



INNOVATIONS FOR SUCCESSFUL SOCIETIES

AN EYE ON JUSTICE: MONITORING KOSOVO'S COURTS, 2008–2014

SYNOPSIS

As Kosovo prepared to declare independence in February 2008, it still lacked a court system that was efficient, trusted, and open to public scrutiny. Most judges had trained under the communist government of the former Yugoslavia and were unaccustomed to public observation of their work. Procedural errors were common, and cases often languished in the judicial system for years. In response, the leaders of two Kosovar nongovernmental organizations decided to train and dispatch recent law school graduates to observe court sessions, report on whether proper procedures were followed, and assess the conduct of judges, prosecutors, and lawyers. Gradually, the program overcame initial hostility within the court system and gained the trust of judges and others working in the courts. By 2014, monitors had covered more than 8,000 sessions, and their reports documented improvements in the openness of court proceedings and in adherence to proper judicial procedures.

Tristan Dreisbach drafted this case based on interviews conducted in Pristina and Prizren, Kosovo, in November and December 2014. Case published March 2015.

INTRODUCTION

In early 2008, six people gathered in a dim, candlelit room in Pristina, Kosovo's capital city. Power outages remained a problem nine years after a devastating war to break away from Kosovo's union with Serbia. Kosovo's troubled courts, however, faced an even greater challenge, and that was what had brought the six together.

Among those present was Jeta Xharra, host of a popular current-affairs TV talk show and head of the Kosovo affiliate of the Balkan Investigative Reporting Network (BIRN), a group of civil society organizations working throughout the Balkans on media and capacity-building projects.¹ She saw Kosovo's struggling institutions as major hurdles in the country's quest to become

a fully independent state. "There was talk about all the obstacles to Kosovo's real functioning," she said. "The lack of rule of law was one of the key things the international community posited as a question about Kosovo's sustainability."

Xharra sat with two civil society colleagues and three young law school graduates who had agreed to participate in an experiment designed to build accountability in Kosovo's justice system.

The country's short history was a patchwork of internal struggles and foreign interventions that had produced a court system that was sluggish, constantly changing, and largely opaque. Kosovars knew little about the workings of the courts and had little confidence in a judicial system that had evolved under the tutelage and control of outside

influences such as the United Nations and the European Union.

An October 2007 report by the UN Development Programme (UNDP) stated that only about 1 in 5 Kosovars surveyed expressed satisfaction with the court system and the prosecutor's office—a rating lower than any other government institution's.²

Xharra and her two civil society colleagues—Faik Ispahiu, who headed Internews Kosova, the media nongovernmental organization (NGO) that produced Xharra's show, and Haki Abazi, a Kosovar who had joined the Rockefeller Brothers Fund, a New York-based foundation, in 2007—recognized the need to better know the problems affecting the courts and to repair the frayed relationship between the people and the judicial system. With little legal knowledge and no template to work from, the three looked for a window into Kosovo's courts.

THE CHALLENGE

Recent history had created the challenges that confronted the reformers in 2008. The relationship between international and local authorities was complex and confusing, and the structure of the court system kept changing as the UN and local institutions adopted new rules and regulations.

Kosovo was a UN-administered territory until 2008, still recognized by most countries as part of Serbia. The vast majority of Kosovars identified as ethnic Albanians and spoke the Albanian language. In the 1998–99 war, Serbian forces had fought with Albanian separatists until a NATO intervention against Serbia forced an end to the conflict, in effect breaking Kosovo away from the Serbian state.

International organizations had rebuilt Kosovo's judicial system after the war. In 1999, the UN Interim Administration Mission in Kosovo (UNMIK) took the lead in building Kosovar institutions and oversaw the functioning

of the judiciary. In 2002, the new Kosovo parliament established by UNMIK chose judges and prosecutors to be appointed by the special representative of the UN secretary-general.

Because Kosovo had no bar examinations during the 1990s, lawyers who were qualified for judicial positions had been in short supply. Most appointees were former judges and prosecutors who had held similar positions prior to 1989, under the former Yugoslav regime.³ In 2005, UNMIK regulations created a new Ministry of Justice and the Kosovo Judicial Council, both of them independent local institutions. UNMIK granted the ministry limited responsibilities over the justice sector, and the judicial council became the authority for appointing and disciplining judges.

When Kosovo declared independence in February 2008, UNMIK ceded most of its judicial responsibilities to Kosovar control, but another international organization stepped in. The European Union Rule of Law Mission in Kosovo (EULEX) brought in judges, prosecutors, and police from European and North American countries who worked parallel to their Kosovar counterparts, applying the same laws but using the mission's own personnel. EULEX could choose to process cases it saw as difficult for Kosovo's nascent institutions to handle, in effect placing a limit on Kosovo's control over its own justice system. The mission focused on cases involving war crimes, corruption, organized crime, and terrorism. EULEX judges and prosecutors worked in English, necessitating the use of simultaneous translation to and from local languages in all court sessions.

