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Corruption risk assessment of the Kosovo judicial system

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

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I. EXECUTIVE SUMMARY

1. The present report sets out an assessment of the areas of corruption risks in the Kosovo judicial system and makes recommendations for reform.

2. Recommendations for reform are guided by international standards on effective judicial systems and draw on information and analysis collected from a series of meetings held between October 2016 and February 2017 with officials from the judiciary, prosecutorial service, police, government, civil service, civil society and international organisations in Kosovo.

3. The report identifies six (6) areas of corruption risks. It sets out the international standards relevant to the corruption risks, provides an analysis of the situation in Kosovo related to each risk and offers recommendations for reform. The six (6) areas of corruption risks are:

1. Legal framework of the judicial system
2. The Kosovo Judicial Council
3. Working life of a judge
4. Court administration and management
5. Case management system
6. Handling corruption cases.

4. Overall the laws and secondary legislation governing the courts and institutions of the judicial system, and the laws and secondary legislation targeting corruption are broadly adequate. There are however gaps in secondary legislation as well as, on occasion, confusing and poorly drafted laws.

5. Crucial procedures, with detailed criteria, for recruiting, appointing, promoting, evaluating, transferring and imposing measures to reprimand or dismiss judges are missing, confusing, poorly drafted or ineffectively implemented by the Kosovo Judicial Council. Judges are not adequately supported to handle ethical dilemmas and lack the appropriate independence to stand up to external interference or criticism.

6. The implementation of anti-corruption laws in Kosovo is hampered by a lack of competence in drafting and adopting efficient secondary legislation; a court system that is clogged by a substantial and growing case backlog, that includes a focus on prosecuting low-level corruption cases, whilst perpetrators of high profile corruption enjoy impunity, as well as dubious prosecutorial and judicial decisions concerning indictments, acquittals and sanctions for corruption.

7. Working conditions for judicial officials and court administrators in Kosovo are mixed: in Basic Courts with newly constructed court buildings the space and equipment allocated to judicial officials and court administrators are adequate, with the exception of Pristina, where there are ongoing complaints by staff about health risks posed by the allegedly poor construction of, and lack of air circulation in, the Palace of Justice. In older court buildings there are cramped registry offices with case files stacked haphazardly on any available surface, a lack of, as well as ill-equipped, courtrooms, and small, poorly furnished and badly equipped judges' offices and court administrators' offices. The conditions in the Mitrovica Basic Court, 'temporarily' located in Vushtri, are particularly grim. Many judges, including judges in the Court of Appeals and Supreme Court have not been provided with computers, which severely hampers their work.

8. The present corruption risk assessment does not set out to expose corruption, but rather to identify 'corruption risk areas' and suggest recommendations for reform. The reforms aim to improve the transparency and accountability, as well as bolster the independence, of Kosovo's judicial system, so that those who seek to act corruptly are not shielded by opaque systems and procedures characterised by poor oversight and mismanagement.

II. INTRODUCTION

1. The PECK II Project

9. Between 2012 and 2015, the joint European Union and Council of Europe Project against Economic Crime (PECK I) implemented for the first time in Kosovo structured assessments of Kosovo's legal and institutional frameworks on anti-corruption, anti-money laundering and combating the financing of terrorism, vis-à-vis relevant international and European standards.

10. In view of the need to continue to support Kosovo institutions in carrying out comprehensive assessments and to provide assistance in implementing specific recommendations from the previous assessment cycles conducted within PECK I, the aim of PECK II is to:

- build on the results and lessons learned from PECK I and support reforms tailored to prevent and combat economic crime;
- assist the Kosovo authorities with the implementation of specific recommendations issued within PECK I;
- carry out a second phased assessment of the Anti-corruption and Anti-Money Laundering/ Combating the Financing of Terrorism frameworks vis-à-vis evolving international and European standards.

2. Scope of corruption risk assessment

11. The present corruption risk assessment analyses the systems and procedures of the Kosovo judicial system, the conduct and integrity of judicial officials as well as key Kosovo anti-corruption laws, to identify the weaknesses, gaps, opportunities, rules and practices that enable judicial corruption, that is, enable judges, professional associates, court staff and other judicial officials to take actions and make decisions that facilitate corruption.

12. The focus of the corruption risk assessment therefore covers two aspects: the risks of corruption occurring because of flaws or gaps in the systems, procedures and practices in Kosovo's courts, court administration offices and judicial oversight and management bodies; and the risks of corruption taking place because of flaws or weaknesses in key anti-corruption laws that enable judges, deliberately or not, to facilitate impunity.

13. The present corruption risk assessment does not set out to uncover or measure the extent of incidents of corruption in the judicial system, rather it intends to present to judicial officials, policy-makers and citizens an explanation of the risk areas where the judicial system and judicial officials are susceptible to being corrupted and what steps can be taken to mitigate those risks.

3. Corruption in the Kosovo judicial system

14. In Kosovo, like all democratic societies, judges play a unique role in upholding the rule of law. They are the final arbiter to whom citizens and officials alike may turn to adjudicate disputes and sanction wrongful or criminal behaviour. The independence of the judiciary as well as judges' personal and professional integrity are essential for commanding public trust in the authority of judges to dispense justice impartially and fairly.

15. As the Venice Commission has pointed out judicial independence is not a privilege of judges that sequesters them from proper public scrutiny and being accountable for their actions, rather it is 'justified by the need to enable judges to fulfil their role of guardians of the rights and freedoms of the people'.¹

16. Corruption in judicial systems may be carried out by employing one or more of the *types* of corruption offences to which judicial systems, like other public sector institutions, are vulnerable. Types of corruption have been detailed in various international legal instruments, principally the United Nations Convention against Corruption (UNCAC), and indeed encoded fairly comprehensively in Kosovo criminal and civil law. Types of corruption include bribery, coercion, abuse of public office by an official, illicit enrichment and nepotism.²

17. Corruption is endemic in Kosovo. In surveys of public perception and experience of corruption, as well as qualitative analyses of corruption in the public and private sector, high levels of corruption have been identified and the public has expressed little trust in public institutions including the judiciary.³

18. Kosovo scores 36 out of 100, where 0 equals most corrupt and 100 equals most clean, in the 2016 iteration of Transparency International's annually published Corruption Perceptions Index.⁴ The low score places Kosovo in the bottom third of most corrupt countries in the world and positions it as slightly more corrupt but on a par with neighbouring countries in the western Balkans: Montenegro (45), Serbia (42), Albania (39), Bosnia and Herzegovina (39) and "the former Yugoslav Republic of Macedonia" (37).⁵ The UNDP's Public Pulse survey reported in April 2016 that the judiciary is considered by 42% of Kosovo citizens as corrupt, placing it as the most corrupt public institution in Kosovo in the perception of citizens.

