosovo non-Albanians
District courts (Unlawful possession of weapons)	126	110
Municipal courts (Theft)	259	79
Minor offences courts (Disturbing public peace and order)	317	166
Total	702	355

⁸ Law on Public Peace and Order, Official Gazette of the Socialist Autonomous Province of Kosovo, No. 13 of 1981.

⁹ Article 253, Provisional Criminal Code.

¹⁰ Article 328(1) and 328(3), Provisional Criminal Code.

¹¹ The data from the Mitrovicë/Mitrovica District Court was obtained prior to February 2008.

The following table summarizes the number of cases involving Kosovo non-Albanian defendants, by ethnicity:

Table 2

	District courts (Unlawful possession of weapons)	Municipal courts (Theft)	Minor offences courts (Disturbing public peace and order)
Serbs	78	37	97
Bosniaks	14	23	24
Roma, Ashkali, Egyptians	10	14	38
Gorani	0	4	3
Turks	5	1	1
Montenegrins	1	0	0
Croats	2	0	2
Total	110	79	165

In the cases analysed by the OSCE, the highest percentage of Kosovo non-Albanian defendants are Kosovo Serbs. Kosovo Bosniaks and Roma, Ashkali and Egyptians are respectively the second and third largest communities. Defendants from other communities account for small percentages, and due to the small sample size the OSCE did not analyse them as distinct communities in this report.

1.1.3. Indicators

Based on the raw data collected in the various courts the OSCE compared similar cases involving Kosovo Albanian and Kosovo non-Albanian defendants, based on three indicators:

1. Conviction/acquittal¹² or liability rate;
2. Type of punishment (imprisonment vs. monetary penalty; suspended sentences vs. non-suspended sentences); and
3. Average punishment (length of imprisonment or amount of fine).

In addition, the OSCE compared cases involving Kosovo Albanian defendants with those involving defendants from the three major Kosovo non-Albanian communities: Kosovo Serbs, Kosovo Bosniaks, and Roma, Ashkali and Egyptians.

In a final section, the OSCE also compared punishments in cases where the defendant and the judge shared the same ethnicity with cases where each had a different ethnicity.¹³

¹² For the purposes of this report, “acquittal” includes any outcome different from criminal punishment (e.g. termination of the proceedings, dismissal of the indictment, or judicial admonition).

¹³ This comparison was possible only based on the data collected in district courts. Insufficient data was available for municipal and minor offences courts, where the vast majority of cases (between 95% and 99%) involved Albanian judges.

1.2. Interpreting the data

Determining if a person is guilty or innocent, deciding what punishment to impose, and calculating the amount of punishment can be affected by many factors. These include the strength of the evidence introduced by the prosecutor, the performance of defence counsel, whether the judge tends to sentence criminals harshly or leniently, the amount of damage caused by the defendant, and whether the defendant is a repeat offender.

The final punishment in a trial depends on the judge's discretion. The law establishes general principles for determining the type of punishment to impose, and for calculating the punishment, and establishes ranges within which the judge can choose. However, the judge ultimately has wide discretion in deciding the trial outcome and the type and amount of punishment in any specific case. The judge should not allow the ethnicity of the defendant to influence his or her decision.

Therefore, it is possible that two different judges presiding over cases involving identical facts would impose two different sentences. Similarly, it is possible that two defendants who commit the same criminal act (e.g. theft of a bicycle) would receive a different punishment. This may be due to differences in past conduct, the entering of a guilty plea, or family circumstances.¹⁴

Even where statistics show differences between Kosovo Albanians and Kosovo non-Albanians tried for similar offences, that does not necessarily prove that judges are biased against one particular group. In fact, the raw data collected does not reveal the reasons for these differences. For instance, lower average punishments received by one group could mean that defendants of that group on average were able to afford better lawyers, or on average committed less serious crimes than the other group (e.g. one group mainly steals bicycles, while the other mainly steals cars).

The OSCE attempted to analyse cases involving a variety of factual situations by considering over 1,000 cases. For example, it can be assumed that within a sample of 100 theft cases, some will involve costly and others inexpensive items, some good and others bad legal representation.