The tangled history of the judicial system turned the simplest matters into serious challenges. Attending trials could be difficult because courtrooms were sometimes hard to find and schedules were not easily accessible to the public. In addition, hearings and trials often took place in cramped offices with little or no public

notice.

Although Kosovo law required most court sessions to be open to the public, in practice they were seldom accessible. Courtrooms for specific cases were sometimes difficult to find because of inadequate postings and signage. Few court buildings posted schedules showing locations and times of court sessions.

A particularly widespread problem arose from the penchant of many judges for performing judicial functions, including hearings and trials, in their private offices, behind closed doors, out of public sight, and in tight spaces that precluded attendance by anyone who had no specific role in a case. Many judges blamed the practice on insufficient courtroom space, an explanation that sometimes failed to hold up under scrutiny.

“There was a lack of space, but not as much as they pretended there was,” Xharra said. “Even when courtrooms were open and available, they still went to their offices.”

“Although the international community encourages judges to hold sessions in open court, it remains local practice for judges to conduct hearings in their offices,” said Malcolm Simmons, a British judge who served as president of the EULEX judges. “The judges’ offices are so small that you cannot get everyone in there or you’re cramped around the judge’s desk. We’ve had situations where the defendant has been sitting outside . . . handcuffed with police officers while the trial is going on inside the judge’s office because there isn’t enough room for him.”

Although legally, court proceedings were open to the public, there could be no public presence when sessions were held in judges’ offices, Simmons added. “There’s that sense of ‘what is actually going on during these trials?’ There’s no transparency. And of course you hear these allegations that a deal was cooked up between the prosecutor and the defense.”

The court system moved glacially. Xharra and her colleagues wanted the monitoring project

to assess the reasons behind those delays and what could be done about it. There was a growing backlog of unprocessed cases, with more than 50,000 civil and 36,000 criminal cases pending in the court system as of November 2007.⁴

Resolving even basic matters such as traffic fines often took years. In Kosovo, traffic violations were processed through the courts so that police officers did not levy fines directly. Although the policy reduced opportunities for bribery, it led to thousands of small civil cases’ clogging the court system. Sami Kurteshi, ombudsperson of Kosovo, whose office collected citizen complaints regarding official institutions, including the courts, received complaints from citizens who told him, “It has taken many years, and I haven’t been informed about [my case]. What is going on?”

Even when a case made it to trial, the process could seem interminable. “Cases go backward and forward for years on appeal,” Simmons said. “Parties can appeal everything . . . In some cases you’ve got protected witnesses who have given evidence maybe three times. If they were scared the first time, they were petrified the second time, and now the third time, we’re wondering why suddenly they’re retracting their evidence. There is no concept of ‘harmless error.’ Cases are sent for retrial based on spurious procedural errors. If justice is achieved at the end of a trial, it is perceived as a bonus rather than being the purpose of the process.”

Many judges had begun their careers in the communist Yugoslav era, when public scrutiny was a nonissue. “You have judges that think everything they do should be private,” said Furtuna Sheremeti, who began managing the Balkan Investigative Reporting Network (BIRN) court-monitoring program in 2014. “Not because they are afraid or they don’t know better, but because that’s the way they have been used to doing things.”

Kosovo’s media generally did a poor job of reporting on the court system. Few media outlets

had reporters with significant knowledge and experience in the courts and legal proceedings, said Selvije Bajrami, a reporter for the *Zeri* newspaper.

In addition, the court system kept few records of what happened during judicial sessions, and courts usually did not even publish verdicts. “The only verdicts that get published are the verdicts of the constitutional court,” Sheremeti said in 2014. “By law, all the courts have to publish their verdicts, but they don’t.”

When official records of court proceedings existed, the documents often were brief descriptions rather than full transcripts. The imprecise record keeping not only limited the information available to the public but also hindered the appeals process by omitting aspects of court proceedings that might turn out to be important later. And although most courts had at least one courtroom with audiovisual-recording capability, the equipment was rarely used.

The ad hoc nature of the court system fostered public skepticism. The 2007 Transparency International Global Corruption Barometer reported that Kosovars said they believed the judiciary to be corrupt, and they ranked it behind only political parties and the medical system in degree of perceived corruption.⁵

Several well-publicized cases of corruption involving judges contributed to a belief that conflicts of interest influenced court rulings. In 2006, a municipal court judge in the city of Gjakova was sentenced to three and a half years in prison for demanding that a party in a civil case pay her 500 euros (about US\$675 at the time) in return for a favorable decision and then destroying both the public prosecutor’s indictment and the case file.⁶ A court convicted another judge of working with a lawyer to manipulate claims against an insurance company in 2005, costing the company more than 70,000 euros.⁷

“After the war, the old mentality of the Yugoslav system is still alive,” Kurteshi said.

“They are mostly not independent. They are under big pressure from politics, from government.”

