



JUDICIARY IN KOSOVO **ADMINISTRATION** **IN DISARRAY**

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JUDICIARY IN KOSOVO: ADMINISTRATION IN DISARRAY

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LIST OF ACRONYMS

ACA	Kosovo Anti-Corruption Agency
ADR	Alternative Dispute Resolution
AJ	Academy of Justice
CEPEJ	European Commission for the Efficiency of Justice (Council of Europe)
CMIS	Case Management and Information System
CTP	Continuous Training Program
EC	European Commission
ERA	European Reform Agenda
EU	European Union
EULEX	European Union Rule of Law Mission in Kosovo
GDP	Gross Domestic Product
IT	Information Technology
ITP	Initial Training Program
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KLI	Kosovo Law Institute
KPC	Kosovo Prosecutorial Council
MP	Member of Parliament
ODC	Office of the Disciplinary Counsel
OSCE	Organisation for Security and Co-operation in Europe
PISA	Programme for International Student Assessment
SAA	Stabilisation and Association Agreement
UNMIK	United Nations Mission in Kosovo
USAID	U.S. Agency for International Development

EXECUTIVE SUMMARY

Eleven years after independence, the judiciary continues to function poorly as obstacles blight the system. It is slow and inefficient and actors at all levels are not held accountable. The slow progress keeps citizen's trust in the justice system low. It has been impacted by perceptions of corruption, inefficiency, politicisation, and a lack of professionalism. Weak rule of law and the inadequacy of the justice system hold Kosovo's European path back and stunt its economic growth. Support to the justice system has been a key focus of international donors, but they have failed to address the basic needs of the judiciary by prioritising support for advanced projects without first addressing the fundamental issues.

External actors have pushed forward reforms that are half-heartedly adopted and where the administrative and governance shortcomings aggravate these problems further. This has led to fragmented reforms that have brought the justice system closer in line with EU standards on paper but have had little practical effect.

The judiciary remains vulnerable to political interference. Institutions that monitor the system – the Kosovo Judicial Council (KJC) and Kosovo Prosecutorial Council (KPC) – are seen as dysfunctional and fail to enforce internal regulations and ethical requirements. Transparency, needed to improve accountability and performance, is still missing, as many actors within the system seem to fear it. Judges and prosecutors lack basic skills or professionalism, yet few are disciplined for misconduct. The judiciary's inability to tackle corruption, internally and externally, creates further disillusionment. Training for judges, prosecutors and ad hoc trainings for administrative staff are foreseen, yet their impact is low. The integration of Kosovo Serbs within the judiciary and the prosecution is a positive development, but the practical obstacles to their work need to be tackled. More effort needs to be devoted to further reduce the backlog of cases and reduce the time needed to solve a case from the beginning to the execution of a final decision. The Functional Review of the Justice Sector, which has been dragging on for too long, should be completed as soon as possible.

Little attention has been paid to court administration; high-level reforms have neglected the deficiencies of the staff and resources that make up this area, which is the largest part of the justice system. The size and budget of the judiciary seem to be adequate for the current needs of the country, but the budget planning and implementation capacities of the various actors need to be substantially strengthened. The quality of formal and informal legal education remains low. Administrative staff lack qualifications, practical skills, and are often resistant to change. Building their capacities has never been a priority nor is it likely to be achieved in the near future. Performance evaluation is formulaic and does not take into account the real output of each employee. The hiring, promotion and demotion of administrative staff is not based on merit or demonstrated abilities, but rather on personal and political connections. Lessons must be learned from the hasty decentralisation process. The broad consensus around the rollout of a Case Management and Information System shows that effective reform is possible.

The European Reform Agenda, the Stabilisation and Association Agreement together with the recent for EU Enlargement Perspective, all demand palpable reforms in the rule of law as a precondition EU accession. The enlargement strategy recognises that strengthening the rule of law requires societal transformation. It will take a demonstration of political will and the engagement of all actors to strengthen the rule of law.

RECOMMENDATIONS

Government

- Continue and advance the Functional Review of the Rule of Law when the new government is formed. The process should pick up the pace and ensure all shortcomings of the judiciary are being addressed, including but not limited to:
 - Introduce specific legislation to regulate the status, obligations and duties of the administrative staff of the judiciary, who shall not operate under the Law on Civil Service.
 - Introduce legislation to allow early retirement for judges, prosecutors and members of the respective administrations.
 - Better define and strengthen channels for cooperation between courts, the prosecution and police.
- Implement and publicise the Law on Protection of Whistle-blowers to encourage citizens to report corruption.
- The Ministry of Justice should take the lead in coordinating the efforts of donors, identifying needs, launching new projects and initiatives to ensure the most effective use of support.
- The Ministry of Justice, in cooperation with KPC and KJC, should support the Faculty of Law to develop an accredited curriculum and establish modules for training courses on Kosovar Law for Kosovo Serb graduates that have followed a Serbian curriculum.
- Sponsor the remaining laws required to fully implement CMIS in all jurisdictions; the Criminal Procedure Code and the Laws on Execution of Criminal Sanctions, Contested Procedure, Out-contentious Procedure and Administrative Conflicts.

Kosovo Judicial Council

- Publish all court decisions, including older judgements and other documents in order to increase transparency. Establish a single, coherent judicial database that contains all judicial decisions in one place instead of dispersed over the various courts' webpages.
- Facilitate the use of actual courtrooms and enforce their use as the only acceptable venue for judicial hearings, instead of judges' offices. The practice of holding hearings in offices must end.
- Implement the relevant regulations to manage the decentralised competences of the courts. The Secretariat of KJC must increase the oversight and control of the legality of all hiring, budgeting and procurement activities. In addition, consider the possibility of facilitating the participation of external actors (representatives of civil society or international experts) to increase transparency.
- Improve budget planning and implementation capacities of the Secretariat and the courts.
- Continue increasing human resources (judges, prosecutors and professional associates) to combat the backlog of unresolved cases, foreseeing modalities for early retirement at a later stage.
- Continuously assess staff (judge and non-judge) training needs. Establish mandatory Initial Training for non-judge staff and increase the number of mandatory Continuous Trainings at all levels of the judiciary.

- Reform evaluation processes for judges. The threshold for Sufficient cannot be 30/100 points, but at least 60.
- Introduce a Code of Ethics for Non-Judge Staff and introduce specific, systematic performance evaluations that reflect their actual performance and abilities in accordance with the new Code. These evaluations should be as demanding as those for judges and serve as the basis for promotion, demotion and dismissal.
- Substantially improve translation capacities. KJC must lead the transition to a fully bilingual judiciary.
- Cooperate with public universities to offer Law students more opportunities to undertake paid internships with the Secretariat and the Courts.
- Advocate for the amendment of the remaining laws needed to allow CMIS to be fully functional in the judiciary.

Kosovo Prosecutorial Council

- Make the results of disciplinary processes public, in accordance with the Law and judicial practice.
- Reform and strengthen the regulatory framework for performance evaluation. Conduct systematic evaluation of all staff (prosecutors and administrative) that reflect their actual performance and abilities. Evaluations should serve as the basis for promotion, demotion and dismissal.
- Improve budget planning and implementation capacities of the Council.
- Continue increasing human resources (prosecutors and professional associates) to speed prosecution of cases, but also foresee modalities for early retirement for members of prosecution.
- Improve hiring rules and practices, and staff planning. New hiring must be based on regular staff needs assessment. Facilitate the participation of external actors (representatives of civil society or international experts) in selection processes at all levels.
- Consider cooperating with public universities to offer Law students more opportunities to undertake paid internships within the Basic Prosecution Offices.

Academy of Justice

- Strengthen the Continuous Training Programme and coordinate with the councils to identify key courses that should be obligatory.
- Increase staffing capacities by hiring more in-house, permanent trainers and translators.

Law Faculties

- Engage with KJC, KPC, and the Kosovo Accreditation Agency to review and update law curricula to ensure student's knowledge is current and applicable to the Kosovo context.

Mediation Committee

- Strengthen and raise the profile of mediation as an alternative dispute resolution to help reduce the backlog.

INTRODUCTION

The judiciary in Kosovo is the result of the various traditions that have made the law of the land over the last three decades, and it has inherited many weaknesses. A substantial part of the people who work within the judicial sector have passed through Yugoslavian, Serbian, International structures, and now the Kosovo system. This volatile environment has dictated the effectiveness of the administration of justice as laws, reforms and leadership have been in constant flux, while the people remain the same.

Since the Declaration of Independence in 2008, the judicial system has undergone a number of changes. Over the years, a comprehensive legal framework has slowly been put into place.¹ A process of vetting and re-appointing judges and prosecutors was implemented in 2009.² The Law on Courts of 2013 re-structured the judiciary to strengthen the independence of the courts, define responsibilities, specialise judges and prosecutors, and simplify the system and access to justice. The 2015 Justice Package attempted to complete this task. More changes took place in 2016, when the decentralisation of the courts was launched at their request. Only in the last few years has there been a certain stability in the judicial setup.

Despite broad changes, the judiciary has shown little improvements, since the high level of corruption and lack of efficiency and accountability are clear indicators that the reforms did not produce the desired results.³ The reforms have moved the alignment of the national legislation closer to EU and international standards but the rule of law remains weak, the judiciary is prone to political interference, and lacks capacity, professionalism and accountability. Especially the court administration is inadequate and resists the need for modernisation.

Weak rule of law is detrimental to democratic governance and impedes European integration.⁴ It is also a significant barrier to economic development.⁵ Judicial independence is guaranteed by the Constitution and legal framework, but practice tells otherwise. The country “has some of the basic components of a justice system... [but] the whole does not work: each part operates on its own and

¹ Law 04/L-139 on Enforcement Procedure (January 2013), Law 03/L-225 on the State Prosecutor (October 2010), Law 06/L-056 on the Kosovo Prosecutorial Council (April 2019), Law 06/L-055 on the Kosovo Judicial Council (December 2018), Law 03/L-202 on Administrative Conflicts (October 2010), Law 04/L-149 on the Execution of Penal Sanctions (August 2013), Law 06/L-006 on the Juvenile Justice Code (October 2018), Law 04/L-193 on the Bar (May 2013), Law 04/L-141 on Bar Examination (May 2013), Law 03/L-007 on Out Contentious Procedure (January 2009), Law 06/L-074 on the Criminal Code (January 2019), Law 04/L-123 on the Criminal Procedure Code (December 2012), Law 06/L-010 on Notary (December 2018), Law 03/L-006 on Contested Procedure (September 2008), Law 03/L-052 on the Special Prosecution Office (June 2008)

² To lead the re-appointment and appointment process in April 2009 a temporary body was set up as part of the KJC by the Special Representative of the Secretary-General, as specified by the UNMIK Administrative Direction no.2008/3. Over 400 judges and prosecutors undertook the re-evaluation process under the supervision of the EU Commission Liaison. Only 50% of judges and prosecutors in office passed the ethics and professional test. Nearly 450 new candidates entered the process for the first time as a judge or prosecutor, of them 340 were appointed by the President as they passed the examination on the Code of Ethics as specified by the UNMIK Administrative Direction No.2008/3. This re-evaluation and appointment process of 2009 Kosovo judiciary saw the largest rejuvenation since the war ended.

³ Leaked wire taps in 2016, dubbed the Pronto Affair, purported to high level cronyism and implicated the independence of the courts. More on that available at <http://prishtinainsight.com/pronto-2-leaked-wiretaps-kosovo-ruling-party-officials-scandal-continues/>

⁴ The latest Communication of the European Commission, A credible enlargement Perspective For and Enhanced EU Engagement with the Western Balkans is littered with references to strengthening the rule of law in the 6 Western Balkan countries. The document is available at https://ec.europa.eu/commission/sites/beta-political/files/communication-credible-enlargement-perspective-western-balkans_en.pdf

⁵ The Council of Europe has noted that “efficiency of the justice system, measured by the disposition time and the clearance rate, is clearly linked with the economy and in particular with the most widely used economic indicator, the GDP growth rate.” European Commission for the Efficiency of Justice, The Functioning of Judicial Systems and the Situation of the Economy in the European Union Member States, Strasburg, 15 January 2013, p.11

largely without real-world effect.”⁶ This statement by the International Crisis Group was true when written in 2010 and continues to be true nine years later. The judiciary suffers from corruption, interference by political interests, and a lack of professionalism among judges, prosecutors, and administrative staff allowed by lax oversight.

Both the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC) have now been functional for several years, but they have not made significant improvements. The constant cycle of piecemeal reforms that recur every couple of years has in fact harmed more than helped. Too often the reforms were not aimed at the right targets. Many donors focus their support on technical and financial assistance to the Ministry of Justice and the governing bodies of the Judiciary, often neglecting the basic needs of the majority of the judicial staff. To a large extent, donor-driven processes have tried to put the cart before the horse. Practice has shown that foreign support was in many cases too advanced for the level of the employees in the judiciary and did not meet their needs.

The administration of the judiciary and staff was never the focus. It has been consistently neglected even though it is the fundamental feature of a functional judiciary. In 2019 more than 2000 civil servants work at all levels of the courts and prosecution administrations, but in many cases they are untrained, lack capacities and largely underperform. They play an important role in the inefficiency of the judiciary and are linked to schemes of corruption, nepotism and political interference, but are consistently overlooked to focus on judges and prosecutors. All the while, the court administration has done little to change its old-fashioned norms and attitudes, which pretty much remain the same as during socialism.

The government began a Functional Review of the rule of law institutions in November 2016, a genuine national initiative aiming to eliminate numerous existing duplications; give coherence to the rule of law; and increase accountability, transparency, and effectiveness. Yet, continuous delays and ongoing legislative processes mean that the existing legal framework is nowadays substantially different than back when the process started. Without high-level political will and active coordination, the ongoing Functional Review and subsequent reforms will again leave the country "with the appearance of justice but without the substance.”⁷

This report presents an overview of the state of the rule of law and the judiciary in Kosovo, divided into two parts. The first section gives an overview of the key challenges to the effective rule of law, with a focus governance of the judiciary. It delves into the structure and role of the monitoring bodies of courts and prosecution services, the state of judicial independence, and the mechanisms for transparency and accountability. It then moves onto practical issues, such as disciplinary procedures, structures to curb corruption and training and capacity building systems. The section finishes with an overview of the judicial integration of the north of Kosovo, the efforts to reduce the backlog and the Functional Review of the Rule of Law.