19. Reports by international organisations as well as NGOs describe how institutions across the public sector, including the courts, are weakened by reports of theft of public money and corrupt behaviour.⁶ The latest EU Progress report states that the '...administration of justice is slow and inefficient, and there is insufficient accountability of judicial officials. The judiciary is still vulnerable to undue political influence and rule of law institutions suffer from lack of funding and human resources.'⁷ The OSCE has regularly published reports on the functioning of the judicial system, including the challenges to judicial independence and the poor quality of its laws and procedures.⁸

20. During the present corruption risk assessment the facts of judicial corruption were presented to judges, judicial officials and others, and their opinions were sought on how to both tackle corruption and improve public confidence in the judiciary. The 'Methodology' section at page 13 sets out in detail the methodology followed during the corruption risk assessment.

¹ Venice Commission (March 2010), *Report on the Independence of the Judicial System Part I: The Independence of Judges*, CDL-AD(2010)004, adopted by the Venice Commission at its 82nd Plenary Session, available at www.venice.coe.int/

² *The United Nations Convention against Corruption*, available at www.unodc.org

³ EU Progress Reports, OSCE reports on the justice system, BIRN, KIPRED and KLI.

⁴ Transparency International (2016), *Corruption Perceptions Index 2016*, available at www.transparency.org

⁵ Europe and Central Asia regional results table (2016), *Corruption Perception Index 2016*, available at www.transparency.org

⁶ BIRN and Internews (2015), *BIRN Kosovo Court Monitoring Report 2015*, available at www.birn.eu.com

⁷ EC Kosovo Report (2016), *Kosovo 2016 Report*, available at ec.europa.eu/

⁸ OSCE (2016); OSCE (2015), OSCE (2012); OSCE (2010), *Intimidation of the judiciary: security of judges and prosecutors*; OSCE (2009), *Litigating ownership of immovable property in Kosovo*, available at www.osce.org

4. Overview of the Kosovo judicial system

21. The Kosovo judicial system has undergone extensive reforms since the end of the 1999/2000 conflict. Until the deployment of the EULEX rule of law mission in 2008, that currently leads on advising the Kosovo authorities on judicial reform, the United Nations Mission in Kosovo (UNMIK) oversaw the reform and operation of the Kosovo judicial system.

22. Before a brief overview of reforms to the Kosovo judicial system is set out here, it should be highlighted that the laws and secondary legislation (such as regulations, directives and administrative instructions, amongst others) pertaining to the organisation and procedures of the Kosovo judicial system as well as Kosovo's anti-corruption laws and secondary legislation, are not titled, collected or cited in official documents in a consistent manner, nor indeed necessarily made available to judges. Similarly, court decisions and final judgements are not collected, published or cited in official documents in a consistent manner, nor necessarily made available to judges.⁹

23. The 'Official Gazette of Kosovo' is published online and endeavours to record and publish all official documents including judgements by the Supreme Court, Court of Appeals and Basic Courts, however it is not comprehensive.¹⁰ The corruption risks posed by the lack of transparency, confusion and disorganisation of official documents will be raised throughout the corruption risk analysis.

24. From 2008 to the present, EULEX has installed international judges in the Kosovo judicial system to 'monitor, mentor and advise' Kosovo judges and ensure the judicial system adheres to international standards. EULEX judges are managed by the 'Assembly of EULEX judges' composed of judges, appointed by the EULEX Head of Mission, who have a special responsibility to ensure judicial independence.¹¹

25. The Constitutional Court of Kosovo was established in 2009. It is responsible for questions of compatibility of laws, decrees, regulations, municipal statutes, proposed referendums, amongst other matters, with the Constitution.¹² The present corruption risk assessment does not cover the Constitutional Court.

26. A one-off comprehensive vetting and re-appointment of judges, as well as prosecutors, took place between 2009 and 2010. Under transitional provisions in the Constitution of Kosovo, the 'Independent Judicial and Prosecutorial Commission', with initially 5, increasing to 10, international commissioners appointed by the President of Kosovo, was established to examine, interview and carry out background checks on judges.¹³ All then practicing judges as well as applicants for new judgeships were obliged to undergo a series of tests including ethics tests.

27. The examination process was marred by criticism that it was not independent and impartial as candidates who failed the test first time round successfully lobbied to have a second test.¹⁴ When

⁹ OSCE reports have raised specific examples of a lack of transparency and confusion in official documents and court decisions that may be attributed to the disruption of the judicial system after the 1999/2000 conflict, a lack of an effective system to collect and publish official documents and difficulties with multilingual translation of documents:

OSCE (March 2009), *Litigating ownership of immovable property in Kosovo*, available at www.osce.org

OSCE (February 2012), *Multilingual Legislation in Kosovo and its Challenges*, available at www.osce.org

¹⁰ *Official Gazette of Kosovo* available at www.gzk.rks-gov.net, accessed on 11 march 2017.

¹¹ Official Gazette of Kosovo (2008), *Law on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo*, Law No. 03/L-053 (OG 27/2008), renamed as 'Law on Jurisdiction and Competencies of EULEX Judges and Prosecutors in Kosovo'; amended and supplemented by Law No. 04/L-273 (OG 32/2014) and Law No. 05/L-103 (OG 21/2016), available at gzk.rks-gov.net/

¹² Official Gazette of Kosovo (2008) *Constitution of Kosovo*, Article 113; Law on the Constitutional Court of Kosovo, Law No. 03/L-121 (OG 46/2009), available at <http://gzk.rks-gov.net/>

¹³ Official Gazette of Kosovo (2008), *Constitution of Kosovo*, Chapter XIV Transitional Provisions, Article 150, available at gzk.rks-gov.net/

¹⁴ *Independent Judicial and Prosecutorial Commission Report*, no available source.

the number of those who passed the second test was even lower than the first test, the Kosovo Judicial Council took the decision to lower the pass mark to enable more judges to qualify. The process was further undermined when, after background checks were carried out by the IJPC, the Kosovo Judicial Council and the President of Kosovo used their authority to reject a number of candidates for judgeships.¹⁵

28. Around 50% of judges serving before the re-appointment process failed the re-application process. All newly appointed judges are appointed for an initial probationary period of 3 years, at the end of which they are evaluated and, if they meet requirements, appointed as permanent judges.¹⁶

29. As of 2016, there are around 350 judges, 31 Professional Associates (with 25 new positions remaining to be recruited) and around 1,500 administrative staff (over 900 are civil servants and the rest are support and technical staff).