The report presents raw data in the form of tables, followed by brief descriptive text.

2. ACQUITTAL/CONVICTION RATE

First, the OSCE compared cases involving defendants from different communities based on the trial outcome, i.e. the percentage of convicted persons versus percentage of those found not guilty.

For the purpose of this report, the OSCE divided the cases between convictions (where courts punished the defendant with a fine or with imprisonment), and "not guilty". The "not guilty" category comprises all cases where the outcome of the trial was not a conviction (e.g. the defendant was acquitted or reprimanded, the

¹⁴ See Article 64(1), Provisional Criminal Code.

indictment was dismissed, the defendant died, or the proceedings were terminated for lack of evidence).

2.1. District courts

Table 3

	Kosovo Albanians	Kosovo non-Albanians
Convicted	118 (94%)	103 (94%)
Not guilty	8 (6%)	7 (6%)

Table 4

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Convicted	13 (93%)	10 (100%)	73 (94%)	118 (94%)
Not guilty	1 (7%)	0 (0%)	5 (6%)	8 (6%)

The data collected in district courts, as reflected in Table 4, shows very similar percentages of acquittals (6-7%) and convictions (93-94%) for Kosovo Bosniaks, Kosovo Serbs and Kosovo Albanians. However, all examined cases involving Roma, Ashkali and Egyptians, resulted in the defendants' conviction.

2.2. Municipal courts

Table 5

	Kosovo Albanians	Kosovo non-Albanians
Convicted	230 (89%)	60 (76%)
Not guilty	29 (11%)	19 (24%)

The data collected in municipal courts in Table 5 shows relatively comparable acquittal/conviction rates for Kosovo Albanian and Kosovo non-Albanian defendants. Of note, the not guilty rate for Kosovo non-Albanians is more than double that of Kosovo Albanians (24% vs. 11%).

Table 6

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Convicted	21 (91%)	9 (64%)	28 (76%)	230 (89%)
Not guilty	2 (9%)	5 (36%)	9 (24%)	29 (11%)

The breakdown by defendants' ethnicity in Table 6 shows some differences between the various communities. Kosovo Bosniak defendants had the highest

conviction rate (91%), while Roma, Ashkali and Egyptians the lowest (64%). All groups had a not-guilty rate of under 40%

2.3. Minor offences courts

Table 7

	Kosovo Albanians	Kosovo non-Albanians
Liabile*	290 (91%)	115 (69%)
Not liable*	27 (9%)	51 (31%)

The data collected in minor offences courts in Table 7 shows significant different trial outcomes for Kosovo Albanian and Kosovo non-Albanian defendants. Courts found Kosovo non-Albanians not liable nearly four times more often than Kosovo Albanians (31% vs. 9%).

Table 8

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Liabile	11 (46%)	29 (76%)	72 (74%)	290 (91%)
Not liable	13 (54%)	9 (24%)	25 (26%)	27 (9%)

The breakdown by defendants' ethnicity in Table 8 shows significantly different percentages of acquittals and convictions among communities. Kosovo Albanian defendants had the highest liability rate (91%), while Kosovo Bosniaks the lowest (46%). Kosovo Serbs and Roma, Ashkali and Egyptians had similar responsibility rates (74-76%).

2.4. Analysis

The data shows a higher not-guilty rate for Kosovo non-Albanian defendants at the municipal court level (where judges acquitted Kosovo non-Albanian defendants twice as often as Kosovo Albanian defendants), and the minor offences courts (almost four times more often). Of note, both in municipal courts and minor offences courts, almost all Kosovo non-Albanian defendants were tried by Kosovo Albanian judges.¹⁵ The conviction rate for the two groups are nearly identical in the district courts.