Equally important, the second section addresses court administration and the performance of the administrative staff. It reviews the size and structure of the courts, the budget of the judicial sector, the effects of the wider education system on the judiciary, the status of the Administration, the existing rules for hiring and performance evaluation, and the decentralisation process. The section closes with an analysis of the ongoing judicial digitalisation.

⁶ International Crisis Group, *The Rule of Law in Independent Kosovo*, Pristina/Brussels, 19 May 2010

⁷ *Ibid* p. 22

1. RULE OF LAW OVERVIEW

1.1 Governing Bodies of the Judiciary and Prosecution

There is a global trend for establishing judicial councils as a means to protect judicial independence. In the mid-80s, only 10 per cent of countries had judicial councils; this increased to 60 per cent by 2008.⁸ However, the establishment of councils alone does not guarantee independence or quality performance within the judiciary. If they exercise their functions properly, councils can help promote rule of law and improve overall judicial performance.

In Kosovo, this trend materialised in the creation of the Kosovo Judicial Council and the Kosovo Prosecutorial Council, enshrined in the Constitution. Unfortunately, both KJC and KPC continue to struggle to act independently and fail to adequately exercise their functions.

Over the past years, the General Auditor noted a number of misconducts from both councils and auditing reports on the KJC tend to be worse than for other government institutions.⁹ Only in recent years they have started acting upon the recommendations made by the General Auditor's Office. The main concerns are weak planning and lack of internal management consultations and reporting.¹⁰ Overall, despite slow improvement both councils are still plagued by a weak governance that reduces their efficiency and harms judicial and prosecutorial independence.

Member appointment procedures were also criticised for not being in line with the European Charter on the Statute for Judges when the KJC was first established.¹¹ The Council of Europe advises that at least half of any high judicial council (such as the KJC) should be composed of judges appointed by their peers. The Venice Commission points out the need for explicit constitutional provisions to ensure that the appointment of judges is not abused by the other powers of the State in recently established democracies.¹² It states that "a substantial element or a majority" of a judicial council should be appointed by the judiciary itself. Prior to reforms in early 2016, 8 of the 13 KJC members were selected by MPs, providing the Assembly significant power over the composition of the KJC.

In February 2016, a constitutional amendment modified the appointment procedure for the members of the KJC.¹³ Now 7 of the 13 KJC members are appointed by their peers (other judges), with the Assembly choosing the remaining 6. Members of the executive cannot sit on the Council, as is permitted in some other states within the region.¹⁴

As for the KPC, since June 2015, 10 of its 13 members are prosecutors; the Chief State Prosecutor (selected by the Council itself), an elected representative from each Basic Prosecution Office, plus one from both the Appellate Prosecution and the Special Prosecution offices.¹⁵ For the other three

⁸ Nuno Garoupa and Tom Ginsburg, *Guarding the Guardians: Judicial Councils and Judicial Independence*, University of Chicago, Chicago, November 2008, p.3

⁹ Balkans Group Interview, National Audit Officer, November 2016

¹⁰ For instance, the KPC consistently failed to follow due process in the appointment and promotion of its staff until 2018, despite repeated recommendations being issued by the National Audit Office. See National Audit Office, Audit Report on the Financial Report of the Kosovo Prosecutorial Council for the financial year ended 31 December 2018, Pristina, June 2019, available here <http://www.zka-rks.org/wp-content/uploads/2019/06/Raporti-final-KPK-2018-Eng.pdf>

¹¹ Council of Europe, *European Charter on the Statute for Judges*, 1998, Art. 1.1.3

¹² European Commission for Democracy through Law (Venice Commission) *Judicial Appointments*, Venice, 22 June 2007, p. 3, available at [https://www.venice.coe.int/webforms/documents/CDL-AD\(2007\)028.aspx](https://www.venice.coe.int/webforms/documents/CDL-AD(2007)028.aspx)

¹³ Constitution, Art. 108.6 (1)-(2); Amendment 25.

¹⁴ OSCE, *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, Pristina, January 2012, p.17

¹⁵ Prior to the amendments, two members were political appointees: the Minister of Justice and Chief Prosecutor, who were directly

positions in the Council, one member is a specialist in criminal law from the Kosovo Bar Association, another member is a law professor, and the last member is an experienced civil society representative with a background in human rights. This system of appointment supports prosecutorial independence, a founding principle of the KPC, yet the exercise of political influence over prosecutors in practice remains a concern. In 2015 there was significant political pressure placed on the nomination of the new Chief State Prosecutor, which turned into an excessively lengthy process.¹⁶

Another consequence of the amendments is that since 2015 the KJC and KPC have the power to submit their budgets directly to the assembly rather than having the government propose it. This reform was not expected at the time to bring any significant change.¹⁷ First, because both the KJC and the KPC had to build the capacity to plan well-prepared budgets, as well as to manage and execute them, and that would take time.¹⁸ Second, because experts expected the Ministry of Finance to maintain pressure to keep the budget minimal, as the government is aware that exerting pressure over these budgets is the primary way to control the Councils.¹⁹

Regarding their governance, both KJC and KPC still lack fundamental capacities to fulfil their mandates. Consequently, they have thus far made no sustainable progress on monitoring the implementation of their decisions, reporting or drafting new regulations. Both councils have repeatedly failed to approve regulations and instructions, as required by law.²⁰

In late 2018 and early 2019 the Assembly passed new laws regulating the functioning of the judicial system, in order to consolidate in a single, coherent text the different legal amendments and constitutional jurisprudence that have taken place since 2013. It should help to clarify the structure of the system and the respective roles and powers of the institutions. However, the new Laws do not change the judicial organisation, and implementation will remain the main issue. Improving it will necessarily require further strengthening the capacities and independence of the monitoring bodies.²¹

1.2 Judicial Independence

The Constitution guarantees the separation of powers between the three branches, the legislative, executive and judicial.²² The judiciary, although formally independent of political institutions, in practice struggles to freely exercise its authority. The public perceives courts and prosecution as highly influenced by politics.²³ Kosovo suffers from the widespread impression that it is run by a

appointed by the government and the President, respectively.

¹⁶ In February 2015 KPC nominated Aleksander Lumezi for Chief State Prosecutor as the only candidate for the position. Prior to the decision five candidates withdrew their candidacy asserting that the KPC had violated the selection process and that there were members who had disputable mandates and that certain members had publicly displayed their preferences. More information available (in Albanian) at <http://www.gazetaexpress.com/lajme/vec-aleksander-lumnezi-mbetet-ne-gare-per-kryeprokuroor-78234/?archive=1>

¹⁷ Balkans Group Interview, Prosecutor, Pristina, 17 June 2016

¹⁸ Balkans Group Interview, KJC Official, Pristina, 16 June 2017 and Council of Europe, *In Depth Assessment Report of the Judicial System*, Strasbourg, January 2018, available at <https://rm.coe.int/in-depth-assessment-report-of-the-judicial-system/16807828e6>

¹⁹ Balkans Group Interview, Supreme Court Judge, Pristina, 16 June 2016 and Court Administration Advisor, Pristina, 20 December 2016

²⁰ The so-called Justice Package laws implemented in 2015 required a total of 35 regulations and instructions to be approved by KJC and KPC. Both Councils have failed to adopt the legislation in a timely manner.

²¹ This new Package of laws include the Law on Courts, the Law on the Kosovo Judicial Council, the Law on Kosovo Prosecutorial Council and the Law on Disciplinary Responsibilities of Judges and Prosecutors.

²² Under the Constitutional provisions (article 4) Kosovo is governed based on the principle of separation of powers and check and balances mechanisms. The Assembly exercises the legislative power, the government is responsible for the implementation of laws and state policies and the judicial power is exercised independently by the courts.

²³ "Approximately 70.7% of respondents believe that politically influential people are less likely to be punished by law. [...]"

lawless political elite in control of every aspect of society.²⁴ The lack of judicial independence has been noted by a number of important actors and observers. In January 2014, 17 of the 27 judges in EULEX published a statement expressing their doubts that Kosovo judges would be able to act independently in certain cases due to high levels of political interference.²⁵ In August 2018 a Special Prosecutor resigned after accusing the State Prosecutor of pressuring him after summoning senior politicians, sparking a wave of protests.²⁶ The government denies attempts to influence the judiciary, but accusations that the judiciary lacks independence from political institutions are frequent and credible, coming from different sources, even within the judicial system.²⁷

The deficiencies within the KJC and KPC pose a recurring problem. These are numerous and found at all levels, structural, organisational and governance. Selection of the board members is often influenced by other actors and practice shows that members with a disputable mandate have continued to sit on the board. This is demonstrated in the case where one board member of the KPC served eight years, instead of the legitimate five-year term.²⁸ The KPC has been accused in the past of damaging the values, ethics and image of the institution by upholding and continuing illegitimate appointments.²⁹ Also the KJC has faced harsh criticism. During the recruitment of fourteen judges in 2016, regulations were amended mid-process which meant that judges were hired on disparate criteria.³⁰

Such incidences call into question the neutrality of the Councils, which have failed to follow internal regulations and do little to shield judges/prosecutors from outside influence. The highly publicised Pronto Affair confirmed suspicions that the government routinely meddled in matters of the judiciary.³¹ Furthermore, when the oral hearing against a number of officials of the then ruling party was opened in November 2018, the lead prosecutor of the case was barred from reading the indictment aloud for the public.³²

Moreover, when respondents were asked which lead institutions of justice systems are most politically influential, 72.4% of respondents believe that courts are the most politically influenced institutions, followed by prosecutions (68.3%)". Group for Legal and Political Studies, *Rule of Law Performance Index in Kosovo (RoLPIK), 4th Edition*, Pristina, October 2018, p. 10, available at <http://www.legalpoliticalstudies.org/wp-content/uploads/2018/10/RoLPIK-4ENweb.pdf>

²⁴ International Crisis Group, *Rule of Law in Independent Kosovo*, 2010, p.9

²⁵ Letter from EULEX judges, Pristina, 22 January 2014, available at http://gazetajnk.com/repository/docs/dokumenti_i_Eulex.pdf

²⁶ RFE/RL Balkan Service, *Kosovo Protesters Demand Chief Prosecutor's Resignation*, Radio Free Europe, 22 August 2018, available at <https://www.rferl.org/a/kosovo-protesters-demand-chief-prosecutor-s-resignation/29447972.html>

²⁷ As an example, see the previous note. Also the Director of Kosovo Justice Institute, Betim Musliu, said in 2016 that the justice system in Kosovo continued to be captured by politics and that, citizens' confidence in the system was getting even worse. See Arton Konushevc, *Sistemi i drejtësisë i komprometuar nga politika [Justice system compromised by politics]*, Radio Free Europe, 8 August 2016, available (in Albanian) at https://www.evropaelire.org/a/27902562.html&sa=D&ust=1518102306870000&usg=AFQjCNE7PU_eztjaLMCwccqZ9h_4FIZQjQ

The Ambassador of the United Kingdom, Ruairi O'Connell stated that 'The justice system has failed in Kosovo', referring to the case of the former mayor of Kaçanik Xhabir Zharku, who was rendered a suspended sentence of two years in prison, available at <http://lajmi.net/oconnell-si-ka-mundesiqe-gjyqesori-vepron-brenda-dites-per-qytetaret-e-thjesht-e-hesht-per-profile-te-larta/>

²⁸ Article 7 of the Law no.03/L-244 on Kosovo Prosecutorial Council, then in force, emphasised that members of the Council were elected for a five year term, yet the Council decided to illegally extend the mandate of its members. I.S. was elected as a member in February 2011. In January 2013 with the new changes in the Council I.S. was re-appointed as a member. He should have concluded his 5 year term in February 2016, but he continued to serve until January 2018. See further at: Kosovo Law Institute *Illegality of Judicial Council and Prosecutorial Council*, Pristina, November 2016, available at <https://kli-ks.org/wp-content/uploads/2016/11/3.-Brief-analysis-Illegality-of-KJC-and-KPC-13.11.2016-1.pdf>

²⁹ Kosovo Law Institute, *Illegality of Judicial Council and Prosecutorial Council*, 2016

³⁰ *Ibid.*

³¹ Leaked wire taps in 2016, dubbed the Pronto Affair, purported to high level cronyism and implicated the independence of the courts. News article available at <http://prishtinainsight.com/pronto-2-leaked-wiretaps-kosovo-ruling-party-officials-scandal-continues/>

³² Jeta Xharra and Blerta Iberdemaj, *Prosecutor barred from reading indictment in 'Pronto' affair case*, Pristina Insight, 15 November 2018, available at <https://prishtinainsight.com/prosecutor-barred-from-reading-indictment-in-pronto-affair-case/>

The perception of an independent judiciary is further compromised by individual judges making themselves available for private meetings with parties who have a case before them. While possibly innocent in nature it exposes judges to improper influence.³³

1.3 Transparency and Accountability

Transparency and accountability, understood as public scrutiny of the judiciary's performance, are essential to ensure trust in the system. In Kosovo, the judicial system lacks these fundamental qualities.³⁴ Internally, mechanisms to hold judges, prosecutors, and governing bodies' accountable are universally weak. The KJC and KPC have a very formalistic approach towards measuring efficiency, which reduces individual accountability.