Other problems abounded. Judges, prosecutors, and lawyers frequently made errors that ranged from minor procedural mistakes to significant violations of citizens’ rights. Court sessions would often start late, with prosecutors and defense attorneys unprepared for their cases and witnesses not informed of their rights. Necessary personnel were sometimes absent from the courtroom. Judges took personal cell phone calls during court proceedings. The judicial code required judges, prosecutors, and defense attorneys to wear robes with colors clearly distinguishing who was who. In practice, the robes, a traditional mark of court decorum and probity, were worn rarely.

FRAMING A RESPONSE

Xharra and her colleagues sought to confront a judicial culture that had grown comfortable with being nameless and faceless. With little transparency about what was happening in courtrooms, the public had a low level of trust in Kosovo’s judiciary.

The reformers had to develop ways to evaluate the malfunctioning courts, provide the public with more information about the justice system, and pressure judicial institutions to change their ways. If successful, their project would provide a more accurate assessment of corruption and conflicts of interest affecting the judicial system and would bolster public confidence in the rule of law.

Though they lacked specific legal background, the reform team knew how to open doors on behalf of citizens. Xharra had credibility with the public. On her weekly TV program, she had earned viewers’ respect by asking tough questions of Kosovo’s elite. Ispahiu had extensive media experience, and Abazi provided a link to crucial funding.

The reformers were well aware that citizens' mistrust of the courts had roots in Kosovo's history of conflict between ethnic Albanians and Serbs. "The judiciary was seen as isolated, scary, kept far away from citizens during the previous regime," Abazi said. "Being both communist-socialist but also an occupying power until 1999, when the war ended, the court was seen as a place where Albanians were prosecuted."

Given BIRN's recent experiences in election monitoring, Xharra, Ispahiu, and Abazi decided that close, consistent observation was the best way to assess and publicize the performance of Kosovo's courts. Citizen monitors could observe and report on procedural violations in courtrooms, putting pressure on judges and other judicial personnel to correct their behavior. Monitors also could shed light on the reasons for lengthy delays in processing cases. In addition, the three believed that a Kosovar-led program would provide a greater sense of local ownership over the court system, which international organizations had played a major role in creating.

The three agreed on basic responsibilities. BIRN, the organization headed by Xharra, would hire monitors. Ispahiu would play a major administrative role. And Abazi would help get the project up and running.

Unaware of any other court-monitoring projects that could provide a template for what they planned to do, Xharra and her colleagues decided to apply BIRN's election-monitoring experience to the court system. In 2007, BIRN had recruited, trained, and deployed citizens to observe polling places during parliamentary elections. BIRN media outlets then publicized observations of electoral fraud. Those activities gave Xharra and Ispahiu broad experience in working with monitors, including in areas outside the capital, where media and civil society generally had a limited presence.

"This was one key opening many doors," Abazi said. "First, to get out there and have judges

feel that somebody's watching. Second, to create an open door for citizens to come in and monitor the courts so they become more familiar with and closer to them. And third, get some more knowledge, because being outside you can always have a different assessment, but being inside you know what the challenges and problems are."

Xharra said that even seemingly minor procedural violations in courtrooms hurt public confidence in the courts. People with cases before the court needed to know the judge would treat them fairly, she said. "Building trust in the people while you're talking on the phone, starting 10 minutes late, and not wearing [proper robes] already set you back." The monitoring project, she thought, could collect solid, firsthand information about the violations, and publicizing the findings would pressure those working in the courts to correct their behavior.

BIRN had to hire monitors who had strong knowledge of the Kosovo court system, including procedural requirements, and an understanding of the rights of defendants and witnesses. Instead of hiring journalists or activists, Xharra, Ispahiu, and Abazi decided to recruit recent law school graduates. "You need to have someone who understands procedures, someone who understands the legislative framework, someone who understands what are the old laws, what are the new laws, what are the reforms," Ispahiu said.

In Kosovo, the bar association usually required graduates of the master's program in law to work in the court system before taking the bar exam. One year of traditional experience as a clerk or assistant to a lawyer would suffice, but the bar also accepted two years of other experience in the courts as an equivalent. Because the BIRN monitoring program could provide such experience, law graduates had an incentive to join.

It also was clear that recruiting full-time, skilled monitors would require BIRN to offer competitive salaries. The backing of Abazi's Rockefeller Brothers Fund and other donors

provided BIRN with the financial resources to attract qualified applicants, especially in Kosovo's challenging employment market.

Xharra and her colleagues also sought a way to take greater local ownership over processes that had been largely the domain of international actors. "If international missions can just land here like they're from space and devise a system to fix our rule of law, what can stop us local NGOs from doing it?" she asked. Key to fixing it was properly evaluating its weaknesses. "We're going to have independent measurements of how our rule of law is working. We don't want internationals to dictate how good our rule of law is."