30. The below table, taken from documentation supporting the budget for the judicial system, sets out the numbers of staff, as well as the budget allocated, in each court.¹⁷

Institutions	2014		2015		2016		2017	
	Staff	Budget	Staff	Budget	Staff	Budget	Staff	Budget
Kosovo Judicial Council	2,118	€20,833,483	2,118	€21,288,771	2,159	€20,745,490	2,159	€21,797,640
Supreme Court	41	€550,930	89	€1,075,172	88	€1,030,317	93	€1,106,990
KJC Secretariat	2,050	€19,947,619	278	€4,339,398	265	€3,480,604	87	€2,137,259
Court of Appeals			121	€1,193,772	111	€1,126,158	132	€1,308,398
Basic Court of Pristina			416	€3,901,801	452	€3,907,626	479	€4,272,592
Basic Court of Prizren			219	€2,035,314	225	€2,165,094	226	€2,287,084
Basic Court of Gjilan			199	€1,741,531	202	€1,905,745	214	€2,016,864
Basic Court of Ferizaj			163	€1,400,857	168	€1,392,339	173	€1,597,510
Basic Court of Peja			230	€2,017,508	231	€2,102,600	231	€2,154,704
Basic Court of Gjakova			159	€1,387,536	160	€1,436,815	160	€1,501,096
Basic Court of Mitrovica			217	€1,833,147	230	€1,853,342	337	€3,084,772

31. In 2013 the Law on Courts¹⁸ fully entered into force and provided for the reorganisation of the Kosovo judicial system with the establishment of seven Basic Courts (courts of first instance) with 20 branches throughout Kosovo municipalities. A Commercial Court and Administrative Court, operating within the Basic Court of Pristina, serve the entire territory of Kosovo.

32. Appeals from decisions of Basic Courts are heard by the Court of Appeals and appeals to Court of Appeals decisions are heard by the Supreme Court, which is the highest judicial authority in Kosovo. A President Judge is responsible for the 'management and operations' of each Basic Court

¹⁵ OSCE (2012), *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, detailed report on the re-appointment and vetting process, available at www.osce.org/kosovo/

¹⁶ OSCE (2012), *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, available at www.osce.org/kosovo/

¹⁷ The above data is drawn from annual budget laws between 2014 and 2017. In 2013, the KJC had 1,995 approved staff and a budget of €19,910,467.

¹⁸ Official Gazette of Kosovo (2010), *Law on Courts*, Law No. 03/L-199, effective date of 01.01.2013, promulgated by decree of the President of Kosovo on 09.08.2010 (OG 79/2010). It is amended and supplemented by Law No. 04/L-115 (OG 25/2012), Law No. 04/L-171 (OG 37/2012) and Law No. 05/L-032 (OG 17/2015), available at <https://gzk.rks-gov.net>

and for the 'operations' of the Court of Appeals. 'Supervising judges' manage branches of Basic Courts. The President of the Supreme Court is responsible for the 'management and operations' of that court. Since January 2016 administrative responsibilities formerly exercised at the central level by the Kosovo Judicial Council were decentralised to the Presidents of Basic Courts, Court of Appeals and the Supreme Court.

33. Within the Supreme Court sits two special panels: the Appeals Panel of the Kosovo Property Agency¹⁹ and the Special Chamber of the Supreme Court on Privatisation Related Matters.²⁰

34. There are no military courts in Kosovo. The Kosovo Specialist Chambers and Specialist Prosecutor's Office based in the Hague have jurisdiction over war crimes and crimes against humanity connected to war crimes allegedly committed by Kosovo forces (the KLA) around the 1999/2000 conflict.²¹

35. The Kosovo Judicial Council (KJC) is responsible for the management and administration of the courts. Article 21 of the Law on the Kosovo Judicial Council sets out that the KJC 'shall determine the policies and strategies for the efficient and effective functioning of the courts. The Chairperson of the Council shall be the chief administrative official of the courts and, together with the Council, shall be responsible for the efficient and effective operation of the courts.'²²

36. Under the terms of the European Commission 'visa liberalisation' dialogue with Kosovo, Kosovo has committed to adopting and implementing legislation and other measures set out in a 'roadmap' developed in June 2012, in order to advance towards visa liberalisation.²³ The roadmap includes a series of requirements concerning preventing and combating organised crime, corruption and terrorism. The Kosovo Judicial Council is responsible for drafting a series of Instructions and Regulations to implement the Law on Courts and the Law on the Kosovo Judicial Council, two laws out of the four so-called 'package of justice laws' which together require a total of 35 Regulations and Instructions to be adopted in order to be fully implemented.²⁴

37. To date, since 2015, the KJC has issued 25 Regulations, excluding amendments and supplements to existing secondary legislation.

38. In line with the provisions of the Law on Courts and the Law on the KJC, the following issues must be dealt with by secondary legislation drafted and adopted by the KJC: codes of ethics for lay judges and court support employees; the management of the centralised criminal evidence system; rules and procedures on the Conference of President Judges and Supervising Judges; rules and procedures on training of judges; procedures for the General Session of the Supreme Court and procedures and rules for the continuing legal education of professional associates and trainee judges.

¹⁹ Kosovo Property Agency was mandated by UNMIK to solve requests regarding properties linked to the conflict of 1999/2000. For more details, check OSCE (2011), *Challenges in the Resolution of Conflict-related Property Claims in Kosovo*, available at www.osce.org/kosovo/

²⁰ Official Gazette of Kosovo (2011), *Law on the Special Chamber of the Supreme Court of Kosovo on Privatisation Agency related matters*, Law No. 04/L-033 (OG 20/2011), amended and supplemented, available at <https://gzk.rks-gov.net>

²¹ Official Gazette of Kosovo (2015), *Law on Specialist Chambers and Specialist Prosecutor's Office*, available at <https://gzk.rks-gov.net>; see also www.scp-ks.org/

²² Official Gazette of Kosovo (2010), *Law on KJC*, Law No. 03/L-223, effective date of 3 May 2011, promulgated on 30 September 2010 (OG 84/2010). It is amended and supplemented by Law No. 04/L-115 (OG 25/2012); Law No. 05/L-033 (OG 17/2015) and Law No. 05/L-094 (OG 11/2016), available at <https://gzk.rks-gov.net>

²³ EC (2016), *Fourth report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap*, available at <https://ec.europa.eu/>

²⁴ There are four laws in the 'package of justice laws' in Kosovo for which the Kosovo Judicial Council and the Kosovo Prosecutorial Council must draft a series of implementing Regulations: Law on Courts; Law on the Kosovo Judicial Council; Law on the Kosovo Prosecutorial Council and Law on the State Prosecutor. The latest EC Kosovo 2016 Report from November 2016 states that 9 out of the 35 Instructions and Regulations referring to these laws remain to be adopted. See EC Kosovo 2016 Report at <https://ec.europa.eu/>

39. During 2017 the KJC plans to finish drafting and adopting several regulations in relation to the KJC Secretariat Director, Court Performance Unit Director, professional associates, the Commissioner for Electronic Interception, lay judges as well as an administrative instruction on training of judges, prosecutors and administrative staff.