While these figures may show that Kosovo Albanian judges are on average more lenient with Kosovo non-Albanian defendants in the municipal and minor offences courts, the OSCE stresses that many factors can influence the final decision of a judge in pronouncing a defendant guilty or innocent. Moreover, a higher acquittal

¹⁵ As explained above (footnote 13), in municipal and minor offences courts the vast majority of cases (between 95% and 99%) involved Albanian judges. The OSCE was not able to obtain data from the five courts with a higher number of non-Albanian judges (Mitrovicë/Mitrovica Municipal Court, Leposaviq/Leposavić Municipal and Minor Offences Court, and Zubin Potok Municipal and Minor Offences Court) due to the non-functioning of the courts there.

rate of defendants belonging to one group can result from external factors (e.g. some defendants were able to afford more effective lawyers, or prosecutors brought weaker cases against some defendants).

Similarly, the observed differences among Kosovo Serb, Roma, Ashkali and Egyptians and Kosovo Bosniak defendants cannot be automatically attributed to judges' bias against one particular community.

3. TYPE OF PUNISHMENT

A second indicator the OSCE analysed in comparing sentences imposed on defendants of different communities is the type of punishment.

For all three offences evaluated in this report (unlawful possession of weapons, theft, and disturbing public peace and order), the law establishes as alternative punishments either a fine or imprisonment.

The judge decides which punishment to impose on a case-by-case basis. Moreover, the judge may decide to impose a suspended sentence.¹⁶ A suspended sentence not only has a substantially different impact on the defendant than a non-suspended sentence (in practice, a suspended sentence remains in most cases unexecuted),¹⁷ but it technically is an alternative punishment to an effective sentence.¹⁸

Therefore, imprisonment and suspended prison sentence are considered two distinct types of punishment. For the same reason, a suspended fine is viewed as a separate type of punishment from a fine.

3.1. District courts

Table 9

	Kosovo Albanians	Kosovo non-Albanians
Fine	67 (57%)	25 (24%)
Suspended prison sentence	44 (37%)	68 (66%)
Imprisonment	7 (6%)	10 (10%)

As described in Table 9, in district courts both groups in over 90% of the cases received either a fine or a suspended prison sentence. Courts imposed effective imprisonment in just 6% of the cases involving Kosovo Albanians, and 10% of the cases involving Kosovo non-Albanians.

¹⁶ A suspended sentence is a punishment alternative to detention (Article 41, Provisional Criminal Code). A judge can impose a suspended sentence to give the perpetrator a reprimand that achieves the purpose of a punishment by pronouncing a sentence without executing it (Article 42, Provisional Criminal Code).

¹⁷ However, a suspended sentence may turn into an effective punishment if the defendant commits another offence within a prescribed period of time (see Article 45, Provisional Criminal Code).

¹⁸ See Article 41, Provisional Criminal Code.

Kosovo Albanian defendants received a fine much more often (57%) than they received a suspended prison sentence (37%). The opposite is true for Kosovo non-Albanian defendants, who received a suspended prison sentence in 66% of the cases, and a fine in just 24%.

Table 10

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Fine	3 (23%)	6 (60%)	15 (21%)	67 (57%)
Suspended prison sentence	9 (69%)	4 (40%)	49 (67%)	44 (37%)
Imprisonment	1 (8%)	0 (0%)	9 (12%)	7 (6%)

The breakdown by defendants' ethnicity in Table 10 shows some differences regarding punishments among communities in the district courts. Roma, Ashkali or Egyptians, and Kosovo Albanian defendants received a fine significantly more often (57-60%) than Kosovo Serb and Kosovo Bosniak defendants (21-23%).

Kosovo Bosniak and Kosovo Serb defendants received prison sentences (imprisonment and suspended prison sentence) much more often (77-79%) than Kosovo Albanian and Roma, Ashkali and Egyptian defendants (40-43%).

Of note, Roma, Ashkali and Egyptian defendants did not receive imprisonment as a punishment in any of the examined cases.

3.2. Municipal courts

Table 11

	Kosovo Albanians	Kosovo non-Albanians
Suspended fine	11 (5%)	10 (17%)
Fine	150 (65%)	33 (55%)
Suspended prison sentence	45 (20%)	9 (15%)
Imprisonment	24 (10%)	8 (13%)

As reflected in Table 11, the cases in the municipal courts show a clear predominance of monetary sentences (fine and suspended fine), which were the punishments imposed in more than half of the total cases for both Kosovo Albanians and Kosovo non-Albanians (65% and 55% respectively).