The leadership of the Supreme Court attributes this lack of accountability to insufficient disciplinary measures and personal responsibility. Within the judiciary, there is no systematic evaluation that would lead to penalties for misconduct. An EU official noted that "no one is being dismissed for a bad evaluation". KJC and KPC have conducted no substantive or partial evaluation of performance.³⁵ The Government is also convinced that neither body fully respect the law and that both fail to meet their obligations.³⁶ In that sense, there is a lack of real check and balance mechanisms regarding the functioning of the councils.³⁷

As for practising judges, the Law on the Judicial Council stipulates that judges with a permanent mandate have to be assessed every three years, but leaves the definition of the process to the KJC itself.³⁸ What KJC has done is determining the selection of 1/3 of the judge pool through the RANDOM command in Microsoft Excel. Consequently KJC evaluates only judges who apply for promotion or through a random selection.³⁹ Even if the process was consistently clean and fair, whether all judges are actually evaluated in the stipulated 3 year frame is a simple matter of luck. What is more, the regulation currently applicable sets a scale from 1 to 100 where 30 is already "sufficient", which results in a low rigorousness.⁴⁰ Law students are evaluated more harshly than fully-fledged judges. This needs to change; thorough evaluations of performance should take place for all judges at least every three years.

Externally, the population is often ignorant of and distrustful towards the courts.⁴¹ Court proceedings

³³ OSCE, *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, January 2012 and BIRN Kosovo 'Kosovo Special Court 'Dinner Incident' Sparks Impartiality Calls', March 2019, available at <https://balkaninsight.com/2019/03/08/kosovo-special-court-dinner-incident-sparks-impartiality-calls/>

³⁴ Balkans Group Interview, Municipal Official, Pristina, 2 October 2015

³⁵ Balkan Group Interview, Kosovo Judicial Council Official, Pristina, 15 May 2017, and Kosovo Prosecutorial Council Official, 12 May 2017

³⁶ Balkans Group Interview, Official, Ministry of Justice, 3 July 2017

³⁷ The President appoints and dismisses judges and prosecutors after the proposal of KJC and KPC. Yet, the authority of the President is limited. Both councils can propose the same candidate even if the President refuses to appoint or re-appoint a certain candidate for the first time. The second time the President cannot refuse. See further at Judgment of the Constitutional Court of 20 July 2012 in the cases K.O.29/12 and K.O.48/12 over proposed Constitutional Amendments delivered by the President of the Assembly, available at http://gjk-ks.org/wp-content/uploads/vendimet/Aktgjykim%20Anex%20A&B%20KO29_48_12_ANG.pdf

³⁸ Law 06/L-055 on Kosovo Judicial Council, article 28.4

³⁹ Balkans Group Interview, Kosovo Judicial Council Official, Pristina, 26 July 2017 and Pristina Basic Court Official, Pristina, 21 February 2018

⁴⁰ Regulation 011/2019 of the Kosovo Judicial Council On amending and supplementing Regulation (11/2016) on Performance Assessment of Judges, article 2

⁴¹ More on this issue can be read in Balkans Policy Research Group, *Kosovo Judiciary's failure to communicate to the public*, Pristina, July 2019, available at <https://balkansgroup.org/blog/post/articles/kosovo-judiciarys-failure-to-communicate-to-the-public>

are largely administered out of sight from the public in violation of the principle of publicity.⁴² This goes against good judicial practices, as experience shows that greater accountability of judges has been more effective in improving judicial efficiency than increasing either financial or human resources.⁴³ Although judges are not used to working under public scrutiny, the public should be provided with more information on judicial outcomes. Judges are accustomed to holding hearings in their offices rather than in courtrooms. This was almost universal for civil cases and applies to all but the most high-profile criminal cases.⁴⁴ Members of the public, civil society and media should have reasonable access to observe cases, which becomes difficult if the premises are not adequate. A strict enforcement of the existing law, holding public hearings in suitable venues and not in the judges' offices must accompany the simplifying of logistics of using courtrooms.

Furthermore, in an attempt to enhance transparency the judiciary committed to disclose their daily agenda for public information. In fact the new webpage of the courts reserve a prominent place to display the daily sessions, their time and venue, the judge presiding over the case and the latest update on the session status. The new tool also offers a calendar to check for future (or past) sessions. Unfortunately, since this is not a legal requirement the courts do not make consistent use of it. While some courts provide an exhaustive schedule, others only update the information regarding specific judges, or just show the label "No sessions". The website of the Supreme Court does not include this feature.⁴⁵

If the publicity of proceedings is problematic, so is that of judicial decisions. The current Law requires all courts to publish all judgements, but a serious attempt to implement this mandate only started with the launching of the current version of their websites in Q1 2019.⁴⁶ From that moment onwards a more complete list of judicial decisions is available in the respective court's website, but only the Court of Appeals and the Supreme Courts have older records available, and not even those are comprehensive. Some individual judges from the Basic Courts uploaded their decisions, but most judgements are not accessible other than through requesting access to public documents, which necessarily requires knowing the particular details of the case.

Overall, transparency has started to slowly improve as the result of these efforts by KJC and individual Courts, but there is substantial room for improvement. First, the judicial database remains scattered through the different courts, with no single point of access. The introduction of a functional case management information system and a single identifying case code has made tracking cases through several instances possible. However, accessing the corresponding decisions still requires to know which court to address. Short-term, once the courts are familiar with the requirements of the principle of transparency and the publishing process has become routine, KJC should lead the transition to a single jurisprudence database for the whole judiciary. The current software design seems capable of coping with that, so at this stage it is a matter of organisation and will.

⁴² Both the Law 03/L-006 on Contested Procedure and the Law 04/L-123 on Criminal Procedure Code contain provisions related to the publicity of judicial hearings and the participation of public and other interested parties.

⁴³ Balkans Group interview, Official, Basic Court of Pristina, Pristina, 25 July 2016

⁴⁴ Balkans Group Interview, Court Administration Advisor, Pristina, 20 December 2016

⁴⁵ Monitoring carried out by BPRG in July 2019 showed that the Basic Courts of Ferizaj, Gjakova and Prizren were the most dedicated to keep their schedule up to date and available. Conversely, the Supreme Court failed to make use of the tool, not providing any information on its schedule. The other Basic Courts and the Court of Appeals fell in between, providing only partial information usually linked to certain specific, more digitally active judges.

⁴⁶ The new website of KJC and, by extension, of the various courts of Kosovo, was launched on April 19th, 2019, resulting from the support provided by the Justice System Strengthening Program run by USAID.

Second, currently only new court sentences are disclosed. The Law calls for judgements to be published by the courts, which means that court orders and other documents resulting from judicial processes (such as summonses or decisions on challenges of judges) are not published. That should be a mid-term priority for KJC and the courts. Long-term, uploading older sentences will also be required to ensure the comprehensiveness of the judicial database. Finally, the courts must start making serious and constant use of the calendar tool available on their webpage, keeping the list of scheduled sessions updated and accurate.

1.4 Disciplinary Procedures against Judges and Prosecutors

Historically the enforcement of disciplinary measures within the judiciary and prosecution of Kosovo was dealt with by a specialised department. Originally, it was the Judicial Inspection Unit created by UNMIK in 2001. In 2008 it became the Office of Disciplinary Counsel (ODC), which was later inherited by the judiciary after the declaration of independence.⁴⁷

In theory, this Office (like the Unit before) would be a specialised, joint technical department capable of conducting independent investigations about judicial or prosecutorial misdemeanours. These investigations would then be presented to the appropriate Council with a sanction proposal, and the respective Disciplinary Commission would decide. In practice this system failed to ensure accountability and maintain discipline, and many actors believe the ODC had continuously failed to fulfil its mandate.⁴⁸ The confusing legal nature of the ODC and its unclear structural relations with the KPC and KCJ contributed to a negative perception of the integrity of the disciplinary process and questioned the councils influence over the ODC's investigations. In an interview with the Ministry of Justice one official was very clear on their misgivings, "Judges and Prosecutors are using the ODC to blackmail each other and not to address complaints".⁴⁹

This backlash, and constant pressure from international actors finally led to a redesign of the disciplinary system.⁵⁰ In November 2018 the Assembly passed a new Law on Disciplinary Liability of Judges and Prosecutors, disbanding the ODC and transferring its investigative power to the Councils. Its staff has now been distributed between KPC and KJC to act as auxiliaries in disciplinary processes, but the responsibility for directing investigations is now attributed to ad-hoc panels. These are composed of judges or prosecutors assigned to a different court or office than the person under investigation. This should compensate for the lack of experienced investigators that the ODC always had.⁵¹

The main changes introduced by the new Law relate to the statute of limitation, which has been increased to 5 years. The role of the respective President of the Court or Chief Prosecutor as a first filter is increased, being the first person to analyse the complaint (or promoting the investigation ex-officio) before passing it to the ad-hoc panel. The panel will forward its conclusions along with a potential proposal for sanction to the Council, which will then schedule an oral hearing to decide on the file. As a basic guarantee, the decision can then be appealed by both parties to the Supreme Court.

Through the process, stricter timeframes and deadlines have been introduced to avoid the excessive

⁴⁷ In 2008 UNMIK approved an Administrative Direction No.2008/7 and transformed the Judicial Inspection Unit into the Office of Disciplinary Counsel

⁴⁸ Balkans Group Interview, EU official, Pristina, 27 July 2017

⁴⁹ Balkans Group Interview, Ministry of Justice Official, Pristina, 3 July 2017

⁵⁰ The European Commission has included on its Country Report for Kosovo recurrent mentions to the weak implementation of the disciplinary regime and the need to amend the Law to strengthen the existing mechanisms. See European Commission, *Kosovo* 2016 Report*, 9 November 2016, p.15 and *Kosovo* 2018 Report*, 17 April 2018 p. 15.

⁵¹ Balkans Group Interview, KJC official, Pristina, 26 July 2017

amount of cases where statutory limitations had expired before the investigation was conducted, which allowed judges and prosecutors off the hook for their misconduct. New regulations have already been passed at both Councils to further detail the respective internal processes, and the in 2019 KPC published an updated version of the Code of Ethics for prosecutors, but the new system has not been fully rolled out yet. Transitional clauses included in the Law determine that until June 2019 already ongoing processes must be finished in accordance with the old procedure. Only new cases will follow the new system. So far this year, KJC has issued 2 disciplinary decisions for actions committed in 2018, and so the new Law remains unapplied. In both cases the Disciplinary Commission opted for a limited salary reduction.⁵²

Another ongoing problem is the fact that KPC has strongly resisted making any part of their disciplinary process public, even though it has had several judicial setbacks in the past in this regard. In 2016, the Basic Court of Pristina ruled that the KPC must disclose the names of prosecutors who are found guilty of professional misconduct after the prosecution by the ODC.⁵³ Furthermore, the new law specifically enshrined the principle of transparency, requiring both Councils to publish the decision after it becomes final.⁵⁴ Although KJC already included a relevant section on its webpage, clearly visible and in a central location, KPC is still reluctant to disclose this information.

1.5 Corruption in the Judiciary

The judiciary continues to be perceived as one of the most corrupt public institutions by the citizens of Kosovo.⁵⁵ A rotten judiciary cannot be expected to fight the widespread corruption that plagues broader society. It must eliminate internal corruption in order to prosecute the external corruption. The challenge is first to assess how corrupt the judiciary is in reality and in what forms corruption is manifested.

A number of reports produced by international organisations have highlighted the high level of perceived corruption within the Kosovo judiciary.⁵⁶ Yet, few cases for corruption against judicial officials have been initiated, and even when that happens, convictions are scarce.⁵⁷ Worryingly, neither the KPC nor KJC are able to provide any data about the number of judges or prosecutors being investigated or tried; hard data does not exist.⁵⁸ There have been some indictments against judicial or prosecutorial staff, but inconsistent supervision and long judicial processes have limited exposure and no preventive effect. More efforts are required to break the perception of impunity.⁵⁹

A EULEX investigation concluded that corruption is omnipresent throughout the country and its

⁵² See Decisions of the Disciplinary Commission Nr. 1/2019 and 2/2019, available (in Albanian) at <http://www.gjyqesori-rks.org/vendimet-e-komisionit-disiplinor/>

⁵³ As an example, see Ervin Qafmolla, *Kosovo Court Backs BIRN's Transparency Demand*, Balkan Insight, 20 July, 2016 available at <http://www.balkaninsight.com/en/article/birn-legal-victories-set-precedent-for-transparency-07-19-2016>

⁵⁴ Law No. 06/L-057 On Disciplinary Liability of Judges and Prosecutors, article 14.5

⁵⁵ Group for Legal and Political Studies, *RoLPIK*, October 2018, p. 11

⁵⁶ See UNDP *Public Pulse Brief*, February, 2019 and Transparency International *Corruption Perception Index* 2018

⁵⁷ Freedom House, *Freedom in the World*, Washington DC, 2018, available at <https://freedomhouse.org/report/freedom-world/2019/kosovo>

⁵⁸ Both KJC and KPC officials answered that “In my knowledge we don’t have this data” to this question. Balkans Group Interview, KPC Official, Pristina, 12 May 2017 and KJC Official, Pristina 15 May 2017

⁵⁹ In July 2019 the Basic Court of Pristina held the opening hearing in a case against a clerk of the Supreme Court, Bukurije Haxhimurati, who was accused of taking over 13,000 € between 2011 and 2013. The Prosecution had filed an indictment against her in late 2016 (at least 3 years after initiating its investigation) and the trial only began 3 years later.

institutions, including in the judiciary.⁶⁰ EULEX itself has been plagued by allegations of corruption. The lack of transparency in the disciplinary process contributes to the perception that such corruption is widespread. The media frequently reports on allegations of nepotism, bribery, political influence, and other abuses of position.⁶¹

Domestic reports from the Anti-Corruption Agency (ACA) and the Auditor General indicate serious cases of mismanagement within institutions of the judiciary.⁶² There are occasional allegations of blatant forms of corruption, such as bribery, yet corruption in the judiciary also takes more subtle forms. Often, judges or prosecutors are alleged to have given preferential treatment to friends and family, to delay trials, allow the case to pass the statute of limitation, or to alter the outcome of a case because of political pressure. They have been accused of cooperating with members of the government, political parties, or businessowners. These forms of corruption—nepotism and political influence—are far more difficult to prove than the payment or acceptance of cash bribes, making their eradication especially challenging.