40. The courts and prosecution service are tasked to build up a track record of investigations, final court rulings and confiscations in serious organised crime and corruption cases, 'notably by endowing the central coordinator for serious organised crime and corruption cases with the mandate and resources to lead multidisciplinary teams of financial investigations and to monitor the judicial follow-up of such cases.' The KPC has established an integrated case management system to track a select number of high-profile serious organised crime and corruption crime cases.²⁵

41. Future recommendations for reform should bear in mind the rapid pace of reform of the Kosovo judicial system since 2000. There is a case for affording judicial officials the time to become accustomed to the new procedures by which the courts operate and to focus on improving existing structures rather than introducing new reforms. Similarly, judges must be supported to become proficient in implementing the large amount of recently promulgated substantive and procedural law concerning corruption crimes and other anti-corruption measures.

42. At the same time, there are weaknesses in the judicial system largely due to a lack of, or poorly drafted, secondary legislation to establish procedures and criteria by which crucial decisions within the judicial system are made. It is appropriate that reforms should be reviewed and changes made where necessary.

²⁵ EC (2016), *Fourth report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap*, available at <https://ec.europa.eu/>

III. METHODOLOGY

43. In the present corruption risk assessment of the judicial system in Kosovo, the resilience to corruption of the Kosovo judicial system has been assessed against the extensive body²⁶ of international standards on judicial integrity and judicial independence that has been developed by groups of judges and experts under the auspices of international organisations such as the Council of Europe, the United Nations, the OSCE and the Commonwealth Magistrates and Judges Association.

44. For the purposes of the present corruption risk assessment, 15 relevant sets of international standards for an effective and efficient judicial system are referred to when assessing corruption risks in the Kosovo judicial system:

- 1) Venice Commission 2010 report on the 'Independence of the Judicial System Part I: The Independence of Judges' adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010)²⁷
- 2) Venice Commission 2007 report on 'Judicial Appointments' adopted by the Venice Commission at its 70th Plenary Session (Venice, 16-17 March 2007)²⁸
- 3) Council of Europe recommendation (2010)12 of the Committee of Ministers to Member States on 'Judges: independence, efficiency and responsibilities', adopted on 17 November 2010.²⁹
- 4) United Nations Economic and Social Council 'Basic Principles on the Independence of the Judiciary' (1985)³⁰
- (5) United Nations Economic and Social Council 'Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary' Resolution 1989/60³¹
- 6) the Judicial Integrity Group 'Measures for the Effective implementation of the Bangalore Principles of Judicial Conduct'³²
- 7) OSCE / ODIHR, Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia³³ that deals with 3 aspects of judicial independence: judicial administration by judicial councils, the selection of judges and judicial accountability.
- 8) Consultative Council of European Judges (CCJE) (2001), Opinion No. 1 on standards concerning the independence of judges and the irremovability of judges³⁴

²⁶To date, there is not yet a consolidated collection of standards concerning measures to be taken against corruption in the judicial process.

²⁷Venice Commission (March 2010), *Report on the Independence of the Judicial System Part I: The Independence of Judges*, CDL-AD(2010)004, adopted by the Venice Commission at its 82nd Plenary Session, available at www.venice.coe.int/. See also Venice Commission (2015), *Compilation of Venice Commission Opinions and Reports concerning Courts and Judges*, (CDL-PI(2015)001). This compilation gathers together the key points from numerous opinions and reports/studies concerning individual cases, available at www.venice.coe.int/

²⁸Venice Commission (March 2007), *Report on Judicial Appointments*, CDL-AD(2007)028, available at www.venice.coe.int/

²⁹Council of Europe (November 2010), *Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities*, available at www.coe.int/

³⁰United Nations Economic and Social Council (1985), *Basic Principles on the Independence of the Judiciary*, available at www.ohchr.org/

³¹United Nations Economic and Social Council (1989), *Resolution 1989/60: Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary*, available at www.legislationline.org/

³²Judicial Integrity Group (2010), *Measures for the Effective implementation of the Bangalore Principles of Judicial Conduct*, available at www.judicialintegritygroup.org/

³³OSCE/ODIHR (2010), *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia: Judicial Administration, Selection and Accountability*, available at www.osce.org/odihr/, accessed on 10 March 2017.

³⁴Consultative Council of European Judges (CCJE 2001), *Opinion No. 1 on standards concerning the independence of judges and the irremovability of judges*, available at www.coe.int

9) Consultative Council of European Judges (CCJE) (2001), Opinion No. 2 on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights³⁵

10) Consultative Council of European Judges (CCJE) (2005), Opinion No. 7 on justice and society³⁶

11) CCJE (2014), Opinion No. 17 on the Evaluation of judges' work, the quality of justice and respect for judicial independence³⁷

12) CCJE (2007), Opinion No. 10 on the Council for the Judiciary at the service of society,³⁸

13) CEPEJ Guidelines in the field of the efficiency of justice³⁹

14) JIG Principles of conduct for court personnel⁴⁰

15) United Nations Convention against Corruption (2004)⁴¹

45. The information for the present corruption risk assessment has been gathered to a large extent by interviewing and collecting the informed opinions of judicial officials, other legal actors and civil society actors focusing on the judicial system in Kosovo as well as international donors and observers based in Kosovo, who have first-hand experience of the extent to which laws, regulations, systems, procedures and official practices are enforced and operational. Data has also been collected from existing sources such as laws and regulations in Kosovo and reports by international organisations and NGOs on the judicial system in Kosovo. A full list of courts and institutions with which the Council of Europe expert (CoE expert) met or visited is provided in Annex 1.

46. The Council of Europe and European Union office in Pristina commissioned a local legal expert, Ms Edita Kusari, to prepare a background paper on the key corruption issues concerning the Kosovo judicial system.⁴²

47. The Council of Europe engaged two international experts to carry out a corruption risk assessment of the prosecutorial and judicial systems simultaneously. The CoE experts conducted two on-site assessment missions in October and November 2016 and a focus group in February 2017.

48. From 31 October to 4 November 2016 and from 20 November to 26 November 2016 as well as between 22 and 24 February 2017, the CoE expert on the judicial system conducted interviews with judges and court administrators and related staff in all 7 Basic Courts in Kosovo, the Court of Appeals and the Supreme Court. In addition the CoE expert met with the Kosovo Judicial Council. Some interviews were carried out together with the CoE expert on the prosecution service: interviews with an international EULEX judge and international EULEX prosecutor, officials working in the judicial strengthening unit of EULEX, officers from the corruption unit of the Kosovo Police, the Director of the Office of Disciplinary Prosecutor (also referred to as Office of Disciplinary Counsel), representatives from international organisations, the Agency for Management of Sequestered and Confiscated Assets, the Chamber of Advocates and representatives from civil society organisations.

³⁵ CCJE (2001), *Opinion no 2 (2001) of the Consultative Council of European Judges*, available at www.coe.int

³⁶ CCJE (2005), *Opinion No. 7 on 'justice and society'*, available at www.coe.int

³⁷ CCJE (2014), *Opinion No. 17 on the Evaluation of judges' work, the quality of justice and respect for judicial independence*, available at www.coe.int

³⁸ CCJE (2007), *Opinion No. 10 on the Council for the Judiciary at the service of society*, available at www.coe.int

³⁹ CEPEJ, *Guidelines in the field of the efficiency of justice*, available at www.coe.int/

⁴⁰ JIG (2004), *Principles of conduct for court personnel*, available at www.judicialintegritygroup.org/

⁴¹ *United Nations Convention against Corruption*, available at www.unodc.org/

⁴² Council of Europe (October 2016), *Technical Paper: Preliminary assessment in identifying potential corruption risks and vulnerabilities in the Kosovo judicial system*, Ms Edita Kusari, Council of Europe expert, ECCD-PECKII-TP-06/2016.