The relatively small sample of cases involving Kosovo non-Albanians in municipal courts also shows a much higher use of suspended fines than in cases involving Kosovo Albanians (17% vs. 5%).

The other punishments (suspended prison sentence and imprisonment) were imposed in a similar percentage of cases (15-20% and 10-13% respectively).

Table 12

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Suspended fine	10 (48%)	0 (0%)	0 (0%)	11 (5%)
Fine	5 (24%)	4 (45%)	22 (78%)	150 (65%)
Suspended prison sentence	4 (19%)	2 (22%)	3 (11%)	45 (20%)
Imprisonment	2 (9%)	3 (33%)	3 (11%)	24 (10%)

Based on the limited amount of data available from municipal courts, the breakdown by defendants' ethnicity in Table 12 shows that Kosovo Bosniaks most frequently received a suspended fine (48%),¹⁹ while the other communities most frequently received a fine, with percentages ranging from 45% to 78%.

All communities received a comparable rate of suspended prison sentences (11% to 22%). Imprisonment was an uncommon punishment for all communities (9% to 11%) except Roma, Ashkali and Egyptians (33%).

3.3. Minor offences courts

Table 13

	Kosovo Albanians	Kosovo non-Albanians
Fine	212 (73%)	100 (87%)
Imprisonment	78 (27%)	15 (13%)

In the examined minor offences courts cases as shown in Table 13, fine was by far the primary type of punishment for both Kosovo Albanian (73%) and Kosovo non-Albanian defendants (87%).

The data also shows that the number of Kosovo Albanians receiving a fine was approximately twice as high as that of Kosovo non-Albanians (27% vs. 13%).

Table 14

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Fine	8 (73%)	24 (83%)	65 (90%)	212 (73%)
Imprisonment	3 (27%)	5 (17%)	7 (10%)	78 (27%)

The breakdown by defendants' ethnicity in Table 14 shows in general that there are no significant differences in the type of punishment imposed on Kosovo non-Albanian defendants in the minor offences courts. However, Kosovo Serbs were imprisoned roughly one-third of the rate of Kosovo Bosniaks and Kosovo Albanians (10% vs. 27%).

¹⁹ All ten cases in the municipal courts where Kosovo Bosniaks received a suspended sentence occurred in the Pejë/Peć region.

Fine was the most common punishment for all groups (73% to 90%). Kosovo Albanians and Kosovo Bosniaks had the highest imprisonment rate (27%), while Kosovo Serbs the lowest (10%).

3.4. Analysis

The data is not conclusive in any of the three courts as to whether defendants of the distinct communities on average receive a more favourable type of punishment. While there are differences among the communities, these differences are not consistently in favour of or against a particular group.

Many factors may determine the judge's choice to impose one type of punishment rather than another. The decision depends on the circumstances of the case (e.g. value of the stolen item(s), type and amount of weapons possessed, degree of liability of the accused, or his or her previous criminal record).²⁰ It also can be influenced by other factors such as the quality of legal representation or the strength of the prosecutor's case. Thus, in light of other possible intervening factors, it is difficult to assess whether the defendant's ethnicity influenced the imposed punishment in the cases reviewed by the OSCE.

In addition, it is not easy to classify the different types of punishment by gravity to determine if a specific group of defendants receives a more or less favourable punishment. While a suspended fine is undoubtedly the most lenient sanction foreseen in the law, and a term of imprisonment arguably the harshest, it is debatable whether a suspended prison sentence is a more severe punishment than a fine. A defendant in a very poor economic situation may consider a suspended prison sentence more lenient than a fine, while a well-off person would rather pay a fine than risking²¹ prison.

But even if one considers two defendants with equal economic means, it would not be easy to determine whether a suspended prison sentence is a more serious punishment than a fine. While some can argue that deprivation of liberty is inherently more severe than a pecuniary punishment, others may consider that a prison sentence which will likely not be executed (unless the defendant commits another offence within a prescribed period of time)²² is a more lenient punishment than an effective financial loss.