Even more worrisome, judges collude by protecting and favouring each other. Such preferential treatment was evident in the case against the Head of the Court of Appeals, who was accused in 2017 of accepting a bribe to release a prisoner. The case was denounced for holding the proceedings under a media blackout; critics saw the move as serving the judge more than the defendant.⁶³ Some judges are regularly seen in businesses that operate out of illegal buildings or have ties to known criminals.⁶⁴

Corruption in the judiciary also extends to how the justice system deals with external cases of corruption (e.g. how they prosecute and decide on cases of corruption). The risk of getting a verdict of imprisonment from a judge for corruption remains low. From January 2016 to December 2018 various courts started trials against 67 people considered high-profile individuals, of which 12 were indicted more than once. Not a single one of these high-profile officials were sentenced to prison during this period.⁶⁵

Prosecutors are often criticised for inefficiency in the fight against corruption. The backlog continues to grow, and statutory limitations have expired on cases against several suspects. Professional misconduct is widespread; civil society has worked on over 600 disciplinary cases against prosecutors for malpractice during preliminary and criminal investigations since 2013.⁶⁶ It is perceived prosecutors

⁶⁰ Jean-Paul Jacqué, *EULEX Report*, Brussels, April 2015, p.17

⁶¹ Kosova Press, *Temporary Suspension for Judge until Criminal Proceedings are Settled*, 27 July 2015, available at <http://www.kosovapress.com/en/elections-2014/security/konfirmohet-suspendimi-i-salih-mekajt-47727/>
 Balkan Insight, *Kosovo outsources Employment Bids Amid Nepotism Wiretaps*, 15 August 2016, available at <http://www.balkaninsight.com/en/article/kosovo-outsources-employment-bids-amid-nepotism-wiretaps-08-15-2016>
 Internews Kosova, *Indictment raised against judge involved in Bribery*, 15 January 2017, available at <http://internewskosova.org/news/corruption/?lang=en>
 RTKLive, *Mungesa e prokurorit shtyn gjykimin ndaj ish-referentes së Gjykatës Supreme [The lack of prosecutor delays the trial against former clerks of the Supreme Court]*, 24 May 2019, available at <https://www.rtklive.com/sq/news-single.php?ID=352170>

⁶² In one case of a KJC tender for car repairs, where an old contract expired and a new one had to be signed, the new contract was six times more expensive than the last one. This example of ballooning of prices is a form of corruption found in the KJC. Balkans Group Interview, Senior Official of the Anti-Corruption Agency, Pristina, 30 September 2015

⁶³ Kosovo 2.0, *Media Blackout on Sali Mekaj*, 22 May 2017 available here <http://kosovotwopointzero.com/en/media-blackout-sali-mekaj/>

⁶⁴ Balkans Group Interview, Legal Advisor, Pristina, 22 December 2016

⁶⁵ See Ehat Miftaraj, Betim Musliu and Hyrije Mehmeti, *Integrity of Justice System in the fight against corruption*, Kosovo Law Institute, December 2018, available at <https://kli-ks.org/wp-content/uploads/2019/01/IKD-Raporti-FINAL-ENG.pdf>

⁶⁶ Ehat Miftaraj and Betim Musliu, *Fighting Corruption without judicial control*, Kosovo Law Institute, March 2018, pp. 5-6 available at https://kli-ks.org/wp-content/uploads/2018/04/2.-Fighting-Corruption-without-Judicial-Control_KLI-Report_english-version-29.03.2018.pdf

allow the statute of limitation on corruption cases to expire, damage evidence or fail to conduct thorough investigations.⁶⁷

The fight against corruption only worsens when indictments do reach the courts. Judges often postpone hearings as parties do not show up, or prosecutors fail to provide full evidence or documentation. Along with other delays, these make courts run slower.

The belief that the country and its judiciary are corrupt is irrefutably high, but how closely this reflects reality remains largely unanswered. In order to tackle the judiciary's corruption problem, both actual corruption and citizens' perception must be addressed together. The only way to improve the standing of the judiciary vis-à-vis the people is through a sustained effort in the fight against corruption. Long, slow processes, lack of interest in conducting thorough investigations and a constant repetition of the minimum possible punishment only strengthen impunity.

To facilitate the fight against corruption, Kosovo passed its first Law on the protection of whistle-blowers in 2011.⁶⁸ That Law, very innovative in the regional context, was heavier in principles than in specific content, and its implementation was always deficient. Although it mandated public institutions to protect whistle-blowers from dismissal and discrimination, in practice that responsibility was not concretized, and consequently did not translate into action. As a result, whistle blowers were routinely dismissed, demoted or even found guilty of committing a crime after they attempted to expose corruption.⁶⁹

In 2018 the Assembly passed a new Law on the protection of whistle-blowers, updating the content of the previous law and including recommendations made by the Council of Europe in the last decade.⁷⁰ The new Law requires all public institutions to designate a responsible official to deal with reports that disclose any information concerning a threat to the public interest. It also defines the obligations of such officials and the institutions themselves, along with their potential responsibilities for failing to fulfil them. Even larger corporations are required to implement procedures for “internal whistleblowing”, and the respective market regulators can also be held accountable for failing to oversee the implementation of the Law.

Overall, the Council of Europe is quite satisfied with the new regulation, which it considers the most advanced in the region.⁷¹ If implemented properly it would represent a substantial step in the fight against corruption, yet it remains to be seen whether the institutions will be capable of applying it as intended, and then force the private sector to abide by it.

Another important institution in the fight against corruption, both within and outside of the judiciary is the Anti-Corruption Agency. The ACA has a broad mandate to oversee state policies against corruption, but it lacks executive powers, so it must rely on cooperating with law enforcement institutions. Since 2011 it has been tasked with controlling the implementation of the Law on Prevention of Conflict of Interest. The current version of this law, adopted in April 2018 in line with EC recommendations, seeks to identify and prevent activities of public officials which may influence their impartial and

⁶⁷ *Ibid.*

⁶⁸ Law 04/L-043 on Protection of Informants (August 2011)

⁶⁹ South East Europe coalition on Whistleblower Protection, available at <https://see-whistleblowing.org/whistleblowers-in-kosovo-struggle-for-protection/>

⁷⁰ Law 06/L-085 on Protection of Whistleblowers (December 2018)

⁷¹ Council of Europe, *Legislation on protection of whistleblowers enters into force in Kosovo**, 2 January 2019, available at <https://www.coe.int/en/web/corruption/-/legislation-on-protection-of-whistleblowers-enters-into-force-in-kosovo->

objective performance of their duties.⁷² The new law is more robust and comprehensive than previous ambiguous versions and as usual with legislation, a strict implementation is necessary to ensure integrity within the judicial structures.

Throughout the years the ACA has seen an increase in reports of corruption, from 130 in 2008 to 390 in 2018.⁷³ Also ex-officio investigations have become more common, according to its annual reports. While this increase is a positive development, the ACA complains that the corruption cases it submits to the justice system are not treated seriously. Moreover, the backlog is being used as an excuse to avoid more complex cases. The ACA constantly complains that its cases against corrupt officials are put aside to deal with old cases according to the plans to reduce the backlog.⁷⁴

In 2018 the ACA transferred 114 cases involving 121 individuals to the State Prosecution and other competent agencies, resulting in 90 indictments filed before the courts. These rendered a punitive judgement on 56 occasions, in most cases imposing fines up to €2,000, and in a few exceptions, imprisonment from 2 to 6 months, which in accordance with the Criminal Code entails a suspended sentence. That means that the convicted person does not enter prison as long as there is no re-offense.⁷⁵ As for those cases that did not continue, the main reason provided to the ACA was withdrawal by the prosecution.⁷⁶

1.6 Training and capacity of judges

The Academy of Justice (AJ), the successor of the Kosovo Judicial Institute, is the institution responsible for training and providing continued legal education for judges, lay-judges, prosecutors and other office holders in the judiciary. Its main activity consists of organising the yearly Initial Training Program (ITP) for newly appointed judges and prosecutors.⁷⁷ According to the law, newcomers to the judiciary go through 12 months of a mandatory initial training followed by a preparatory exam before being appointed as judges or prosecutors.⁷⁸

In addition, the AJ offers a Continuous Training Program (CTP) to assist judges and prosecutors in maintaining updated knowledge. This CTP is reviewed on a yearly basis, which should theoretically ensure that it covers the most pressing issues for the professionals. Attending this courses is voluntary, except for those modules that KJC designates as mandatory. Similarly, the Academy offers other training courses for professionals in the judiciary on an ad-hoc basis. However, no regular professional development programmes similar to that for judges and prosecutors are available for senior civil servants.⁷⁹

Improving knowledge and professional standards increases the quality of judicial work, and consequently, public trust. In practice, this is still problematic as trainings are often out-dated and

⁷² Law No. 06/L-011 On Prevention of conflict of Interest in Discharge of a Public Function (April 2018)

⁷³ International Crisis Group, *Rule of Law in Independent Kosovo*, 2010, p. 4. Anti-Corruption Agency, *Annual Report 2018*, p. 7, available at <https://www.akk-ks.org/en/publikimet/1665/2019/1665>

⁷⁴ Balkans Group Interview, Senior official Anti-Corruption Agency, Pristina, 30 September 2015

⁷⁵ Anti-Corruption Agency, *Annual Report 2018*, p. 13

⁷⁶ *Ibid.* p. 12

⁷⁷ The Initial Training Program started in 2008. In 2019/2020 the ITP is undergoing its 7th generation. By this year, most of the judges and prosecutors in Kosovo have had to complete the course before being appointed, in accordance with the Law. An overview of the Program can be found here https://ad.rks-gov.net/Uploads/Documents/PTE1920En_.pdf

⁷⁸ Article 31 Law 06/L-054 on Courts and Article 19 Law 05/L0-95 on Academy of Justice.

⁷⁹ Sigma and OECD, *Analysis of the Professionalisation of the Senior Civil Service and the Way Forward for the Western Balkans*, Paper 55, 2018, p. 66

professional requirements are inadequate. Participants have criticised trainings for serving little purpose, “I have told the trainer that this training does not reflect our needs”.⁸⁰ To some extent, the institutionalisation of the CTP has started filling that gap, but the AJ needs to strengthen the programme with a less ad-hoc, more structured approach.

It is a task for AJ, KPC, KJC and court administrators to coordinate and design the curricula as stipulated in the law and the Strategic Plan for the Academy of Justice. A supporting training strategy to ensure compatibility and knowledge share between judges, prosecutors and other professional clerks is equally important. Addressing the professional deficit based on carefully identified demands and needs of judges, prosecutors and administrative staff is necessary. As yet, the AJ has no capacity to support those needs. It lacks permanent staff and relies on short-term trainers or ad hoc trainings offered by donors.⁸¹

1.7 Judicial integration of northern Kosovo

Since the declaration of independence in 2008 the Serb majority in the north of Kosovo refused to participate in the State institutions. Rule of Law agencies all but ceased to exist after all cooperation with UNMIK stopped. The Government of Serbia maintained a minimal presence in the area through partially functioning police forces and courts. Cut from Belgrade’s jurisdiction and rejecting Pristina’s, the area became unruly and ultimately was dominated by criminal organisations and strongmen, with only a testimonial presence of the State.

The Dialogue between Pristina and Belgrade started addressing the situation, with successive agreements restoring some semblance of order in the region. Custom checks were reintroduced between Serbia and the region, the existing police forces were brought within Kosovo Police, and in 2017 both countries agreed on the implementation of the justice agreement, which had been pending since 2015.⁸² Within the year the last vestiges of the Serbian judiciary stopped operating and were formally replaced by the Kosovar courts.

Politically, that was a substantial step towards normalising the situation in the region. In practice, the Kosovar institutions had failed to prepare in the years of delay and had to improvise at the very last minute. The Academy of Justice had to design an intensive crash course for the Serb judges and prosecutors to replace the usual ITP; translators had to be hired for the Academy, for the newly reconstituted Basic Court of Mitrovica, and for the Court of Appeals. Not even the infrastructure was ready, and a number of technical decisions had to be rushed in the following months to get the new courts running.⁸³

As a result of this effort the Basic Court and its branches finally became operative during 2018, as the new staff settled and infrastructural projects were completed. For the first time in a decade there is a fully functional judiciary in the northern municipalities of Kosovo, which is no small feat in itself, although structural problems persist.

⁸⁰ Balkans Group Interview, KJC Official, Pristina, 15 May 2017

⁸¹ *Ibid*

⁸² European External Action Service, *Serbia and Kosovo agree final steps for implementation of justice agreement in meeting of EU-facilitated Dialogue*, 1 September 2019, available at https://eeas.europa.eu/diplomatic-network/eu-facilitated-dialogue-belgrade-pristina-relations/31573/serbia-and-kosovo-agree-final-steps-implementation-justice-agreement-meeting-eu-facilitated_en

⁸³ Reze Hoxha and Francisco José García Martínez, *Going south? Integration of Serb Judges and Prosecutors from the North into the Kosovar Justice System*, Group for Legal and Political Studies, Pristina, November 2018, available at <https://www.legalpoliticalstudies.org/wp-content/uploads/2018/11/FINAL-REPORT-Integration.pdf>

The training of Serb officials is still lacking, despite slow but constant improvement. In addition there are not enough professionals with the required background yet. Kosovo Serbs lack a proper legal education adapted to the Kosovo legal system, studying the Serbian curriculum instead; and they have started only recently acquiring experience with the Kosovar judiciary through various internship schemes and the first registrations in the Bar Association.⁸⁴ The language barrier is still a problem, and in fact the Basic Court has started allocating cases according to language, which certainly poses a problem for effective integration, as it fractures the working of the court along ethnic lines. Furthermore, the translation of legal documents, from laws and regulations to case files is still problematic, slow, and often of insufficient quality.⁸⁵

According to the statistics reported by KJC, in 2018 the Basic Court of Mitrovica doubled its staff when the Serb officials joined, and it even managed to reduce its backlog from 10,768 cases to 8,929, a decrease of 17.1%. Yet, access to justice and the execution of decisions remain problematic.