GETTING DOWN TO WORK

In 2008, Xharra, Ispahiu, and Abazi began laying the groundwork for the BIRN judicial monitoring program. First, they recruited a pool of qualified applicants for the monitoring positions and consulted with outside experts, along with the recruits themselves, in choosing what kinds of information the monitors would collect. In May 2009, the project published its first annual report, publicized it broadly through BIRN's channels, and moved to expand. After experiencing some problems with gaining access to courtrooms during the first two years, the project's leaders negotiated an agreement with the Kosovo Judicial Council to make sure that BIRN monitors would be welcome in Kosovo's court system.

Recruiting monitors

BIRN solicited applications for full-time, salaried monitoring positions and brought an initial pool of applicants to the BIRN office in Pristina. "We decided to invite young lawyers who were about to graduate or graduated that year," Abazi said. "It was an interview, if I remember correctly, of 40 people, all sitting in a circle. We explained our idea and then got their input—and

interest—and had them in a way participate in building the whole concept."

During that brainstorming session, the potential recruits discussed ideas about how the court-monitoring program should be structured. Those who contributed most to the meeting were targeted as the best candidates for the job. Xharra, Ispahiu, and Abazi chose three for the first trial round of monitoring.

Because the monitors already had legal knowledge, their training focused on the communities in which they would work. BIRN's leaders taught them "who are the main actors involved, what would be the different potential challenges and how you deal with them, the basics of getting in touch, who are the main actors of civil society, who are the journalists in those localities where they would go," Abazi said. "We were trying to give them some sense of the network they would be swimming around in."

Pay and responsibilities varied. "The monitors are not all paid the same salary, because they do not all cover the same number of sessions," Sheremeti said in 2014. "For example, I have a monitor who covers six municipalities, and I have a monitor who covers two municipalities."

Designing the questionnaire

With the initial monitors chosen, BIRN had to determine the data the observers would collect during their courtroom visits. "The most difficult part was to define what we wanted to achieve, what is the kind of data that we wanted to come out with," Ispahiu said. "Once you know what you want to report, then you know what are the right questions to ask."

To assess the most important problems affecting the Kosovo courts, BIRN invited judges, lawyers, prosecutors, and other legal experts to share their thoughts and experiences. "We started talking about it, and we did lots of interviews," Xharra said. "We invited guests from rule-of-law institutions—like heads of courts and

prosecutors—to tell us how a process works, what a normal session should be like, and what’s the biggest problem. So out of three days of lectures by different guests, in the end we came up with a list of [around] 20 questions we want to measure.”

Procedural violations and lack of professionalism in the courts were commonly cited problems and became a focus of the project. Each questionnaire also recorded the name of the judge, the names of the parties involved, the case number, and where the session was held, in addition to yes-or-no questions about whether certain procedural violations had occurred during a court session.

Monitors would sit in the public-gallery areas of courtrooms and answer the questions on an electronic form that enabled them to also contribute other observations not captured by the questions.

Ispahiu led the creation of an electronic database for which data was collected from monitors, who inputted their information from wherever they happened to be in Kosovo.

Preparing reports

The three initial monitors began work in March 2008. After half a year, BIRN doubled the number, and by March 2009, eight monitors were covering district and municipal courts in five of Kosovo’s seven districts. Although the BIRN office in Pristina might call for attendance in certain important cases, monitors had leeway to choose the court sessions they wished to cover, as long as they met the monthly quotas set in their contracts.

The project’s first annual report, released in May 2009, featured statistics on various procedural problems that had been identified during the 513 court sessions monitored during the first year of monitoring. Among the findings: Courts used audiovisual recording equipment in only 8 of the 513 sessions despite the widespread availability of such equipment. In 17.7% of the

Box 1

BIRN Court Monitoring Form

In addition to gathering basic information about the court sessions monitors observed, BIRN included the following questions in its 2008–09 court monitoring questionnaire.

- Were adequate security procedures in place at the entrance to the court?
- Were you able to access your chosen case on the appropriate day?
- Was electronic recording equipment used in the court?
- Were statements by the parties taken correctly?
- Were there any technical problems during the session?
- Did the session take place in a courtroom or at another venue?
- Were the required officials present in the courtroom?
- To what extent were lay judges proactive during the hearing?
- Were the parties treated equally by court officials?
- Were there any problems affecting a witness’s ability to come to the court?

In subsequent years, BIRN added questions:

- Was the hearing announced on public announcement boards?
- Did the session begin on time?
- Were mobile phones used during the session?
- Did judicial personnel wear the required attire?

monitored sessions, statements of the parties to the case were taken incorrectly. And only 26.9% of sessions took place in a courtroom, with the rest held in judges’ offices.⁸

The report also described problems observed by monitors but not captured in the initial set of yes-no questions that provided quantitative results. The problems included findings that some judges processed very small numbers of cases, that courts often failed to properly notify parties and witnesses about court sessions they were required to attend, that prosecutors sometimes took part in more than one trial simultaneously, that judges

took personal cell phone calls during trials, and that courts failed to offer proper translation services when needed. The report also recommended action by parliament, the government, the judicial council, and other institutions to provide more resources for courts and better oversight of the judicial system.