49. The Council of Europe expert posed closed as well as open-ended questions to interlocutors concerning the 6 (six) areas of corruption risks set out in the present report, that included the issues highlighted in the local expert's background paper.

50. During the course of interviews additional information became available that was cross-checked with officials interviewed in judicial offices, state agencies and international offices.

51. In some interviews the CoE experts were concerned that the presence of more senior judges, prosecutors or officials could inhibit the information given by more junior judges, prosecutors or officials.

52. The CoE experts on the judicial system and the prosecution service together prepared a follow-up questionnaire for local judges and prosecutors that sought to afford them an opportunity to anonymously share information on concerns and opinions they hold about corruption and its risks in the judicial and prosecutorial systems. The questionnaire was uploaded on an online survey platform, Google Forms⁴³, and sent to judges, prosecutors and administrators via email. Despite repeated requests for responses by the Council of Europe Secretariat, the overall response level to the questionnaire was very poor. Nonetheless the limited response to the questionnaire does not affect the information, findings and recommendations set out in the present Technical Paper. The questionnaire is provided in Annex 2 and a table setting out numbers of recipients and respondents is provided in Annex 3.

53. A final focus group was held between 23 and 24 February in Tirana, Albania with selected judges and judicial officials from Kosovo as well as the President of the Court of Appeals of 'the former Yugoslav Republic of Macedonia' and a first instance judge from Albania. The focus groups enabled the CoE expert to present initial findings as well as get feedback, corrections and further information.

⁴³ www.google.com/forms/about/

IV. CORRUPTION RISK ASSESSMENT OF THE KOSOVO JUDICIAL SYSTEM

54. The present corruption risk assessment of the judicial system in Kosovo sets out six areas of corruption risks:

1. Legal framework of the judicial system
2. The Kosovo Judicial Council
3. Working life of a judge
4. Court administration and management
5. Case management system
6. Handling corruption cases.

55. The assessment of the six areas of corruption risks in the judicial system in Kosovo follows 3 steps:

First, relevant **international standards** on judicial integrity, independence, accountability and effectiveness are set out at the beginning of each section. They serve to guide recommendations on how to mitigate corruption risks and improve the functioning of the judicial system;

Second, the **situation in Kosovo** related to the relevant international standards is analysed based on findings the CoE expert gathered through interviews with key Kosovo judicial officials, international organisations and civil society groups, as well as research of primary and secondary sources of information such as laws, reports and other relevant sources;

Third, where appropriate, **recommendations** for reforms and improvements are made.

1. Legal Framework of the Judicial System

1.1 Guarantee of Judicial Independence

International standards

- Paragraph 22, Venice Commission, Report on the Independence of the Judicial System Part 1: The Independence of the Judges

*The basic principles ensuring the independence of the judiciary should be set out in the Constitution or equivalent texts.*⁴⁴

- Principles 1, 3 and 4, UN Basic Principles on the Independence of the Judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

⁴⁴Venice Commission (March 2010), *Report on the Independence of the Judicial System Part I: The Independence of Judges*, CDL-AD(2010)004, adopted by the Venice Commission at its 82nd Plenary Session, available at www.venice.coe.int/. See also chapters I, II and III of the Council of Europe (November 2010), *Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities*, available at www.coe.int/.

3. *The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.*

4. *There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.*

■ Venice Commission Report on Judicial Appointments (2007)⁴⁵

48. *An appropriate method for guaranteeing judicial independence is the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy.*

Analysis of the situation in Kosovo

56. Formally judicial independence is guaranteed in Kosovo. It is enshrined in Article 102 (2) of the Constitution: 'The judicial power is unique, independent, fair, apolitical and impartial and ensures equal access to the courts' and Article 102(4) of the Constitution: 'Judges shall be independent and impartial in exercising their functions'.⁴⁶

57. Judicial independence is also enshrined in the Law on Courts: article 3(2) states that 'Judges during exercising function and taking decisions shall be independent, impartial, uninfluenced in any way by no natural or legal person, including public bodies'; and article 34 holds that 'Judges shall act objectively, impartially and independently'.⁴⁷ The Kosovo Code of Criminal Procedure in articles 2 and 8 also refers to a 'competent, independent and impartial court.'

58. A number of constitutional and legal provisions provide for institutional systems and procedures to buttress the independence of the judiciary. The Constitution provides for a fair appointment process, states that judges may not be transferred against their will, provides that judges have the right to appeal decisions for their dismissal and holds that judges may not hold positions that would be inconsistent with the principles of independence and impartiality of the role of judges.⁴⁸

59. Article 35 of the Law on Courts prohibits judges from being members of political parties or participating in political activity and from engaging in activities incompatible with the performance of their duties or that may be perceived to interfere with their independence and impartiality. On the other hand Article 32 of the Law on Courts clarifies the type of professional activities that are permissible for judges, which include 'professional organisations, scientific meetings ... lectures or training and participation in the preparation of various legal projects' for which they may receive compensation. Article 32(4) of the Law on Courts states that remuneration for participation in such activities may not exceed 25% of the basic salary and should be disclosed to the Kosovo Judicial Council.

60. Article 29 of the Law on Courts sets out an equitable salary and judicial compensation policy that should enable judicial officials to earn a reasonable living wage comparable to other Kosovo officials, and so minimise the need for them to seek income from other sources that may lead to the compromising of their independence. Article 30 of the Law on Courts gives judges the right to request protection from the Kosovo Judicial Council where their or their families' lives are threatened.

⁴⁵ Venice Commission (March 2007), *Report on Judicial Appointments*, CDL-AD(2007)028, available at www.venice.coe.int/

⁴⁶ Constitution of Kosovo.

⁴⁷ Official Gazette of Kosovo (2010), *Law on Courts*, Law No. 03/L-199, available at <https://gzk.rks-gov.net>

⁴⁸ Official Gazette of Kosovo (2008), *Constitution of Kosovo*, Chapter VII Articles 104, 105, 106 and 108, available at <https://gzk.rks-gov.net>

61. Article 21 of the Law on Courts establishes the Supreme Court as the 'highest judicial authority in Kosovo' with territorial jurisdiction over the entirety of Kosovo.