There is no uniform criterion for the acceptance of documents issued by the parallel structures that administered the area during the last decade, and much less for older judicial decisions from the parallel Serbian judiciary. A process needs to be agreed upon and publicised as soon as possible for the sake of legal certainty.⁸⁶ Mistrust between the Kosovar and the Serbian judiciaries persists, and in fact the Serbian courts in Leskovac are still hearing from cases that affect the Kosovo District of Mitrovica, having thus far failed to surrender the archives to their counterparts there.⁸⁷ This poses a clear challenge of jurisdiction and does not contribute to legal certainty either. Thus, formal relations at the court level need to be established and the transfer of cases must be completed without delay.

To further complicate matters, there are still no northern based, Serbian speaking notaries nor private enforcement officers, which make the register of legal documents and the practical implementation of court decisions unreasonably complicated, given the role of both figures in the Kosovo legal system. New selection processes have not taken place in the last two years and should not be further delayed.⁸⁸

1.8 Backlog and Inefficiency

Due to the difficulties of the state building process, the lack of personnel and resources and the constant state of transition, the courts have accumulated a substantial backlog of old cases. Deferrals of cases contribute to the low trust in the judiciary; one judge commented ‘I know a man who began his civil case in 2004 when he had black hair, and he concluded his case in 2013... by then he had grey hair’.⁸⁹ In 2015, when the KJC started compiling integrated statistics, there were 430,923 cases pending resolution through the different stances of the judiciary, a number that rose to 440,832 by the end of that year.⁹⁰ The inefficiency and slowness of the courts affects more than the judicial system, it is also preventing economic growth.⁹¹

⁸⁴ Jovana Spremo, *Integration of Judiciary in the context of Belgrade – Prishtina dialogue and EU accession process*, Lawyers’ Committee for Human Rights, Belgrade, May 2019, available at <http://en.yucom.org.rs/wp-content/uploads/2019/05/Integracija-pravosudja-ENG-za-sajt-1-1.pdf>

⁸⁵ *Ibid*

⁸⁶ Rreze Hoxha and Francisco José García Martínez, *Going South?*, 2018, p. 9

⁸⁷ Jovana Spremo, *Integration of Judiciary*, 2019, p. 24

⁸⁸ Rreze Hoxha and Francisco José García Martínez, *Going South?*, 2018, p. 8

⁸⁹ Balkans Group Interview, Judge in Economic Department of Basic Court of Pristina, Pristina, November 2015

⁹⁰ Kosovo Judicial Council, *Annual Statistical Report of the Courts 2015*, Pristina, February 2016, available (in Albanian) at http://www.gjyqesori-rks.org/wp-content/uploads/reports/RAPORTI%201%20PERGJITHSHEM%202015_22_02_2016.pdf

⁹¹ Ineffective rule of law has taken a toll on the economy. As sluggish, incompetent courts fail to enforce contracts, banks curb their lending practices. “We hear bitter complaints from commercial banks about the judiciary,” says Jan-Peter Olters, World Bank’s

In 2013, the KJC adopted its first strategy to enable Basic Courts to develop individual approaches to tackle the backlog of cases, still applicable.⁹² Several donor-funded and led initiatives have also contributed to reduce the number of unsolved cases, but there are serious concerns that without international assistance the progress will stop.⁹³ The introduction of private enforcement agents also helped with the overall situation as it eased judicial execution, but obtaining a judgement to execute at all remains disorganised and time-consuming. The Ombudsperson calculates the number of court decisions pending implementation to be over 100,000.⁹⁴

On the other hand, the introduction of a new traffic Law in 2016 threatened to collapse the already overburdened courts. The new Law treated traffic fines and sanctions as criminal offenses, requiring a judicial decision on any sanction while substantially hardening the traffic rules, which gave the departments for minor crimes several hundred new daily cases almost overnight. Unsurprisingly, the Law was amended in 2018 to allow Police officers to sanction all but the gravest actions on their own authority.

As a result of the various initiatives in place there has been a marked improvement over the years in dealing with the backlog of cases. In 2019 the number of pending cases at the beginning of the year stood at 245,515, which is 44% less than three years prior. According to Levizja Fol, if the rate of clearance shown in recent years continues and there is no regression from the courts or prosecution, the backlog will be tackled by 2022.⁹⁵ However, Kosovar courts had in 2017 a disposition time (the amount of days needed to solve a case) of 415 days. That more than doubles the European average, which according to the European Commission for the Efficiency of Justice of the Council of Europe (CEPEJ) stands at 235 days for civil matters, 315 for administrative and 138 for criminal justice.⁹⁶ That seems to point towards a brute force approach, where backlog is not being reduced by higher efficiency in the daily work, but simply because of the amount of resources the various national and international actors are throwing to the task, and cast doubts about the sustainability of the judiciary on its own.

An alternative that has been increasingly explored is mediation, an extra judicial mechanism to solve controversies through an impartial mediator. Mediation is a cheaper and quicker solution to solve disputes.⁹⁷ Thus, an effective mediation scheme can substantially ease the workload of the courts, as any case solved through it does not require judicial intervention. Kosovo has had a system in place

country manager for Kosovo. Banks have billions to lend, but lend very little. Mortgages secure only 22 million euros of debt, and a Kosovar seeking a new mortgage loan is more than likely to get turned down. It boils down to the rule of law: it is impossible for banks to enforce a contract or collect on a debt. Courts take too long to issue a judgment, and even then banks fail to capitalise on foreclosures and people refrain from bidding on collateral. Yet “banks could do a lot more to stimulate the economy, if the courts were effective,” notes Olters. Balkans Group Interview, Pristina, September 2015

⁹² Kosovo Judicial Council, *National Backlog Reduction Strategy*, August 2013., available at [http://www.gjyqesori-rks.org/wp-content/uploads/reports/final%20-%20backlog%20reduction%20strategy%20\(1\)%20ENG.pdf](http://www.gjyqesori-rks.org/wp-content/uploads/reports/final%20-%20backlog%20reduction%20strategy%20(1)%20ENG.pdf)

⁹³ Balkans Group Interview, Court Administration Advisor, Pristina, 20 December 2016

⁹⁴ Koha.net, *Avokati i Popullit thotë ka hendikep në sistemin gjyqësor, rreth 100 mijë vendime gjyqësore nuk janë zbatuar* [The Ombudsperson says there is a handicap in the judicial system, around 100,000 judicial decisions are not implemented], 3 March 2019, available at <https://www.koha.net/arberi/148227/avokati-i-popullit-thote-ka-hendikep-ne-sistemin-gjyqesor-rreth-100-mije-vendime-gjyqesore-nuk-jane-zbatuar/>

⁹⁵ Jeton Zulfaj, *Beyond Numbers: The performance of Prosecution and Courts in fight against corruption*, Levizja Fol, Pristina, May 2018, available at <http://levizjafol.org/wp-content/uploads/2018/05/The-performance-of-Prosecutions-and-Courts-in-fight-against-corruption-for-2017.pdf>

⁹⁶ European Commission for the Efficiency of Justice, *European judicial systems. Efficiency and quality of justice 2018 Edition (2016 data)*, CEPEJ Studies No. 26, Strasbourg, October 2018, available at <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c>

⁹⁷ A mediation session costs just 25Euro, Balkans Group Interview, Ministry of Justice Official, Pristina, January 2018

since 2008, and in 2019 a new Law on Mediation was adopted.⁹⁸ However, awareness of alternative dispute resolution (ADR) remains low, though the concept is gaining some traction. The fact that three of the seven regional mediation centres were closed did not contribute either.⁹⁹ Allocating further funds towards raising public awareness and facilitating access to mediation could help deviate more cases from the courts and so reduce the backlog.

1.9 Functional Review of the Rule of Law Sector

Over the last decade, a number of interventions in the judiciary have been undertaken and sectorial strategies have been prepared. Yet, no comprehensive or strategic approach for the development of effective rule of law had been initiated. Nuances of different legal systems are part of the rule of law sector. Ad-hoc reforms, non-coordination of government, justice system and international donors contribute to the overall performance of the judiciary.

In November 2016, the Government started a Functional Review of the rule of law sector to be led by the Ministry of Justice.¹⁰⁰ It is to be the second Functional Review of its kind in the country, but unique in that it is a local initiative with no international oversight.¹⁰¹ There are three components divided into seven pillars. The first component will review the legal framework, the second will examine the institutional setup and legislation, and the third will analyse the cooperation between all the judiciary bodies.¹⁰² The expected output from the Functional Review is a comprehensive sectorial strategy.

The Functional Review was framed within the scope of the SAA, an agreement between the EU and Kosovo that should serve to bring the country closer to EU standards.¹⁰³ After it was launched in 2016 progress stalled while the role and engagement of the international community (who would provide technical support, if the EU or the US) required some discussion. Then the government fell and the Review remained on hold until November 2017. The new government modified the composition of the steering committee and its structure, re-launching the process.¹⁰⁴ The new composition of the steering committee met at the end of February 2018.

The government expected to complete the review in two years from its original launching, and although that deadline is now more than a year overdue it remains official policy.¹⁰⁵ The restructuring in 2017, while delaying progress, did make the process slightly more participatory. There are 160 groups or individuals listed to be part of the relevant working groups, including members of the government, judiciary, President's Office, law faculty, NGOs and donors.¹⁰⁶ It is expected that the review will call

⁹⁸ Law 6/L-009 on Mediation (August 2018)

⁹⁹ European Commission, *Kosovo* 2018 Report*, 17 April 2018, p.16

¹⁰⁰ Government Decision Nr. 07/117, November 2016

¹⁰¹ The first Functional Review was for the security sector in 2013 and was monitored by the international community, Balkans Group Interview, Ministry of Justice Official, Pristina, February 2018

¹⁰² The seven pillars are 1. Consolidation of the legal and institutional framework to advance the rule of law principles 2. Functioning of the judiciary 3. Transformation of the criminal system 4. Advancing the mechanism for access to justice 5. Role of partners and donors 6. Anti-corruption measures 7. Commercial justice. Government Decision Nr. 24/2018, February 2018

¹⁰³ Stabilisation and Association agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo*, of the other part, October 2015, Article 83

¹⁰⁴ The Government Decision Nr. 02/15 from November 2017 removed the State Prosecutor and the Director of Kosovo Intelligence Agency from the steering committee and added a representative from the President's Office, a representative from the Prime Minister's Office and a representative from University of Pristina Law Faculty

¹⁰⁵ Balkans Group Interview, Ministry of Justice Official, Pristina, February 2018

¹⁰⁶ Government Decision Nr. 24/2018, February 2018

for some constitutional changes and to institutionalise mechanisms for anti-corruption.¹⁰⁷ Though as the process continued uncoordinated with other parallel procedures and initiatives the validity and feasibility of the strategy, whenever it finally comes, is dubious.¹⁰⁸ Furthermore, some relevant issues have been left unattended, such as personnel and their regime, the coordination between Kosovo Police and the prosecution services and infrastructural needs.

The new government that forms after the snap elections due to take place in late 2019 should continue the Functional Review and take the opportunity to overcome the various shortcomings, starting with determining a realistic scope and timeframe based on the process so far.

2. JUDICIAL ADMINISTRATION

To really get to the root of the problems in the judiciary, it is not sufficient to focus only on the rule of law; it is necessary to look at the governance, administrative institutions and staff members of the courts. As the judiciary goes through the motions of repeated reforms, mostly under pressure from the EU and other international donors, the vital role that court administration plays is largely ignored. Reforms have not focused on improving the capacities of the administrative staff who comprise the bulk of the justice system. The KJC and KPC fail to hold judges and prosecutors accountable and do not implement internal regulations that would bring needed change. Financial resources and human capital are disbursed recklessly with basic needs left unmet. Unless, and until the administrative side of the judiciary is improved, reforms are unlikely to take hold and the judiciary will continue to fail to perform.

2.1 Size and Structure

The court system in Kosovo is comprised of 7 Basic Courts, the Court of Appeals and the Supreme Court.¹⁰⁹ The Basic Courts are first instance courts and cover the respective districts of Pristina, Gjilan, Prizren, Mitrovica, Gjakova, Peja and Ferizaj. Each Basic Court has smaller local branches to ease access to justice. The Court of Appeal is a second instance, located in Pristina with jurisdiction over the entire territory of Kosovo. As per the agreement on justice with Serbia it has opened a branch in Mitrovica, albeit with low functionality for the time being. The Supreme Court is the highest court in the country and deals with extraordinary legal remedies and third instance review, as well as certain special jurisdictions regarding privatisation and property.

In recent years there has been significant increase in the number of judges. In 2010, after the vetting process, there were 246 active judges.¹¹⁰ At the end of 2018 the number stood at 352.¹¹¹ Furthermore, in January 2019, 37 additional new judges were sworn in, of which 8 were ethnic Serbs, as a result of

¹⁰⁷ Balkans Group Interview, Ministry of Justice Official, Pristina, 3 July 2017 and Balkans Group Interview, Ministry of Justice Official, Pristina, February 2018

¹⁰⁸ Barbara Matias and Francisco José García Martínez, *The Functional Review of the Kosovar Justice System: An Overview of the Process so Far*, Group for Legal and Political Studies, Pristina, October 2018, available at <http://www.legalpoliticalstudies.org/wp-content/uploads/2018/10/GLPS-Policy-Note-Functional-Review-of-the-Justice-System-in-Kosovo-Final.pdf>

¹⁰⁹ Law 06/L-054 on Courts (December 2018), article 8

¹¹⁰ The once off vetting took place in 2009 – 2010, where all judges and prosecutors were tested before reappointment. 450 judges and prosecutors were subject to rigorous testing, background checks and interviews; only 40 per cent of the cohort was reappointed to their positions.