In conclusion, while the data on the type of punishment does show some differences between defendants of different communities, the OSCE cannot conclude that a particular group on average received more lenient punishment.

²⁰ See Article 64(1), Provisional Criminal Code.

²¹ The suspension of a sentence may be revoked under certain conditions (see Articles 45-47, Provisional Criminal Code).

²² See Articles 42 and following of the Provisional Criminal Code, establishing terms and conditions for imposing (and revoking) suspended prison sentences.

4. AVERAGE PUNISHMENT

A final indicator the OSCE analysed in comparing sentences imposed on defendants from different communities is the average amount of punishment. For most offences, the Provisional Criminal Code establishes a legal minimum and a maximum. The judge can therefore discretionally impose any punishment that falls within this range. Many factors can influence the amount of punishment, such as the past conduct and the personal circumstances of the perpetrator, the circumstances of the act, or the defendant's motives.²³

Of course, calculating a punishment is not a mathematical exercise. Sentencing is such a complex process, that it is difficult to isolate the influence of one variable (the possible bias of judges towards/against one ethnic group) on the final amount of the sentence from other concurring factors. Therefore, one cannot infer direct evidence of bias by analyzing the different average punishment defendants receive for violations of the same legal provisions. Defendants of one group, while violating the same legal provision, may on average have committed less serious acts (e.g. theft of food vs. theft of jewellery), be first-time offenders as opposed to repeat offenders, or behaved more correctly after the commission of the offence, including during the trial.²⁴

4.1. District courts

Table 15

	Kosovo Albanians	Kosovo non-Albanians
Fine	398 Euros (67 cases)	333 Euros (25 cases)
Suspended prison sentence	5.4 months (44 cases)	5.4 months (68 cases)
Imprisonment	3.1 months (7 cases)	5.6 months (10 cases)

The data from district courts shown in Table 15 indicates that Kosovo non-Albanian defendants received on average identical suspended prison sentences as Kosovo Albanian defendants (5.4 months). Average fines are also similar (398 vs. 333 Euros) considering the maximum limit allowed by law.²⁵

However, Kosovo non-Albanian defendants received significantly higher average non-suspended imprisonment terms than Kosovo Albanian defendants (5.6 vs. 3.1 months).

²³ See Article 64(1), Provisional Criminal Code. Moreover, in determining a fine, the court must also consider the economic situation of the perpetrator. This includes the amount of his or her personal income, his or her assets, and previous obligations (Article 64(3), Provisional Criminal Code).

²⁴ See Article 64 of the Provisional Criminal Code, which describes factors that a judge should consider when determining the type of punishment.

²⁵ For the crime of Unauthorised Ownership, Control, Possession or Use of Weapons under Article 328(2) of the Provisional Criminal Code, the court may impose a fine ranging from 50 Euros to 7.500 Euros.

Table 16

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Fine	325 Euros (3 cases)	350 Euros (6 cases)	297 Euros (15 cases)	398 Euros (67 cases)
Suspended prison sentence	6.2 months (9 cases)	6.3 months (4 cases)	5.0 months (48 cases)	5.4 months (44 cases)
Imprisonment	n/a	n/a	4.2 months (9 cases)	3.1 months (7 cases)

Table 16 shows comparable average fines for all groups. Kosovo Serbs on average received the lowest (297 Euros), while Kosovo Albanians the highest (398 Euros).

Table 16 shows that suspended prison sentences were slightly higher for Kosovo Bosniaks and Roma, Ashkali and Egyptians (6.2 and 6.3 months respectively) than for Kosovo Serbs and Kosovo Albanians (5.0 and 5.4 months respectively).

In addition, Kosovo Serb defendants received slightly higher imprisonment terms than Kosovo Albanian defendants (4.2 vs. 3.1 months). No Roma, Ashkali or Egyptian received imprisonment sentences in the examined cases. While there was one imprisonment sentence (18 months) imposed on a Kosovo Bosniak defendant, this was excluded from the table because it would provide an inaccurate representation of “average” imprisonment.