Following the 2009 report, new items were added to the questionnaire based on the monitors' observations during the first reporting year. The new questions aimed to capture statistical data on the use of cell phones during trials, whether court sessions were clearly announced to the public, and whether judges, prosecutors, and defense attorneys wore the required robes. In addition to quantitative data, each annual report provided broader observations on the functioning of the court system and recurrent procedural issues.

Spreading the word

The monitoring reports gained an audience among the leaders of the court system and the citizenry through BIRN's efforts to publicize the findings. The reports created a record assessing the quality of court proceedings, but BIRN's leaders knew that few members of the general public would take the time to read them. BIRN therefore used its media outlets to share information with citizens. This could increase public demands for reform and accountability in the judicial system. "We don't just launch the report," Sheremeti said. "We have a press conference and a roundtable where we invite the Kosovo Judicial Council, the Kosovo Prosecutorial Council, and prosecutors; and we sit and discuss it. It's a public event."

The project's impact on the public came mainly through BIRN's strong media presence. BIRN promoted the findings, including a weekly presentation of statistical data from the monitoring work, on Xharra's well-known television program, *Life in Kosovo*. Observations from the monitoring project inspired BIRN's

reporting on the judicial system, including news articles on understaffing in courts and the low salaries paid to judges. "TV is important for publishing the findings—first to inform the public and to directly impact institutions and pressure them to do their jobs better," said Genc Nimoni, who worked on the BIRN court-monitoring project from 2009 to 2014.

In 2010, Xharra and Ispahiu created a second television program, called *Justice in Kosovo*, to explore rule-of-law issues.

Beginning in 2012, the publicity aspect of the project expanded further with the active participation of monitors. BIRN required monitors to create media content by interviewing lawyers and parties to cases, collecting video clips, and writing short articles for two BIRN Web sites, *Gazeta Jeta ne Kosove* (gazetajnk.com) and kallxo.com.

"It's too late to wait until the end of the year to report on some things, on certain court sessions," Xharra said. She wanted monitors to use social media platforms like Twitter and write reports on the court sessions they observed.

"Sometimes we have a monitor who brings us cases to investigate for the journalists, and at other times we have journalists saying, 'This is what I found, this is a session that I wrote about last week, and it's being held today, you can monitor it,'" Sheremeti said.

In the second year of the program, monitors attended 1,248 court sessions. By 2011, they had covered 2,525. By 2012, 13 monitors had observed all levels of the judicial system, including appeals courts and the Supreme Court.

BIRN also tracked developments in the judicial council and other institutions in the court system. In 2011, a special BIRN report analyzed the lengthy process required for vetting the judiciary. Beginning in 2008, all judges and prosecutors were required to reapply for their jobs. Many did not make it through the process, chiefly because large numbers of applicants failed a

controversial ethics test.⁹

Getting the judges in line

Although Kosovo law required court sessions to be open to the public, BIRN's monitors encountered opposition from members of the judiciary and often had trouble gaining access to courtrooms. During the first year of the project, monitors were unable to access 7.8% of their chosen court sessions. Judges sometimes asked them to leave, or monitors were told that there was insufficient space in a judge's office for outside observers. Even when able to access courtrooms, BIRN members described a general resistance to monitoring among many judicial personnel.

Xharra recalled debating with extended family members who were affiliated with the court system and being told, "I will never allow your team in. Do you have cameras watching doctors when they do operations? They'd become nervous, and the life of the patient would be at risk. Why do you have to watch us all the time?"

Enver Peci, chair of the judicial council, a constitutionally established group of 11 judges who represented their colleagues, said some judges were hesitant to grant BIRN monitors access to all court sessions. "It's much easier if you work without supervision or monitoring, because your actions are very nonchalant and you act very closely and freely with the parties. . . . It's completely different now, when the monitors are inside, because he has to take into consideration the way he speaks, the way he dresses, the way he acts."

"If we come in, [the judges] need to make sure the session is going right," Xharra said. "Just the obligation to watch their step. They were coming up with all sorts of excuses why they don't need any monitoring."

When the project started, Xharra and Ispahiu knew their monitors had the lawful right to attend sessions, and they believed no specific

authorization was necessary. After encountering resistance during the first two years of monitoring, however, they decided to seek explicit official permission. In 2010, they approached the judicial council for help. Ispahiu took the lead in talks with the judicial council. In 2010, after several months of negotiations, BIRN and the council agreed on a memorandum of understanding (MoU) allowing the organization's monitors to attend court sessions, including certain sessions that would normally be off limits.

"A certain number of cases are closed to the public," Ispahiu said. "These are cases concerning minors, concerning family matters, and some others. So those are cases in which we participate only as monitors. Monitors make sure they don't share that information and that they don't make it public, and it remains only monitoring information for our system." Monitors could attend such sensitive cases and collect data for the monitoring reports but were not permitted to write stories or descriptions of the proceedings for publication.