OSCE *Gender Composition of judges and prosecutors in Kosovo*, Pristina, December 2010

¹¹¹ Kosovo Judicial Council, *Statistics of the Courts, Annual Report 2018*, Pristina 2019, available at http://www.gjyqesori-rks.org/wp-content/uploads/reports/Raporti_vjeter_statistikor_per_vitin_2018_mbi_punen_gjykatave_Ang.pdf

the implementation of the agreement on justice.¹¹² This pace is currently outweighing resignations and retirements.¹¹³ Similarly, the supporting staff is increasing, amounting to 1613 people in 2018, 250 more than in 2014.¹¹⁴ Regarding the prosecution, in 2014 there were 128 prosecutors, increasing to 191 by the end of 2018.¹¹⁵

When compared to wider Europe, these figures are in fact above average. There are now 22.6 judges and 11.1 prosecutors per 100 000 inhabitants. According to the CEPEJ, the European average is 21 judges and 11 prosecutors per 100 000 inhabitants.¹¹⁶ Furthermore, the number of non-judge staff per judge in the judiciary is also above average, 4.58 in Kosovo compared to a 3.9 European average. It is worth mentioning that Kosovo, due to historical reasons and the transition to independence has a considerable backlog of cases from the last two decades that other countries do not have to face. The distribution of the workload and the capacities of the existing staff have added to this problem, as the slow pace of work has made reducing this backlog all but impossible.

The selection of judges and prosecutors is criticised for relying on the requirement of experience over other qualifications. Since every candidate must first pass the bar exam procedure, experience in itself does not make a better judge.¹¹⁷ In addition, reforms have been criticised by international officials for being “done in a rush due to the visa liberalisation process” and being poorly written as “in most laws there are no transition clauses”.¹¹⁸ Given the frequency with which the legal framework has changed in the past decade, this led to disorganisation and a state of constant transition, contributing to an already spectacular backlog.

To deal with this backlog and meet the ongoing needs of society, the aim should be to increase the qualifications and skills of the staff. Since November 2016 KJC has worked with USAID to conduct a needs assessment required by the European Reform Agenda.¹¹⁹ In 2018 the council finally managed to complete the action after allocating the last judges to the positions that had been previously identified.¹²⁰

The number of judicial clerks and professional associates, including legal and finance associates for the courts has also been problematic in the past. In 2017 there were 103 clerks in KJC; one professional associate serves to 16-20 judges.¹²¹ Similarly, KPC officials had also complained about the lack of clerks, which dealt with a similar ratio.¹²² In response to this, the new Laws determined

¹¹² Gazeta Express, *Betohen para presidentit 37 gjyqtarë të rinj* [Thirty Seven New Judges are Sworn in Before the President], 21 January 2019, available (in Albanian) at <https://www.gazetaexpress.com/lajme/betohen-para-presie37-gjyqtare-te-rinj-618130/>

¹¹³ European Commission, *Kosovo* 2018 Report*, Brussels, 17 April 2018, p.16, available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

¹¹⁴ Council of Europe *In Depth Assessment*, 2018

¹¹⁵ State Prosecution, *Raporti i Punës 2018* [Work Report 2018], Pristina, February 2019, p. 9 available (in Albanian) at <http://kpk-rks.org/assets/cms/uploads/files/Raporti%20Vjetor%20i%20Pun%C3%ABs%202018%20i%20Prokurorit%20r%C3%AB%20Shtetit.pdf>

¹¹⁶ European Commission for the Efficiency of Justice, *European judicial systems 2018*, 2018

¹¹⁷ Balkans Group Interview, Supreme Court Judge, Pristina, October 2016

¹¹⁸ Balkans Group Interview, EU Official, Pristina, 03 November 2016

¹¹⁹ The European Reform Agenda (ERA) is a joint plan signed in November 2016 between Kosovo and EU that contains 22 priorities and 130 actions in the area of governance, rule of law, economic growth, competitiveness, education and job creation. See further about ERA at Balkans Policy Research Group, *European Reform Agenda for Kosovo: Challenges to the Good Plan*, Pristina, November 2016

¹²⁰ Njoma Mjeku, *European Reform Agenda, Monitoring Report for year 2018*, Group for Legal and Political Studies, Gap Institute and Prishtina Institute for Political Studies, Pristina, February 2019, p.9 available at <http://www.legalpoliticalstudies.org/wp-content/uploads/2019/04/ERA-english-finale.pdf>

¹²¹ Balkans Group Interview, Court Administrator, Pristina, 25 July 2017

¹²² Balkans Group interview, KPC Official, Pristina, 19 October 2017

that each individual judge or prosecutor should have at least a professional collaborator to work with exclusively.¹²³ Defining the requirements and selection of the collaborators is a task for each council, according to the respective laws. This opportunity should be used to bring not just more officials, but better officials.

In the short term, however, and until the required change of mind-set takes place within the judicial administration, the staff of both courts and prosecution services should continue increasing. In order to reduce the backlog, take on the constant flow of incoming cases and free staff for further extensive training, more human resources are required. Mid to long term, once efforts to increase the professional quality of the staff start bearing fruits, these numbers can be gradually reduced with the natural rate of retirement. In fact, at that point, the possibility to offer early retirement should be explored as a way of accelerating the renewal and rejuvenation of the judiciary and the prosecution.

2.2 Budget

Comparatively, Kosovo makes a substantially higher effort than its neighbours. In 2019, the budget of the judicial sector, as defined by the Council of Europe (courts, prosecution and legal aid), amounted to almost 45.5 million euros.¹²⁴ Comparing it with the budget of other countries, along the lines of the CEPEJ Studies, will help frame the relative situation of Kosovo. It is worth noting, however, that the latest figures available compiled and published by the CEPEJ in 2018 correspond to 2016. Data for 2018, which would be more accurately comparable, will not be available until 2020 and a renewed study should be considered then.

Whatever the case, the current budget represents 0.64% of the GDP. For comparison, the average according to the CEPEJ is 0.32%.¹²⁵ However, the figure looks more modest when considering the investment per inhabitant. In this case, Kosovo is allocating €25.25 per capita to justice.¹²⁶ The European average remains far removed at €64, which is normal considering the size of the local economy. However, Kosovo overtakes its neighbours Albania and North Macedonia, who spent €10.4 and €20.2, respectively, even though both economies are larger.¹²⁷

The Prosecution, for its part, receives 31% of the budget allocated to the judicial system (€14 million), which again surpasses the European average, which stands at 24%. This, however, is a common phenomenon in Eastern and South-Eastern European states, where the public prosecution still plays a far larger role than in other regions.¹²⁸ In relative terms, Kosovo allocates €7.87 per inhabitant to its prosecution service, below average (€12) but again surpassing its neighbours and on par with Bosnia Herzegovina.

These figures show that, while there is room for improvement, the State already allocates a substantial amount of money to the judiciary. However, this resource allocation does not seem to be having a tangible impact on the performance of the justice system. After the last reforms, both councils, and the courts, are ultimately responsible for the administration of the budget, without the supervision

¹²³ Law 06/L-054 on Courts, article 39 and Law 03/L-225 on State Prosecutor as amended by Laws 05/L-034 and 06/L-025, articles 12/A and 12/B

¹²⁴ Specifically, the Budget allocated €29,404,466 to KJC, €14,170,065 to KPC, €1,433,309 to the Academy of Justice and €406,135 to the Legal Aid Commission, totalling €45,413,975.

¹²⁵ BPRG calculation based on European Commission for the Efficiency of Justice, *European judicial systems. 2018*, 2018, p. 30

¹²⁶ The Kosovo Agency of Statistics estimates the population the country at 1,798,506.

¹²⁷ European Commission for the Efficiency of Justice, *European judicial systems. 2018*, 2018, p. 26

¹²⁸ BPRG calculation based on European Commission for the Efficiency of Justice, *European judicial systems. 2018*, 2018, p. 57

of the Ministry of Justice. KJC and KPC are, in addition, tasked with drafting the budget for their respective sectors and proposing it to the Assembly.

Since neither council had the capacity to conduct an effective budget planning the transition was somehow chaotic until they could build those capabilities. Currently KJC's budgetary unit has 6 officials, while KPC data is not available.¹²⁹ In late 2017 it had 14 finance and budgetary officials responsible for drafting, management, and execution of the budget.¹³⁰ Not only that, but they have consistently failed to defend their proposals in front of the Assembly, which has resulted in budgets more reduced than those originally requested by the Councils, even if the trend is towards increased funding.

In the last years both councils have started using their new prerogative to increase their resources, and from 2017 to 2019 the budget of the KPC and the prosecutorial system has increased by almost half, while that of KJC and the judiciary has grown by a third.¹³¹ Some experts consider that the total amount of money destined to the Rule of Law remains a negligible fraction of the total budget, which shows a clear lack of political will.¹³² A comparative analysis, however, suggests that the problem is not how much money is spent on Justice, but how it is spent. After all, Kosovo spends more than its neighbours, both per capita and compared to the GDP, and that seems to also point towards insufficient capacities by the judicial and prosecutorial institutions to effectively manage those funds.

Quite commonly judges and other officials highlight salaries as a key area where a greater share of the budget should be spent.¹³³ While it is true that the salaries of judges remained frozen from 2002 until 2010, the Law on Courts of 2011 tied the wages of the judiciary with that of the executive.¹³⁴ Furthermore, the new Law 06/L-111 on Salaries in Public Sector from 2019 aligns the salaries of the justice sector with that of the President of the Republic, which stands at €38,900 gross (€33,282'96 net).¹³⁵

That implies that the Basic Salary of a judge in a Basic Court (an entrance position) amounts to €21,000 gross (coefficient 5.5), four times the average salary, estimated at €5,400.¹³⁶ Furthermore, judges of the Supreme Court earn (as a Basic Salary) around €30,000 (coefficient 7.75), 5.5 times the average salary. According to the CEPEJ, that is well above the average differential across Europe, where junior and senior judges earn in average 2.46 and 4.53 times the average gross salary, respectively.¹³⁷ In comparative terms, a Kosovar judge is better remunerated at the beginning of his or her career than

¹²⁹ Secretariat of the Judicial Council, *Raporti vjetor 2018 [Annual Report 2018]*, Pristina, 2019, p.19 available (in Albanian) at http://www.gjyqesori-rks.org/wp-content/uploads/reports/66835_SKGJK_RAPORTI_VJETOR_2018_SHQ.pdf

¹³⁰ Balkans Group Interview, KPC Official, Pristina, October 2017

¹³¹ Since 2017 the yearly Law on Budget groups the expenditures on the entire judiciary under the KJC, doing the same for the prosecution and the KPC. That year the KPC had a budget of 9.48 M€ which has risen to €14.17 M in 2019, an increase of 49.41%. At the same time, the budget of the KJC has passed from €21.80 M to €29.40 M, rising 34.89%. During this period the entire Budget of the Republic has increased from 2 to 2.38 billion euro, an 18.85%.

¹³² Berat Thaqi, *No Money for the Rule of Law, How Kosovo's Budget Process Affects Judicial Independence*, Centre for European Policy Studies, Brussels, May 2019, available at https://www.ceps.eu/wp-content/uploads/2019/05/LSE2019-06_No-money-for-the-rule-of-law.pdf

¹³³ Balkans Group interview, Legal Advisor, Pristina, 19 January 2017

¹³⁴ OSCE, *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, January 2012, p.18

¹³⁵ Declaration of Property from Hashim Thaçi for the year 2018 registered with the Anti-Corruption Agency, available at <https://akk-ks.org/assets/cms/uploads/files/Deklarimi%20i%20Pasurise/Deklarimet/declaration/2019/Presidencia%20e%20Republikes%20se%20Kosoves/Hashim%20Tha%C3%A7i.pdf>

¹³⁶ Telegrafi, *Kosova me pagën mesatare më të ulët në rajon, Sllovenia më të lartën [Kosovo has the lowest monthly salary of the region, Slovenia the highest]*, 22 February 2018, available (in Albanian) at <https://telegrafi.com/kosova-pagen-mesatare-te-ulet-ne-rajon-sllovenia-te-larten/>

¹³⁷ European Commission for the Efficiency of Justice, *European judicial systems. 2018*, 2018, p. 123

most senior judges in other countries, considering the respective socio-economic conditions.

With regard to the support staff, their situation has been traditionally more delicate, although recent developments have led to a remarkable improvement. In July 2018 judicial workers took part in a general strike to increase their salary in line with the Government and to regulate the status of the administration, among other demands. The strike was called off after six days when an agreement was reached.¹³⁸ Once the new Law entered into force, enshrining the content of that agreement, the lowest administrative position would earn an annual gross Basic Salary of €7,000, still over the national average. Similarly, state attorneys and professional collaborators are now receiving €13,615 gross, reasonably proportional to the salary of judges and prosecutors while still well above the average salary. In these conditions, the status of the supporting staff has been substantially increased, which in theory should help curb corruption and increase the efficiency of the courts.

However, the CEPEJ has previously indicated that they did not see any direct correlation between budget and judicial efficiency.¹³⁹ It would seem that the most pressing need is not increasing the budget, but rather developing short and long term strategies to strengthen the management of the available resources to increase the efficiency of the system.¹⁴⁰

2.3 Formal Education and its Impact on the Judiciary

A recent report has shown that judges and prosecutors are underperforming in regard to their skills and mandate.¹⁴¹ The average age of judges is over 50 years old.¹⁴² They have been shown to lack basic skills and have been inconsistently trained. Older judges, in particular, have been accused of misapplication of law, insufficient writing skills and along with prosecutors an inability or unwillingness to use technology to track cases which consequently weakens the rule of law.¹⁴³

Not only that, but also the younger judges entering the system are ill prepared with out-dated teaching methods and a substandard curriculum. The latest PISA report, a comparative international testing of education systems showed in 2015 that Kosovo's education system yielded some of the lowest results in the world.¹⁴⁴ Without basic reading and analytic skills, students have a hard time digesting and comprehending dense material when they start their legal education.