4.2. Municipal courts

Table 17

	Kosovo Albanians	Kosovo non-Albanians
Suspended fine	319 Euros (11 cases)	787 Euros (10 cases)
Fine	247 Euros (150 cases)	240 Euros (33 cases)
Suspended prison sentence	3.0 months (45 cases)	3.7 months (9 cases)
Imprisonment	3.5 months (24 cases)	4.1 months (8 cases)

As reflected in Table 17, the data on monetary sentences in municipal courts shows that Kosovo non-Albanian defendants received on average much higher suspended fines (787 Euros) than Kosovo Albanians (319 Euros). However, this observation is based on a relatively low number of cases (11 involving Kosovo Albanian defendants and ten involving Kosovo non-Albanian defendants).²⁶

Average fines, however, were slightly higher for Kosovo Albanians (247 Euros) than for Kosovo non-Albanians (240 Euros).

²⁶ In addition, as shown in Table 18 below, all non-Albanian defendants were Kosovo Bosniaks.

Table 17 also shows that Kosovo non-Albanian defendants received slightly higher imprisonment terms (3.7 vs. 3.0 months) and suspended prison sentences (4.1 vs. 3.5 months) than Kosovo Albanian defendants.

Table 18

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Suspended fine	787 Euros (10 cases)	n/a	n/a	319 Euros (11 cases)
Fine	192 Euros (5 cases)	212 Euros (4 cases)	255 Euros (22 cases)	247 Euros (150 cases)
Suspended prison sentence	4.3 months (4 cases)	3.0 months (2 cases)	3.3 months (3 cases)	3.0 months (45 cases)
Imprisonment	0.8 months (2 cases)	4.3 months (3 cases)	6.0 months (3 cases)	3.5 months (24 cases)

Table 18 shows that Kosovo Bosniak defendants received much higher suspended fines than Kosovo Albanian defendants. In none of the examined cases did Kosovo Serb or Roma, Ashkali and Egyptian defendants receive a suspended fine as punishment.

As shown in Table 18, Kosovo Bosniak defendants also received a higher average suspended prison sentence (4.3 months) than defendants of other groups (3.0 to 3.3 months). However, Kosovo Bosniaks received the lowest imprisonment terms (0.8 months). Kosovo Serb defendants received the longest imprisonment terms (6 months), while average imprisonment terms for Kosovo Albanians and Roma, Ashkali and Egyptians ranged between 3.5 and 4.3 months.

4.3. Minor offences courts

Table 19

	Kosovo Albanians	Kosovo non-Albanians
Fine	134 Euros (212 cases)	130 Euros (100 cases)
Imprisonment	24 days (78 cases)	22 days (15 cases)

Table 19, summarizing the data collected in minor offences courts, shows that Kosovo Albanian and Kosovo non-Albanian defendants received very similar average punishments. Kosovo Albanians received slightly higher imprisonment sentences (24.1 vs. 21.7 days) and slightly higher fines (134 vs. 130 Euros) than Kosovo non-Albanian defendants.

Table 20

	Kosovo Bosniaks	Roma, Ashkali and Egyptians	Kosovo Serbs	Kosovo Albanians
Fine	130 Euros (8 cases)	122 Euros (24 cases)	136 Euros 65 (cases)	134 Euros (212 cases)
Imprisonment	15 days (3 cases)	19 days (5 cases)	26 days (7 cases)	24 days (78 cases)

The breakdown by defendants' ethnicity in Table 20 shows that on average in minor offences courts all groups received similar fines (122 to 136 Euros).

Table 20 also shows that Kosovo Serb and Kosovo Albanian defendants on average received slightly higher imprisonment sentences (24 to 26 days) than Kosovo Bosniak and Roma, Ashkali and Egyptian defendants (15 to 19 days).

4.4. Analysis

The data from all three courts suggests that the average punishment imposed on Kosovo Albanians and Kosovo non-Albanians is not substantially different. Similarly, the data shows similar average punishments among Kosovo Serb, Kosovo Bosniak, and Roma, Ashkali and Egyptian defendants.