After the memorandum was finalized, the judicial council sent to all judges a notice stating they must allow BIRN monitors in courtrooms. Abazi said this agreement was an important step in gaining access for monitors: "BIRN targeted the very top levels of the judiciary, and once you get that, it's very hard for people at lower levels to reject."

Although the agreement removed some of the practical obstacles BIRN had confronted, Xharra and Ispahiu worried that they may have set a bad precedent by having to appeal to the judicial council for a right that had already been theirs under Kosovo law. Other groups might be compelled to seek similar special authorization to observe the courts.

"I feel a bit guilty because organizations that don't have an MoU, if they're told they can't have access, they're being lied to," Xharra said. "They have access without an MoU."

Ispahiu felt even more strongly. “Legally, we should not have signed the document, because the sessions are public,” he said.

Still, Xharra said the agreement was a necessary evil, given Kosovo’s recent history. “This is a kind of culture that needed that,” she said. “You have a generation of people who are used to the communist system, where everything has to be done with a piece of paper and has to have a stamp and has to have a signature and has to have three higher levels of approval and so on.”

Despite those concerns, the agreement served its purpose in helping resolve disputes over access to courts. Sheremeti cited a 2014 example of a security guard at a court that would not allow a monitor to enter because he carried a camera. “This happened three times. I called the head of the Kosovo Judicial Council, Enver Peci, and told him, ‘Look, we have this MoU, but it’s not being respected.’ . . . I went together with Peci to talk with the judge and with the president of the court; I told them about the case, and they apologized and said it’s not going to happen again.”

OVERCOMING OBSTACLES

Distrust proved harder to reduce than the BIRN team anticipated. “In the beginning, very few judges welcomed us as a monitoring project,” Ispahiu said. “The majority of them were very reluctant because they felt they were entitled, they were untouchable, they should not be criticized.” Many judges initially mistrusted monitors, and court security personnel prevented monitors from bringing recording equipment into courtrooms.

Although the 2010 agreement with the judicial council opened courtroom doors, BIRN staff said less-formal efforts—such as their consistently fair treatment of judges and a willingness to advertise improvement rather than just problems—played significant roles in reducing tensions and improving relations with the judiciary. “BIRN monitors don’t write only about the obstacles,” said Valon Kurtaj, a judge in

the basic court of Prizren. “They write the positive things. This has a great impact on the public and the faith of the public in public institutions. When they see in independent media saying that the court is doing a good job, then the public will believe more in the court.”

Gradually, the relationship changed to the point that judges began calling BIRN to request the presence of monitors at specific court sessions, Sheremeti said. When the subject of a dispute was highly contentious, the presence of outside observers could encourage all parties to behave properly.

“We have cases where judges actually call us and say: ‘Look, we have this very controversial decision to give tomorrow. We’re scared that something might happen. We really want and need you to be there,’” Sheremeti said. “Maybe parties would disagree with the verdict, make a big fuss about it. If BIRN is there, they won’t.”

Judges also saw the monitors’ presence as providing a neutral voice for an often-skeptical public about what is happening in courtrooms. The transparency provided by BIRN could shield the judge from unfair criticism. “The people who are present in the court as the public, when they see that someone is monitoring the case, they are more satisfied that the courts will do their jobs properly,” Kurtaj said. BIRN monitors “present the situation in the right way,” he added. “It is very important and very positive because, as a judge, I have an umbrella to cover me. The case is monitored, and I have done the right thing. I have someone who watched me, and he knows very well what we’ve done in this trial.”

Xharra said judges also appreciated that the monitoring project highlighted inadequate working conditions in the courts. The prime example was an early effort by BIRN to raise judges’ pay. Salaries in the judiciary were far lower than comparable positions in ministries, and the monitoring project’s leadership said the low salaries did not provide judges with incentives to

work hard and left them more vulnerable to corruption. BIRN heavily promoted raising judges' pay through its monitoring reports, its media outlets, and meetings with relevant officials. "We did so many programs about it, so many conferences about it," Xharra. "We had made it a norm that we thought their salaries and those of heads of court should be just as big as the ministers', and that's achieved."

A law that took effect in January 2011 tied the salaries of judges to other government officials, resulting in significant pay raises for judges. The president of the Supreme Court, for example, would receive the same salary as the prime minister.¹⁰ Peci, chair of the judicial council, agreed that BIRN had an impact on raising salaries, including a televised debate that had helped communicate the importance of the issue to the public.

Xharra said that effort showed judges BIRN was not out to harm them and would advocate in their favor if it felt it benefited the court system. "They see we're not vampires out to suck blood," Xharra said. "They loved it that in conferences we raised the issue of how little they are paid, and suddenly through our project they have doubled their salaries."