Law curricula throughout Kosovo are similar; they provide a general legal education based on positive law and the history of law. There is no consideration whatsoever towards technical or professional needs. Legal education consists of formal theoretical lectures, in the form of one-way presentations by professors with little room for active student engagement. Students, and later practitioners, can recite by heart the content of a specific article, but often do not understand what it means. In general, they lack even the most basic understanding of how to apply basic principles to different factual cases,

¹³⁸ Bota Sot, *Administrata e Gjykatave dhe Prokurorive e vendosur në realizimin e kërkesave të tyre [Judicial and Prosecutorial Administration determined to achieve their claims]*, 11 July 2018, available here: <https://www.botasot.info/aktuale-lajme/919439/administrata-e-gjykatave-dhe-prokurorive-e-vendosur-nerealizimin-e-kerkesave-te-tyre/>

¹³⁹ European Commission, *Kosovo* 2016 Report*, 9 November 2016, p 13

¹⁴⁰ Council of Europe, *In Depth Assessment Report*, 2018

¹⁴¹ Center for International Legal Cooperation, Levizja FOJ and Kosova Democratic Institute, *Kosovo Justice Sector Integrity Scan*, December 2017 P.19

¹⁴² According to the KJC, the average age of judges was 55.6 years in 2017. Balkans Group interview, Pristina, June 2017

¹⁴³ "In Kosovo, for example, even the quality of written judicial decisions is widely criticised as reflecting 'poor analytical, research and writing skills.'" Marko Kmezić, *EU Rule of Law Promotion: judiciary Reform in the Western Balkans*, Routledge, New York, 2017

¹⁴⁴ OECD, *PISA 2015 Results* (volume I): *Excellence and Equity in Education*, Paris, 2016

as their knowledge of legal doctrines is formalistic and theoretical.¹⁴⁵ In general, education in law lacks clinical practice, which would equip students with practical skills and experience. Law faculties have made inadequate attempts to add such subjects to the curriculum.¹⁴⁶

All law faculties operating in Kosovo are subject to accreditation and quality assurance procedures, but they have significant autonomy to design the content of the legal curricula. Lax oversight by the Kosovo Accreditation Agency, the institution tasked with ensuring the quality of the higher education sector, contributed to, at best, a mediocre performance by almost all Kosovo universities. Moreover, when the Agency finally attempted to bring some semblance of order to the sector in late 2018, it came under intense heat from the universities and some political actors.¹⁴⁷

Vested interests, a culture of education as a business and a low quality threshold make the Kosovar higher education system irresponsive to the needs of the population and the labour market. With regard to Law, the curriculum must prepare the students that eventually become judges, prosecutors and court administrators. They must not only be taught legal doctrine, but also learn values, legal reasoning and practical application of law. Increasing opportunities for substantive internships and promoting greater exposure to the functions of the legal system will prepare students to work in these areas. Young graduates who pass the Bar Exam should be offered more extensive opportunities, which would contribute to renew the judiciary in the mid-term.¹⁴⁸ Unfortunately, internships are often seen as a source of cheap labour rather than an investment into the future. The judicial and prosecutorial councils, as well as the court administration, must build up their cooperation and capacities with universities and offer all aspiring judicial incumbents comprehensive paid internships.¹⁴⁹

2.4 Administration

The court administration remains a serious obstacle to improving the efficiency of the judiciary. There is a lack of basic professional competencies. As the first point of contact for members of the public, their approach is problematic, largely unprofessional, and often creates an impassable barrier for access to justice.¹⁵⁰

According to the respective reports, more than 1600 administrative staff works in the judiciary, and 565 more in the prosecution. Yet, 560 of them hold only a high school-level diploma.¹⁵¹ The lack of educational qualifications does not alone explain the shortcomings of the administrative staff. In general, there is a clear distinction between older and younger staff. New recruits have law degrees, but often lack practical experience and have little knowledge of judicial work, making older staff more effective while they acquire experience.¹⁵² Older staff, on the other hand, often lack formal

¹⁴⁵ Law education consists largely from textbooks as the main source of knowledge. Case law is almost non-existent, which later reflects in very poor skills in argumentation and practical knowledge, Balkans Group Focus Group, Law Students in UP, 22 February 2018

¹⁴⁶ The majority of courses offered by law faculties in Kosovo often focus on areas that are not essential for students in a contemporary legal setting. Worryingly, there has been no expansion of the curricula in new areas of relevant law, such as Environmental Law, Tax Law, Consumer Law, etc. Balkans Group Focus Group, University of Pristina Law Students, Pristina, 22 February 2018

¹⁴⁷ Rron Gjinovci, *Help Education in Kosovo*, Kosovo 2.0, 30 January, 2019, available at <https://kosovotwopointzero.com/en/help-education-in-kosovo/>

¹⁴⁸ Balkans Group Interview, Law Professor, October 2017

¹⁴⁹ Internships are organised in accordance with the Regulation 08/2017 of the Kosovo Judicial Council, on Interns at the Courts and the Secretariat of the KJC, according to which all internships are unpaid.

¹⁵⁰ Balkans Group Interview, Court Administration Advisor, Pristina, 25 July 2017

¹⁵¹ Balkans Group Interview, KJC Official, Pristina, September 2017 and KPC Official, Pristina, October 2017

¹⁵² Balkans Group Interview, Court Administration Advisor, Pristina, 19 January 2017

qualifications, but have extensive experience working within the system.¹⁵³ Although they are more familiar with existing processes, they are reluctant to adopt new technologies, have a very formalistic approach and are slow paced in the workplace.

There has never been a focus on capacity building of administrative staff, and it takes an excessive amount of time and procedure to remove them for incompetence.¹⁵⁴ The administrative staff at both courts and prosecution are civil servants, with all the protections that position entails.¹⁵⁵ That in theory prevents external meddling in the work of the service, but in practice makes evaluation and oversight very difficult. This leads to a preposterous situation where one KJC official commented that "in case 50 per cent of staff did not show up for work tomorrow, you would not notice because they do not do anything."¹⁵⁶ There is a significant imbalance in the efforts of various administrative staff, with some being highly qualified and diligent and others contributing little to no work at all on a daily basis.¹⁵⁷ Hiring is done in far too many cases on the basis of personal or political connections. Traditionally there has not been any overall assessment of staffing needs; rather, those with hiring power decided they wanted to give a certain person a job and then they found a position for that person.¹⁵⁸ The practice has slightly been curbed by more advanced staff planning techniques, but it facilitated and still contributes to under-performing staff acquiring positions and slowing down or damaging the rule of law.

Many judges and prosecutors believe that corruption is rampant among the court administration. In fact, there were some complaints in 2010 that the vetting process at the time focused exclusively on judges, leaving administrative staff without oversight.¹⁵⁹ But despite the suspicion that administrative support staff play a role in corruption (or even act as primary driver of it), attempts to hold them responsible for misconduct are rare. In 2016, there were 556 referrals of judges for misconduct and only 30-40 referrals of administrative staff.¹⁶⁰

In 2016 the KJC and KPC explored separating their administrative staff from the civil service.¹⁶¹ That proposal was abandoned, as the Union of Administrative Staff within the judiciary strongly insisted on remaining civil servants; the law on civil service offers strong legal protection, life-long jobs and regular salary increases.¹⁶² Nonetheless, the KJC has the authority to set a Code of Ethics for court support employees, including sanctions and even their dismissal.¹⁶³ It should make use of this authority, along with their mandate to issue regulations in order to improve performance. Although some effort has been put into increasing the individual accountability of judges, that of other staff has never been seriously tackled.

¹⁵³ Balkans Group Interview, Court Administration Advisor, Pristina, 20 December 2016

¹⁵⁴ Balkans Group Interview, Court Administration Advisor, Pristina, 20 December 2016

¹⁵⁵ Law 03/L-149 on Civil Servants (May, 2010)

¹⁵⁶ Balkans Group Interview, KJC Official, Pristina, 16 June 2016

¹⁵⁷ Balkans Group Interview, Court Administration Advisor, Pristina, 20 December 2016

¹⁵⁸ Balkans Group Interview, Court Administrative Staff, Pristina, 26 June 2016

¹⁵⁹ Kosovo Law Institute and Forum for Civic Initiatives, *Reappointment Process, Independence and Influences*, Pristina, 2011, p. 17

¹⁶⁰ Balkans Group Interview, Supreme Court judge, Pristina, 16 June 2016

¹⁶¹ The Ministry of Public Administration, the KJC and KPC sent a concept note on the status of administrative staff in 2016 but it was withdrawn as that group realised they would lose privileges. Most likely they will remain as civil servants, but they will have a certain independence from the Ministry of Public Administration as compared to civil servants in other institutions. Balkans Group Interview, Kosovo Judicial Council Official, Pristina, 12 May 2017, Ministry of Justice official, Pristina, 14 February 2018 and KJC Official, Pristina, 21 February 2018

¹⁶² Balkans Group Interview, Kosovo Judicial Council, Pristina, 26 July 2017

¹⁶³ Law 06/L-055 on Kosovo Judicial Council, art 7.1.19

Unless reform takes place, the KJC should work within the existing framework to hold court administration staff accountable for their jobs. The existing rules require regular performance evaluations based on concrete indicators.¹⁶⁴ Yet, performance evaluations take place because the law says so as a tick box exercise; “we conduct performance evaluations every year as we are obliged by the law to do so [...] we agree more or less prior to the evaluation of how to grade each other”.¹⁶⁵ Performance appraisals of staff in the Basic Court of Pristina are generally average.¹⁶⁶ No serious efforts are made by the KJC, KPC or Court administrators to change the arbitrary nature of evaluations, and thus the accountability of the support staff is non-existent.

Capacity building for all court administrators is needed. Many lack basic skills, and there is a strong need for administrative staff to be specialised in complex areas such as economic and financial crime and public procurement.

2.5 Internal Rules and Procedures for Hiring and Performance Evaluation

Neither the KJC nor the KPC adhere to uniform sets of merit-based criteria when “transfer[ring] or promot[ing] judges and prosecutors.”¹⁶⁷ A merit-based evaluation system was only enacted for judges and prosecutors at the end of 2015 with additional refinement in early 2019. The levels of competence and professionalism are still a primary concern.¹⁶⁸ Many judges are inadequately trained and are unwilling to undergo further training or take responsibility for their cases. Yet, as of the end of 2016, all judges have passed verbally their mandatory evaluations.¹⁶⁹ No judge was dismissed for lack of performance between 2000 and 2015.¹⁷⁰ What is more, if the process of evaluation of judges and prosecutors is basic and underdeveloped, the evaluation of other staff has barely started.

Recruitment process over managerial positions in both councils have been another recurring concern. According to the General Auditor, the KJC failed to conduct recruiting procedures to cover managerial positions for several years. Instead, it covered such posts with acting staff, contrary to the legal requirements. It would only be in 2018, after repeated calls to act upon it, that they would put an end to that situation.¹⁷¹ Unfortunately, this kind of practice where the very same judiciary fails to enforce the law even internally is far too common.

Despite reforms, KJC and KPC struggle to guarantee meritocracy in recruitment procedures and promotion. In June 2017, the Constitutional Court annulled the selection of the president of the Supreme Court and the Court of Appeals for not guaranteeing an equal, merit-based, transparent and open voting process.¹⁷² However, the second vote in July 2017 noted a lack of substantive discussion and lack of sufficient reasoning, which demonstrates the unwillingness of the KJC to fully respect the opinion of the Constitutional Court.¹⁷³ These actions further erode public trust in justice institutions.

¹⁶⁴ The Regulation No 10/2012 on civil Servant’s Performance Appraisals determines the criteria and procedures for civil servant’s performance and applies to all institutions while appraising civil servant’s performance results.

¹⁶⁵ Balkans Group Interview, Kosovo Judicial Council official, Pristina, 26 July 2017

¹⁶⁶ There are only two buses for staff in the Basic Court of Pristina which can result in lateness and people are marked down for this, through no fault of their own, Balkans Group Interview, Basic Court of Pristina Official, Pristina, 21 February 2018

¹⁶⁷ Kosovo Law Institute, *Illegality of the judicial and Prosecutorial Council*, Pristina, November 2016, available at <https://kli-ks.org/wp-content/uploads/2016/11/3.-Brief-analysis-Illegality-of-KJC-and-KPC-13.11.2016-1.pdf>

¹⁶⁸ Balkans Group Interview, KJC Official, Pristina, September 2017

¹⁶⁹ European Commission, *Kosovo* 2016 Report*, 9 November 2016, p.15

¹⁷⁰ Balkans Group Interview, Supreme Court Judge, Pristina, October 2015

¹⁷¹ National Audit Office, *Audit Report 2018*, 2019

¹⁷² Decision of the Constitutional Court on the Case no. KI 34/17, 12 June 2017.

¹⁷³ On 25 August 2017, the EU Office in Pristina issued a statement over the process of selection of Supreme Court and Court of

There is also a problem with obtaining professional collaborators for the judges. Currently there is no clear job description, requirements and specific role for the position. Consequently, recruiting collaborators has been hindered by the relatively low level of prestige compared to judgeships. In practice the qualification required for such positions is the same as for judges, while the salary is substantially lower. At present, a candidate judge must have the Bar Exam and 3 years of work experience, plus passing the judge examination to be appointed.¹⁷⁴ Since KJC has thus far failed to issue a regulation on defining the specific criteria, these requirements (minus the specific exam) are being applied *mutatis mutandi* to collaborators.¹⁷⁵

The 2009–2010 vetting process flushed out more than 50 per cent of judges and prosecutors who failed the tests or background checks.¹⁷⁶ That shows how the lack of systemic, constant and rigorous performance evaluation and accountability mechanisms harm the sustainability of institutions, and should serve as a lesson for both KJC and KPC. Long-term it is easier to regularly hold the staff to the highest standard than partially dismantle the organisation when the situation becomes untenable.

2.6 Decentralisation of the Courts

In response to the claim that KJC exercised far too much decision-making power over the work and needs of individual courts, decentralisation was lauded as indispensable to increasing performance in 2014.¹⁷⁷ This manoeuvre shifted responsibilities for human resources, public procurement, budget and finance and logistics from the Council directly to the courts. Along with the competences, staff were transferred from the KJC to support the courts with their new obligations.¹⁷⁸

However, as it is often too common, no proper analysis was done, nor training provided for the court staff prior to decentralisation. In addition, the transition period was poorly planned. Courts were unable to hire new staff for six months, resulting in staffing gaps in KJC and the courts.¹⁷⁹ Public Procurement, especially, became very problematic with the transfer, as there was a significant shortage of procurement officials in the courts, since up until then KJC had dealt with the issue.¹⁸⁰ From fully centralised to fully decentralised within a very short period of time, the courts and their staff were unprepared for the new tasks and were overloaded with work.¹⁸¹ President-judges were given too much power and were now involved in senior administrative duties and sitting on the recruitment panel, which is in flagrant violation of the law.¹⁸²

Appeals presidents emphasising lack of reasoning over the decision and lack of transparency.