There are however two notable exceptions: imprisonment in district courts, and suspended fines in municipal courts. On average, the amount of these punishments is roughly twice as high for Kosovo non-Albanians than for Kosovo Albanians.

It is difficult to explain these differences, as other indicators in the same courts are very similar for Kosovo Albanians and Kosovo non-Albanians. Of note, while the average suspended fine imposed in municipal courts is much higher for Kosovo non-Albanians, the average fine is actually slightly lower. The same is true for district courts, where the average term of imprisonment is much higher for Kosovo non-Albanians, while the average suspended term of imprisonment is almost identical to that of Kosovo Albanians.

Overall, the results are mixed, with no group constantly receiving higher or lower average punishments.

5. SAME VS. DIFFERENT JUDGE ETHNICITY

For district courts cases,²⁷ the OSCE also compared cases where the defendant and judge have the same ethnicity²⁸ with cases where the defendant and judge have a different ethnicity.²⁹

²⁷ As mentioned in footnote 13, insufficient data was available for municipal and minor offences courts, where the vast majority of cases (between 95% and 99%) involved Albanian judges.

²⁸ For example, both judge and defendant are Kosovo Albanians, or both are Kosovo Serbs.

²⁹ For example, the judge is Kosovo Albanian while the defendant is Kosovo Serb, or the judge is Kosovo Serb while the defendant is Roma.

Table 21

	Where judge is of same ethnicity	Where judge is of different ethnicity
Number of cases	134 (57%)	102 (43%)

5.1 Acquittal/Conviction Rate

Table 22

	Where judge is of same ethnicity	Where judge is of different ethnicity
Guilty	126 (94%)	95 (93%)
Not guilty	8 (6%)	7 (7%)

The data shows almost identical conviction/acquittal rates for both groups.

5.2 Type of punishment

Table 23

	Where judge is of same ethnicity	Where judge is of different ethnicity
Fine	68 (54%)	24 (24%)
Suspended prison sentence	54 (43%)	58 (57%)
Imprisonment	4 (3%)	13 (13%)

The data shows that where the defendant and judge have different ethnicities, judges imposed suspended prison sentences more frequently than fines (57% vs. 24%). When the judge and defendant have the same ethnicity, fine was the most common punishment (54%), and suspended prison sentences were imposed only in 24% of the cases.

Of note, effective imprisonment was imposed over four times more often when judge and defendant have a different ethnicity (13% vs. 3%).

5.3 Average punishment

Table 24

	Where judge is of same ethnicity	When judge is of different ethnicity
Fine	377 Euros	389 Euros
Suspended prison sentence	4.6 months	6.2 months
Imprisonment	4.0 months	4.8 months

The data shows a constant trend of higher punishments in cases where the defendant and the judge are of different ethnicity. The difference is modest as for fines (on average, 3% higher), but is larger for both imprisonment (on average, 20% higher) and for suspended prison sentences (on average, 35% higher).

The constantly higher average punishment observed in district court cases may suggest that district court judges impose harsher punishments when judges and defendants are of a different ethnicity. However, different facts of the cases may also account for differences in punishments.

6. CONCLUSION

An overview of the data obtained from over 1,000 cases in the Kosovo courts suggests that overall there are no systematic differences in punishments and trial outcomes between Kosovo Albanians and Kosovo non-Albanians, or among the non-Albanian communities. In addition, the few observed differences did not consistently favour a particular group or community. In any case, the observed differences among the groups do not necessarily prove bias in favour of or against a specific group. The unique facts and aggravating or mitigating circumstances of the case may explain the differences.

Of interest, the OSCE noted that in district court cases where the defendant and the judge have the same ethnicity, defendants were imprisoned less often and received slightly more lenient average punishments than in cases where the defendant and the judge have a different ethnicity.

As this was a preliminary study that did not control for all factors that can affect punishment, the limits of this study must be recognized. This report provides an initial overview that could be useful to further research and analyse the topic.



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