Although the relationship between monitors and judges improved significantly after several years, some obstacles remained: Until 2014, no one in the Kosovo court system had responsibility for communicating with the media or civil society. And the absence of any public-information function frustrated attempts by the media and the public to find information on court proceedings and check the status of cases. "This is one of the recommendations that BIRN had in its reports that has been heard after two years, finally," Sheremeti said. "The courts did not have spokespersons, and as such, communication was very flawed. And now for the first time [in 2014], all the courts except the basic court in Pristina have their spokespersons, so we have noticed that

things are going much more smoothly and we no longer have this problem of not knowing where the court session was taking place." The basic court in Pristina did not appoint a spokesperson in 2014, stating there was no space for a new office, Sheremeti said.

Although audiovisual recording of court sessions was permitted by law in most cases, in practice court security personnel or judges sometimes prevented such equipment from being used. BIRN monitors often brought pocket-size digital cameras to courts to document sessions or record interviews with parties to a case. "We sometimes have problems going inside, especially with cameras," said Labinot Leposhtica, who began working as a BIRN monitor in 2014. "The procedural code allows filming, but they don't respect it," he said, referring to judges and security guards.

Monitors also had difficulty in accessing documents, enduring long waits at judges' offices or asking lawyers for copies of indictments, verdicts, or other decisions.

Although the percentage of sessions held in judges' offices instead of courtrooms decreased after 2007, space restrictions continued to confound monitors who tried to attend such cases. "If there are three defendants plus their lawyers, plus the police officers, you don't have room, so you are outside," Leposhtica said. "Even if the court allows [monitors], you don't have space and you have to leave."

Another obstacle to BIRN's monitoring efforts involved Kosovo's ethnic divisions. In areas of northern Kosovo where a large number of ethnic Serbs lived, courts operated within the Serbian justice system. Courts based in Serbia and northern Kosovo claimed jurisdiction over areas in Kosovo, including majority-Serb North Mitrovica. Although Kosovo's Mitrovica basic court also claimed jurisdiction over this area, the Serbian courts operated under the Serbian Ministry of Justice and applied the laws of

Serbia.¹¹ A BIRN monitor worked in the Kosovar Mitrovica court, but not in the Serbian courts. “We have a monitor that monitors the north, but whereas other monitors send me 10 sessions a month, he sent me only 3 sessions for the past month, so you can imagine how much access we have,” Sheremeti said in 2014.

ASSESSING RESULTS

Although the BIRN monitoring program provided hard data on the number of court sessions observed and the frequency and types of procedural violations during those sessions, the extent of the project’s influence in driving behavioral changes and reforms was far more difficult to measure.

BIRN’s 2013 annual report, released in 2014, stated that its monitors had observed 8,694 sessions in all municipalities in Kosovo and at all levels of the court system from 2008 to 2013. Although the number seemed large, it was a small sample of the total number of judicial sessions held in Kosovo during the six years. And because monitors were allowed to choose their own sessions, the number did not represent a random sample.

BIRN tracked the occurrence of violations year by year, and in general the trends were positive, although some indicators remained high. BIRN reported that in 2013:

- 78% of monitored sessions were announced on public information boards—up from just 50% in 2010.
- Nearly three-quarters of sessions (73%) started on time—almost double 2009’s 38%.
- 44% of sessions were held in judges’ offices—down from 73% in 2009.
- Improper courtroom attire (robes, etc.) was observed at 34% of sessions compared with 53% in 2010.¹²

Although it was unclear how much the monitoring project had influenced those results, judges indicated that there was an effect. “Those

cases and issues that were monitored in the courts not only helped us as a council but also helped a lot of courts monitor their work and perform with a high level of discipline,” Peci said.

“We improve our quality through these reports,” Judge Kurtaj said. “They reported on some obstacles in the justice system that maybe we didn’t see [at the time] or didn’t know about.” “These things are being discussed at the highest level possible,” Peci said. “Fortunately, the incidence of those errors is diminishing year by year, so therefore it helps me a lot in my work.”

BIRN’s leaders and Kosovar judges said that, regardless of the data gathered, the simple act of putting an outside observer in a courtroom had an effect on the behavior of judicial personnel. Judges, prosecutors, and defense attorneys tended to act more professionally and better adhere to proper procedures when they knew someone was watching. “You have a change in the judge’s attitude and in the behavior of everyone in the courtroom when you have people sitting there watching, because they don’t know who they are,” Simmons said. “They don’t know whether they’re reporters or international monitors, so they tend to be a little bit more careful about what’s being said.”

“When [BIRN monitors] were in court monitoring the case, this made judges and prosecutors more careful, more respectful about the law, and more professional,” Nimoni of the BIRN court-reporting project said.

That observer effect likely distorted BIRN data. If judges and other judicial personnel acted more professionally because they were being observed, then the data presented by BIRN would likely show results more positive than what may truly have been the case for the court system. If monitors had not been present, a judge may have been more inclined to commit procedural violations, which would not appear in the BIRN reports.

Regardless of how the quantitative statistics

were evaluated, BIRN staff said the project helped create a culture of transparency in the courts. Openness in the courts “has increased dramatically,” Ispahiu said. “Compared with the moment when we started, it is a huge improvement, but it’s still far from where we want to be. . . . It’s no longer blasphemy to enter a courtroom and say ‘I’m here just to monitor the proceedings.’”