¹⁷⁴ Law 06/L-054 on Courts, article 30.

¹⁷⁵ The figure of the professional collaborator was first introduced by the Law 03/L-199 on Courts, whose article 33 tasked KJC with issuing a specific regulation defining the position. The new Law on Courts reproduces that mandate in article 39, yet KJC has not yet fulfilled it, 9 years after first receiving the task.

¹⁷⁶ OSCE, *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, Pristina, January 2012

¹⁷⁷ Kosova Live 360, statements from the conference on “Review, Analysis and Reporting on the Process of Judicial Work During 2014 and Plans for 2015”, 14 November 2014, available at <http://www.kosovalive360.com/decentralizimi-i-gjykatave-i-domosdoshem.html>

¹⁷⁸ Following decentralisation, KJC had to move 22 procurement, finance and admin staff to the courts to help them extend their competences, Balkans Group Interview, KJC Official, Pristina, 19 September 2017

¹⁷⁹ Balkans Group Interview, Basic Court Pristina Official, Pristina, 21 February 2018

¹⁸⁰ Only eight procurement officials worked in Basic Courts, the Court of Appeal and the Supreme Court.

¹⁸¹ Balkans Group Interview, Official Basic Court of Pristina, Pristina, 25 July 2017

¹⁸² Balkans Group Interview, Official Basic Court of Pristina, Pristina, 25 July 2017

Unsurprisingly, proposals to revert the decision on decentralisation of the courts quickly gathered support within the Ministry of Justice and the KJC.¹⁸³ The latter conducted an analysis of the effects of decentralisation and deemed the process unsuccessful.¹⁸⁴ The report published by the Court Performance Review Unit recommended the process to be reduced or revoked.¹⁸⁵

Initially president-judges of the Basic Courts were in favour of the reversal but as administrative capacities were developed they turned against the initiative.¹⁸⁶ The Basic Court of Pristina, as an example, recruited 142 personnel for various positions in a process that was described as more transparent.¹⁸⁷ Before decentralisation the courts needed permission to make the smallest of purchases, whereas now they are much more autonomous.¹⁸⁸ Decentralising procurement has also led to an increase in smaller companies being able to bid for proposals, but can also increase the possibility of corruption.¹⁸⁹

The courts understood the need to address the power distribution and were willing to discuss options within decentralisation.¹⁹⁰ As a result, KJC issued an Administrative Instruction in June 2019 defining the distribution of responsibilities between the Secretariat of the Council and the respective offices of the courts in the fields of human resources, budget and procurement. Overall, the resulting design leaves the courts a wide margin to plan and conduct their own policies, with KJC performing oversight and coordination.¹⁹¹ For instance, KJC will define the terms of employment for new hires and approve both launching the call and the final appointment, but the selection process will be managed by the court itself through a mixed commission in which the majority will be held by court staff.

This should put an end to the chaotic situation that followed decentralisation, where the courts improvised selection and procurement procedures under the President-Judges, who were at that point acting as some sort of chief administrator without any structured process. However, a proper implementation of the Instruction requires that the Secretariat of the KJC exerts effective oversight, and does not limit itself to rubberstamping and approving any decision taken by the decentralised administrations. In order to increase transparency and even public trust, KJC should explore the possibility of opening participation to external actors, such as international experts or trusted representatives from civil society, as a way of ensuring due process. This could be modelled on the practice of having experts participating in selection procedures for key public positions.¹⁹²

2.7 Case Management and Information System

Several different case file management systems, supported by various international donors, were

¹⁸³ Balkans Group Interview, KJC Official, Pristina, July 2017 and Ministry of Justice Official, Pristina, September 2017

¹⁸⁴ Balkans Group Interview KJC Official, Pristina, 19 September 2017 and Balkans Group Interview KJC Official, Pristina, 21 February 2018

¹⁸⁵ Court Performance Review Unit, Nr.2017/02 *Review on the Functioning of the Delegation of Authorisations from KJC to the Courts (Decentralisation of Courts)*, Pristina, November 2017

¹⁸⁶ Balkan Group Interview, KJC Official, Pristina, 21 February 2018

¹⁸⁷ Balkans Group Interview, Basic Court of Pristina Official, Pristina, 21 February 2018

¹⁸⁸ 'We needed permission to buy even toilet rolls', in reference to the situation before decentralisation of procurement, Balkans Group Interview, Basic Court of Pristina Official, Pristina, 21 February 2018

¹⁸⁹ Balkans Group Interview, KJC Official, Pristina, 21 February 2018

¹⁹⁰ Balkans Group Interview, Basic Court of Pristina Official, Pristina, 21 February 2018

¹⁹¹ Administrative Instruction 01/2019 of the Kosovo Judicial Council on the division of responsibilities of the Secretariat of the KJC and the courts in matters of personnel, budget and finance, logistics and procurement

¹⁹² Since late 2018 British experts have been taking part in the selection process of a wide range of senior positions within the Kosovar administration, reviewing the candidates and making recommendations to the respective selection panel. More on this can be read at <https://www.kosovoselection.org/overview?lang=en>

introduced into the judicial system over the years. The purpose of each of these systems was to improve case administration, but introduced duplicities and incompatibilities. As an example of these digitalisation efforts a National Central Criminal Records System has been introduced with the support of the European Union. This will serve to consolidate the management and oversight of convictions and sanctions, which until now had to be processed manually by judges and prosecutors.¹⁹³ More broadly, a Case Management and Information System (CMIS), supported by the Norwegian government, is now showing real results and the promise of sustainability for the administration of justice. After initiating the project in 2013, CMIS is now in the consolidation phase.¹⁹⁴ The data centre for maintenance of the platform was inaugurated in October 2017 and marked the largest technological investment in the judiciary.¹⁹⁵

Prior to the roll out of CMIS, EU officials flagged the lack of consistent records as a key problem, stating that there was no way to follow what happens with a case, from the initiation of investigation to the final court ruling, as the file would receive a new case number at each step.¹⁹⁶ CMIS finally made operating possible with unique case numbers that track the case from start to finish and automatically create tasks based on each stage of the process. The system is also capable of generating statistical reports. When fully functional across the country, CMIS should increase transparency and efficiency of the judiciary. Every court official will be held accountable by the system.¹⁹⁷

As funding partner, Norway signed an agreement with the government, the KJC and the KPC to support CMIS, pledging around €5 million from 2013 – 2018 and later extending it until 2021.¹⁹⁸ Unlike many other judicial reforms, for once there is a strong sense of local ownership over the CMIS project.¹⁹⁹ The KJC recognised the need to implement digital administration and introduced a working document in November 2015, which produced a list of actions, including legal changes and regulations, to enable the use of CMIS.²⁰⁰ The majority of relevant laws posed no barrier to the use of CMIS, yet seven laws needed to be amended.²⁰¹ The document noted that Regulation on Internal Court Organisation only allowed manual case management and listed a wide range of changes needed to facilitate electronic case management. It noted that the use of CMIS and other technologies "will contribute to increasing efficiency, reducing the costs of court, and improving communication between Courts and other parties or institutions".²⁰² Although it was expected that the situation would be corrected through 2019, the fall of the government in July stopped the process. Consequently, the Criminal Procedure Code and the Laws on Execution of Criminal Sanctions, Contested Procedure,

¹⁹³ European Union in Kosovo's Facebook page, video on National Central Criminal Records System, accessed 21 August 2019, available at <https://www.facebook.com/watch/?v=2451522281608229>

¹⁹⁴ Balkans Group Interview, Head of ICT Office KJC, Pristina 25 June 2019

¹⁹⁵ Balkans Group Interview, KJC Official, Pristina, 19 September 2017 and 20 February 2018. News coverage on the inauguration of the data centre available at http://kpk-rks.org/en/single_lajmi/1572/inaugurohet-qendra-e-re-e-t-dhnavet-sistemit-gjyqsor-dhe-prokurorial-

¹⁹⁶ Balkans Group Interview, EU Official, Pristina, 3 November 2015

¹⁹⁷ Balkans Group Interview, KJC Official, Pristina, February 2018

¹⁹⁸ Governance Group (prepared for the Norwegian Ministry of Foreign Affairs), *Midterm Review: Case Management and Information System for the Kosovo Judiciary*, 14 November 2016, p.3

¹⁹⁹ *Ibid*

²⁰⁰ KJC and KPC, *Proposal for the Creation, Modification and Supplementation of the Relevant Legal Framework for Implementation of the Case Management and Information System (CMIS)*, November 2015

²⁰¹ These are the Criminal Code, Criminal Procedure Code, Juvenile Justice Code, Law on Execution of Criminal Sanctions, Law on Contested Procedure, Law on Out-Contentious Procedure and Law on Administrative Conflicts

²⁰² KJC and KPC, *Proposal for the CMIS*, 2015, p.4.

Out-contentious Procedure and Administrative Conflicts remain untouched.²⁰³

One of the main practical concerns with CMIS was the average computing competence of the staff. An initial assessment of the IT skills within the courts showed that around 60 per cent needed comprehensive training.²⁰⁴ From 2014 to 2016 introductory training was provided to administrative staff, judges and prosecutors, after which the failure rate for an IT competency test was reduced to around 11% from an initial 25%.²⁰⁵ It was feared that court staff would be resistant to training; however, involving all stakeholders in the design and delivery from the beginning of the project has proven even the sceptical international community that the KJC is capable and competent to implement reforms. While so far the emphasis has been on the quality of the inputs, over time the system can track individual user performance and be used for management purposes.

The launch of CMIS complements recommendations routinely given to Kosovo, giving many hope that it will be successful even after donor support ceases.²⁰⁶ The KJC and KPC have already pledged funds in the midterm budget to take over maintenance of the system and have assigned commissions to monitor ongoing implementation in the courts.²⁰⁷ In addition to financial sustainability, the success of CMIS will depend on other factors, including its compatibility with other software and registries.²⁰⁸ Initial results demonstrate a sharp increase in resolving cases as a direct impact of the new system. Through the first half of 2019 the registration of cases in the system took place across Kosovo, and CMIS is now functional in the Criminal and Civil jurisdictions.²⁰⁹ The KJC should utilise the momentum of this project and the fact that it enjoys broad local support, to push forward on rolling out the system.

²⁰³ During 2019 the Criminal Code and the Juvenile Justice Code were replaced with newer versions that no longer pose a problem for the implementation of CMIS. However, the Criminal Procedure Code and the Law on Execution of Criminal Sanctions were still going through parliamentary procedure, and the other 3 had not yet been presented by the Government for consideration.

²⁰⁴ Balkans Group Interview, KJC official, Pristina, 16 June 2016

²⁰⁵ Balkans Group Interview, KJC official, Pristina, 19 September 2017

²⁰⁶ Governance Group, *Midterm Review*, 2016, p.3

²⁰⁷ Balkans Group Interview, Head of ICT Office KJC, 25 June 2019

²⁰⁸ CMIS should be compatible with other electronic systems used by line ministries, notaries, private law enforcement agents, Kosovo Bar Association etc.

²⁰⁹ Kosovo Judicial Council, *Kosovo Judicial Council successfully completes activities foreseen for implementation of CMIS for the first half of 2019*, 8 August 2019, available at <http://www.gjyqesori-rks.org/2019/08/08/keshilli-gjyqesor-i-kosoves-permbyll-me-sukses-aktivitet-e-parapara-per-zbatimin-e-smil-per-gjashtemujorin-e-pare-te-vitit-2019/>

CONCLUSION

The justice system has made some improvements since independence in 2008. The onetime vetting of judges and prosecutors, the introduction and subsequent reinforcement of both KJC and KPC, the decentralisation of the courts and the integration of Serb judges have led to greater alignment with international standards. At the same time, this constant evolution meant the judicial sector was always dealing with something other than delivering justice.

EU requirements within the scope of visa liberalisation have also resulted in better coordinated laws and a more robust Criminal Code, but significant challenges remain. The judiciary is still not independent, accountable nor efficient. Even with the contribution of international partners, the justice system is beset with deficiencies that hamper the functioning of rule of law. The backlog of cases and poor inter-institutional coordination makes the administration of justice slow, inefficient and unhelpful to the citizens.

The system is vulnerable to political interference. Nepotism in the hiring process still plague the sector, resulting in a low performance, not to mention the poor perception it generates. Performance evaluation is a mere formality and has no impact on promotion or demotion, leaving many unmotivated to perform their jobs adequately.

Quick fix solutions do not really exist. Increasing the budget and the staff numbers will not, by itself, change the way the system performs. Mentalities within the justice sector must be changed. Hiring and promotion must be done on the basis of qualification and performance, not on personal or political connections. Increasing the capacities of administrative staff, judges and prosecutors must be a top priority and these groups must be open to implementing modern, efficient procedures. Future reforms should adopt a comprehensive approach and should address the deficiencies at all levels, not just the top.

Lessons must be learned from ill-conceived planning, such as the chaotic transition towards decentralisation, and comprehensive studies should be the basis for all major decisions. Transparency and accountability are demanded by citizens, and must be delivered by all judicial institutions. Implementation of the CMIS will help to solve some of these issues, and thus it must continue being a priority. The institutional capacities of the agencies and institutions need to dramatically increase and alternative dispute resolution should be resourced and promoted to assist dealing with the backlog.

It is essential that the Ministry of Justice and the judiciary take advantage of the European drive and pressure to strengthen the rule of law. This requires buy in from all levels of society, where the citizens also have a role in ensuring that the rule of law is upheld in Kosovo.

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