62. Kosovo has adopted the model of an independent judicial council to oversee the functioning and independence of the judiciary. Article 108 of the Constitution provides for a Kosovo Judicial Council (KJC) to 'ensure the independence and impartiality of the judicial system'. Article 108 states that the KJC is a 'fully independent institution in the performance of its functions' and is mandated to ensure that the courts are independent, professional and impartial as well as 'fully reflect the multi-ethnic nature of Kosovo and follow the principles of gender equality'. The KJC is charged by the Constitution to 'give preference in the appointment of judges to members of communities that are underrepresented in the judiciary as provided by law'.⁴⁹

63. The Law on the Kosovo Judicial Council sets out that the KJC is responsible for the 'recruitment, appointment, reappointment, transfer, discipline, assessment, promotion and training of judges...' as well as 'overall management and administration of the courts; for development of oversight of the budget of the judiciary; and for the establishment of new courts and new branches'.⁵⁰

64. The following sections in the present corruption risk assessment further analyse the above-mentioned institutional aspects of the Kosovo judicial system that can further strengthen judicial independence, and assess how effective they are in practice in creating transparent and accountable systems and procedures that prevent corruption.

1.2 Immunity of Judicial Officers

International Standard

■ Principle 16, UN Basic Principles on the Independence of the Judiciary

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Analysis of the situation in Kosovo

65. Article 107 of the Constitution deals with judicial immunity:

(1) Judges, including lay-judges, shall be immune from prosecution, civil lawsuit and dismissal for actions taken, decisions made or opinions expressed that are within the scope of their responsibilities as judges.

(2) Judges, including lay-judges, shall not enjoy immunity and may be removed from office if they have committed an intentional violation of the law.

(3) When a judge is indicted or arrested, notice must be given to the Kosovo Judicial Council without delay.

66. Article 104(4) of the Constitution properly distinguishes judicial immunity in civil matters concerning judges' exercise of their judicial function, from the necessity to sanction judges where they commit criminal acts: 'Judges may be removed from office upon conviction of a serious criminal offense or for serious neglect of duties.'

⁴⁹ Official Gazette of Kosovo (2008), [Constitution of Kosovo](https://gzk.rks-gov.net), article 108, available at <https://gzk.rks-gov.net>

⁵⁰ Official Gazette of Kosovo (2008), [Law on the KJC](https://gzk.rks-gov.net), Article 1, Law No. 03/L-223, available at <https://gzk.rks-gov.net>

1.3 Independence of judges from external interference in practice

International standards

■ UN Basic Principles on the Independence of the Judiciary

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

Analysis of the situation in Kosovo

67. It is not the intention of the present assessment to uncover corruption. Nonetheless judicial officials were asked directly if they themselves were, or if they knew of any judicial officials who were subject to improper influences, threats or interferences from political officials or others.

68. One President of a court stated that local elected officials such as mayors put pressure on judges through the media to decide on cases in a manner favourable to politically connected persons. The President stated there is 'group pressure on judges by political persons', often applied through newspapers, television and radio stations.'

69. Judicial independence continues to be threatened by the ill-advised practice of individual judges making themselves available for private meetings with members of the public, including parties to cases heard before them. The practice has roots in the welcoming culture in Kosovo society at large but nonetheless it exposes judges to improper influence and can foster the appearance that judges do not exercise their authority in an independent and impartial manner.⁵¹

70. Both prosecutors and defending lawyers should be treated impartially and unequal access to judges outside court hearings should be minimised. Article 9 of the Criminal Procedure Code sets out the principle of equality of parties in procedures. Several articles in the 2016 revised Code of Professional Ethics for Judges (CPEJ) require judges to avoid such situations: article 2 concerning impartiality states 'A judge, in the performance of judicial duties, should treat all parties in proceedings equally without taking favors or manifest bias or prejudice. At all times the judge must be and should appear impartial. Impartiality has to do not only with the decision, but also in the decision-making procedure', while article 3 concerning equality states in 3.2: 'A judge, in the performance of his/her function ensures equal treatment of the parties to the proceedings.'

Recommendations

71. It is recommended that senior political officials including the Minister of Justice, as well as spokespersons for the judiciary, including the President of the KJC, speak out publicly against the intimidation of judges, publicly condemn personalised media attacks on the judiciary and individual judges and demonstrate their support for an independent judiciary.

⁵¹ The compromising position in which judges in Kosovo place themselves with regards to meeting with members of the public and parties to ongoing cases, has been reported on regularly by the OSCE. OSCE (January 2012), *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, available at www.osce.org/kosovo/

72. It is recommended that international organisations continue to support training programmes for the media on the role of the judicial system in Kosovo society including advice for journalists on how to report on the work of courts and individual cases, as well as how to hold judges and courts accountable, without interfering in the judicial process or compromising the independence of the judiciary.

73. It is recommended that judges are reminded by Court Presidents as well as by CPEJ related trainings on the risks of *ex parte* communication and their obligations to disclose such communications.

2. The Kosovo Judicial Council

2.1 Composition of the Kosovo Judicial Council

International standards

- Council of Europe Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities⁵²

27. *Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.*

- Venice Commission Report on Judicial Appointments (2007)⁵³

50. *A substantial element or a majority of the members of the judicial council should be elected by the Judiciary itself. In order to provide for democratic legitimacy of the Judicial Council, other members should be elected by Parliament among persons with appropriate legal qualifications.*

- OSCE/ODIHR Kyiv Recommendations

Composition of Judicial Councils

7. *Where a Judicial Council is established, its judge members shall be elected by their peers and represent the judiciary at large, including judges from first level courts. Judicial Councils shall not be dominated by appellate court judges. Where the chairperson of a court is appointed to the Council, he or she must resign from his or her position as court chairperson. Apart from a substantial number of judicial members elected by the judges, the Judicial Council should comprise law professors and preferably a member of the bar, to promote greater inclusiveness and transparency [...]*

Analysis of the situation in Kosovo

74. The Kosovo Judicial Council has recently been reformed so that the majority of its thirteen members are elected by peers, rather than, as was previously the case, the Kosovo Assembly.⁵⁴ Constitutional Amendment 25 amends article 108 (6.1) and (6.2) so that seven (7) members of

⁵² Council of Europe (November 2010), [Recommendation \(2010\)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities](https://www.coe.int/t/e/treaties/Recommendation%20(2010)12_of_the_Committee_of_Ministers_to_Member_States_on_judges_independence_efficiency_and_responsibilities.pdf), available at www.coe.int/

⁵³ Venice Commission (March 2007), [Report on Judicial Appointments](https://www.venice.coe.int/web_content/documents/Report_on_Judicial_Appointments.pdf), CDL-AD(2007)028, available at www.venice.coe.int/

⁵⁴ The Council of Europe (2015) – amongst other international organisations and local NGOs - under the PECK I Project previously recommended that the composition of the Kosovo Judicial Council be changed so that a majority of its members are elected by judges and not, as was then the case, by the Kosovo Assembly.