“We don’t perceive [BIRN monitors] as something outside of this court,” Judge Kurtaj said. “We accept them as part of our job because they are doing something that is a positive thing for our court.”

Xharra said BIRN also had an influence on working conditions in the courts. “We spoke about lack of space, lack of computers,” she said, in addition to raising judges’ salaries. “There is [now] a big investment in a new building where [the courts in Pristina are] going to move; there’s a lot more space now.” The Pristina Palace of Justice is scheduled to open in 2015.

While Xharra and her colleagues hoped the program would enhance public trust in the courts, public opinion data suggested that no progress had been made in that area. In April 2013, UNDP polling registered just 16.7% of respondents expressing confidence in the court system, a net decrease from the 20% reported in March 2007.¹³ Although in part it reflected broad distrust in the country’s young institutions, citizens held especially harsh sentiments regarding the justice system. “The courts are seen as one of the most corrupt institutions” in Kosovo, said Agron Demi, director of the GAP Institute for Advanced Studies, a research organization.

Although BIRN reported gains inside courtrooms, the prosecution of judges and prosecutors on corruption charges appeared to damage public trust rather than bolster confidence in the progress of reforms. Prosecutors charged five judges with issuing illegal decisions in exchange for material benefits and charged a

former president of the Pristina municipal court with assisting in the crime. Their trial began in 2014.¹⁴ In 2013, a court sentenced the former special prosecutor who had led Kosovo’s anti-corruption task force to five years in prison on charges including abuse of his position.¹⁵ In addition, allegations of corruption against an international judge working with EULEX dominated the media in late 2014.¹⁶

REFLECTIONS

The court-monitoring project operated by the Kosovo affiliate of the Balkan Investigative Reporting Network (BIRN) offered a model others could replicate. The data collection process was simple, although it required monitors who knew the procedural rules of the legal process. The output was not deeply analytic, but BIRN’s reports provided useful data and instilled a sense of public accountability in courtrooms. BIRN’s method for developing agreement on a monitoring instrument, the incentives it offered young lawyers to participate, the systems for publicizing the information so that it did not collect dust on a shelf—all of those things, in addition to the list of metrics itself, could provide a foundation for similar efforts in other settings.

Still, courtroom monitoring was inherently limited in what it could reveal. Although trained monitors observed significant problems in courtrooms, deeper systemic issues, including conflicts of interest or instances of corruption, could have prevented cases from going to trial in the first place. Monitoring also could not reveal difficulties in protecting witnesses or enforcing decisions after they get made at trial.

Courtroom monitors were also unable to analyze how judges arrived at and drafted their decisions—an issue that observers in Kosovo said was very important. Decisions were typically poorly written, and the judge’s chain of thinking was difficult to discern.

Malcolm Simmons, a British judge who

served as president of judges for the European Union Rule of Law Mission in Kosovo, said decisions were often “poorly drafted. The review of evidence is often cursory at best. Too much emphasis is placed on evidence that has little relevance to the factual findings, and it is sometimes extremely difficult to determine the [rationale for the decision].” BIRN’s annual court-monitoring reports addressed the quality of decisions, but the focus was only on issues observed during court sessions.

The locally led nature of the BIRN project was highly valued in a country where international organizations maintained significant influence. “It’s not some outsider coming in and saying to Kosovo institutions, ‘Here is what you need to do: one, two, three,’” said Haki Abazi, who was with the Rockefeller Brothers Fund. “It’s the Kosovars themselves.”

BIRN’s monitoring work was complicated by its role as an investigative-reporting organization. BIRN required monitors to function as journalists and produce content for BIRN Web sites, which

required them to devote time to conducting interviews and writing articles. This meant they spent less time in courtrooms monitoring sessions, and it diminished their capacity to monitor and analyze events in the court.

Sustainability was an open question. The project relied on donor funding, and if international interest in Kosovo waned, fewer resources would be available for local civil society organizations like BIRN to fund such programs. Recruiting knowledgeable monitors required the financial means to pay them competitive wages—something a local civil society organization without international funding would likely find impossible.

The BIRN Kosovo project inspired a similar program in Montenegro, run by the nongovernmental organization Civic Alliance, which used monitors with no legal training to gather less-sophisticated data. And in Serbia, the Center for Research, Transparency and Accountability set up a similar program to monitor courts in some municipalities.

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¹ Headquartered in Sarajevo, Bosnia and Herzegovina, BIRN was founded in 2002. As of 2014, it had affiliates in Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Romania, and Serbia. Each affiliate had a large degree of autonomy. In addition to court monitoring, BIRN Kosovo produced two television programs, published two Albanian-language news Web sites and a biweekly English-language news magazine, and provided an online platform for citizens to report instances of corruption or failure of institutions.

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³ During this time, Serbian officials fired most of the ethnic Albanian civil servants for refusing to sign a loyalty oath.

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