Council of Europe (2015), [Assessment report on compliance with international standards in the anti-corruption area, paragraph 114](https://www.coe.int/t/e/treaties/Assessment_report_on_compliance_with_international_standards_in_the_anti-corruption_area_paragraph_114.pdf), available at www.coe.int/

the KJC are judges elected by the judiciary and six (6) members are elected by the Assembly, with requirements including that two (2) of the six (6) members are from the Serb community and two (2) are from other communities, whilst four (4) of the six (6) Assembly-elected members must also be judges and one (1) must also be a member of the Kosovo Chamber of Advocates. Quorum is nine (9)⁵⁵ and, given the political fragility in Kosovo that affects, in particular, the Assembly's ability to fulfil its constitutional and legal duties, the KJC may not always operate with full membership: indeed, during one period in 2014 the work of the KJC ground to a standstill because of a lack of quorum.

75. The Law on the Kosovo Judicial Council has not yet been amended to reflect the change to the composition of the KJC, although the new composition rules are set out in KJC Regulation No. 17/2015 on amending the regulation No. 02/2015 on election of Kosovo Judicial Council members from the judiciary.

76. As of November 2016, when the CoE expert met with the President of the Kosovo Judicial Council only eleven (11) of the thirteen (13) members of the council were appointed. The terms of two (2) minority members had expired in March 2016 and the Kosovo Assembly⁵⁶ had postponed the appointment of community members to the KJC.

77. When serving judges are elected to the Kosovo Judicial Council they may not serve as court Presidents or be promoted.⁵⁷

78. Under article 9 of the Law on the Kosovo Judicial Council five (5) permanent committees of the KJC are listed and the KJC may establish other permanent or temporary committees as it considers necessary. The five permanent committees listed are:

- Committee for Normative Issues;
- Committee for Budget, Finances and Personnel;
- Committee for Court Administration;
- Disciplinary Committee;
- Judges Performance Assessment Committee.

79. Article 27 of the Law on the Kosovo Judicial Council sets out the functions of the KJC Secretariat that includes preparing a consolidated budget for the judiciary and administering the judiciary's approved budget (article 27.4) and managing the judiciary's administrative and support personnel (article 27.5).

80. The Law on the Kosovo Judicial Council also establishes, under the direction of the KJC and its Committee for Court Administration, the Court Performance Review Unit to 'assess the work of the courts and propose[s] to the Council policies or directives for reforming or improving the work of the courts.'⁵⁸ Regarding the budget of the unit, Article 29.3 states that the 'Secretariat shall provide such budgetary support to the Court Performance Review Unit as the Council may direct'.

⁵⁵ Official Gazette of Kosovo (2010), *Law on KJC*, Article 14.4, available at <https://gzk.rks-gov.net>

⁵⁶ The Kosovo Assembly since the beginning of 2016 has been operating sub-optimally on account of political party opposition to the government's EU-backed agenda concerning relations with Serbia and border delineation negotiations with Montenegro. For a brief overview of the political situation in Kosovo see Freedom House (2017), *Freedom in the World: Kosovo Country Report*, <https://freedomhouse.org/>

⁵⁷ Official Gazette of Kosovo (2010), *Law on KJC*, Article 5(6), available at <https://gzk.rks-gov.net>

⁵⁸ Official Gazette of Kosovo (2010), *Law on KJC*, Article 29, available at <https://gzk.rks-gov.net>

Recommendation

81. It is recommended that the Law on the Kosovo Judicial Council be amended to reflect the changes to the composition of the KJC as set out in Constitutional Amendment 25 that amends Article 108 of the Constitution.

2.2 The role of the Kosovo Judicial Council in drafting adopting and implementing secondary legislation pertaining to the judiciary

International standards

- Council of Europe Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities⁵⁹

28. Councils for the judiciary should demonstrate the highest degree of transparency towards judges and society by developing pre-established procedures and reasoned decisions.

- OSCE/ODIHR Kyiv Recommendations

Transparency of Judicial Administration

10. The Judicial Council shall meet regularly so that it can fulfil its tasks. Public access to the deliberations of the Judicial Council and publication of its decisions shall be guaranteed in law and in practice.

Analysis of the situation in Kosovo

82. The KJC, specifically the Committee for Normative Issues, is tasked with drafting secondary legislation to implement laws concerning the judicial system.

83. The KJC has faced challenges in drafting secondary legislation including a lack of expert legal drafting competence, procedural confusion in the KJC about adopting secondary legislation, particularly regulations, delays in adopting secondary legislation and a culture of amending and re-amending regulations that has stoked confusion and uncertainty about the integrity and functioning of the judicial system. The Kosovo Law Institute that monitors the day to day operation of the KJC including the procedures they employ to debate, draft, adopt, amend and re-amend regulations has catalogued the lack of technical competence including poor legal drafting techniques and poor understanding of the law that has marred the quality and effect of regulations.⁶⁰ The delays, mismanagement and confusion by the KJC in drafting secondary legislation whether due to ignorant incompetence or corrupt design severely undermine the integrity of the judicial system in Kosovo.

84. The following sub-sections refer to and indicate the challenges concerning specific regulations the KJC is required to draft to implement the package of judiciary laws and meet the terms of the EU visa liberalisation process. They include regulations on recruitment, appointment, performance evaluation, promotion, transfer, suspension and removal of judges.

⁵⁹ Council of Europe (November 2010), [Recommendation \(2010\)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities](#), available at www.coe.int/

⁶⁰ See KLI reports (April 2016) and (December 2016)

85. There is a proposal to consider a constitutional amendment to allow for the Constitutional Court to conduct judicial review of KJC decisions and regulations.⁶¹ The proposal is limited to granting standing for judges and candidates for judges, who are directly affected by KJC decisions and regulations concerning career development (vetting, recruitment, appointment, transfer, evaluation, promotion and dismissal⁶²) to seek judicial review by the Constitutional Court.

Recommendations

86. It is recommended that the KJC is supported with expert legal drafting assistance to draft the series of Regulations it is obliged to adopt, to implement the package of laws relating to the judicial system. Assistance should be sought from legal drafters in the Ministry of Justice who have an overview of laws relating to the justice system as a whole, and have received substantial support to improve drafting skills as well as harmonise secondary legislation with existing laws.⁶³

87. It is recommended that the KJC ensures that all secondary legislation is publicly accessible on its website. Not all KJC Regulations and other secondary legislation are currently available at the time of writing the present assessment. The secondary legislation is essential for judicial officials and others to understand judicial procedures for recruitment, appointment, promotion, transfer and dismissal, amongst others, of judges.

88. It is recommended that the Ministry of Justice establish a working group to consider the proposal for a constitutional amendment to enable the Constitutional Court to conduct judicial review of KJC decisions and regulations relating to the career development of judges and judicial candidates.

2.3 Recruitment of judges

International standards

■ OSCE/ODIHR Kyiv Recommendations⁶⁴

Judicial Selection

3. Unless there is another independent body entrusted with this task, a separate expert commission should be established to conduct written and oral examinations in the process of judicial selection ... In this case the competence of the Judicial Council should be restricted to verifying that the correct procedures have been followed and to either appoint the candidates selected by the commission or recommend them to the appointing authority.

4. Alternatively, Judicial Councils or Qualification Commissions or Qualification Collegia may be responsible directly for the selection and training of judges. In this case it is vital that these bodies are not under executive control and that they operate independently from regional governments .

Membership of Bodies Deciding on Judicial Selection

8. Members of special commissions for judicial selection (see para 3) should be appointed by the

⁶¹ EC (2014), *Kosovo 2014 Progress Report*, available at <https://ec.europa.eu/>

⁶² Article 104 of the Constitution granting judges the right to appeal dismissal decisions to the Supreme Court would, following such a proposal, also require amendment.

⁶³ USAID (2015), *Kosovo Effective Rule of Law Program (EROL): Final Project Report*, available at www.usaid.gov/kosovo

⁶⁴ OSCE/ODIHR (2010), *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia: Judicial Administration, Selection and Accountability*, available at www.osce.org/odihr/, accessed on 10 March 2017.

Judicial Council from the ranks of the legal profession, including members of the judiciary. Where Judicial Councils, Qualification Commissions or Qualification Collegia are responsible directly for judicial selection (see para 4), the members should be appointed to fixed terms of office. Apart from a substantial number of judicial members in this selection body, the inclusion of other professional groups is desirable (law professors, advocates) and should be decided on the basis of the relevant legal culture and experience. Its composition shall ensure that political considerations do not prevail over the qualifications of a candidate for judicial office (see para 21).

- Council of Europe Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities⁶⁵

Chapter VI - Status of the judge: Selection and career

44. Decisions concerning the selection and career of judges should be based on objective criteria preestablished by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.

45. There should be no discrimination against judges or candidates for judicial office on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, sexual orientation or other status. A requirement that a judge or a candidate for judicial office must be a national of the state concerned should not be considered discriminatory.

46. The authority taking decisions on the selection and career of judges should be independent of the executive and legislative powers. With a view to guaranteeing its independence, at least half of the members of the authority should be judges chosen by their peers.

47. However, where the constitutional or other legal provisions prescribe that the head of state, the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary (without prejudice to the rules applicable to councils for the judiciary contained in Chapter IV) should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice.

- Venice Commission Report on Judicial Appointments (2007)⁶⁶

48. An appropriate method for guaranteeing judicial independence is the establishment of a judicial council, which should be endowed with constitutional guarantees for its composition, powers and autonomy.

49. Such a Council should have a decisive influence on the appointment and promotion of judges and disciplinary measures against them.

⁶⁵ Council of Europe (November 2010), [Recommendation \(2010\)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities](#), available at www.coe.int/

⁶⁶ Venice Commission (March 2007), [Report on Judicial Appointments](#), CDL-AD(2007)028, available at www.venice.coe.int/

Analysis of the situation in Kosovo

89. Across the Basic Courts visited by the CoE expert in October and November 2016 as well as the Court of Appeals and the Supreme Court, judicial officials reported insufficient numbers of judges to handle caseloads, as well as many vacancies in courts' administration offices. The KJC stated that it requires approval from the Ministry of Finance and Ministry of Public Administration before initiating recruitment processes. As a result there are significant delays in recruiting judges and court personnel.

90. The Law on Courts and Law on the Kosovo Judicial Council oblige the KJC to draft a series of Regulations to implement recruitment and appointment procedures, a requirement that is also necessary for progress towards the EU visa liberalisation process.⁶⁷

91. The KJC has been criticised for amending Regulations to change the criteria and procedures of recruitment processes during the period in which recruitment processes are underway. Regulations (12/2016) and (13/2016) both amended Regulation (05/2016) on recruitment, examination, appointment and reappointment of judges during the 2016 recruitment process of 61 basic courts' judges.⁶⁸ The KJC intervened to lower the pass rate of examinations. The CoE expert interviewed local judicial officials and officials from international organisations who stated that the decision to lower the examination pass rate undermined the integrity of the process and arguably justifies that the recruitment process should be declared void and should be repeated.⁶⁹

92. The key requirement for judicial recruitment processes set out across international standards, is that objective criteria that is 'preestablished by law or by the competent authorities' should be published before a recruitment process begins. Recruitment decisions should be based on the merit of the candidates 'having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity'.⁷⁰

93. There is no international standard that holds examinations as the preferred basis for recruitment of judges. The Venice Commission has commented: 'It could be argued whether the examination should be the sole grounds for appointment or regard should be given to the candidate's personal qualities and experience as well.'⁷¹ Some officials commented that requiring candidates for judgeships to sit examinations, quite apart from the problems with interference in the process and the seemingly lack of ability of sufficient numbers of candidates to pass the tests, is not a reliable indicator of the qualifications, skills and ability of the candidates.

94. Opinions were also expressed by officials interviewed by the CoE expert that the KJC should delegate recruitment processes to recruitment professionals and the KJC's role should be to oversee that procedures are correctly followed.

⁶⁷ EC (2016), *Fourth report on progress by Kosovo in fulfilling the requirements of the visa liberalisation roadmap*, available at <https://ec.europa.eu/>

⁶⁸ See the reports by the Kosovo Law Institute (KLI) of the failings of the KJC to adequately draft Regulations concerning the appointment and reappointment process of judges:

Kosovo Law Institute (KLI): (December, 2016) (April, 2016), *Efficiency, Accountability and Integrity of Judicial System and Prosecutorial System: Analysis of the implementation of legal obligations by Judicial Council and Prosecutorial Council*, available at <http://kli-ks.org/>

⁶⁹ On 6 March 2017 the KJC decided to revoke its decision (131/2016) to lower the pass rate, annul the written test results of 3-4 December 2016 for all applicants and repeat the written test for only 75 out of 176 candidates who obtained 45 points or more (see KJC Decision 47/2017 of 6 March 2017).

⁷⁰ Council of Europe (November 2010), *Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities*, paragraph 44, available at www.coe.int/

⁷¹ Venice Commission (March 2007), *Report on Judicial Appointments*, paragraph 36, available at www.venice.coe.int/

95. The KJC issued a Regulation concerning the appointment of Basic Court Presidents: Regulation No. 09/2016 on the Selection Procedures, Appointment, Evaluation, Suspension and Dismissal of Court Presidents and Supervising Judges. The scope and clarity of the Regulation has been criticised by KLI.⁷² The Regulation covers a range of procedures beyond that of appointing Basic Court Presidents and does not devise a process of appointment particular to Basic Court Presidents, but rather establishes the same process using the same selection criteria as that for the President of the Supreme Court. KLI argues that the criteria for appointing the President of the Supreme Court should be different from Basic Court Presidents, reflecting the different responsibilities of the courts. In addition, KLI points out the poor drafting of the Regulation.

96. The recent process of selecting some court Presidents in 2017, including the Presidents of the Court of Appeals and the Supreme Court, has been criticised by the international community, and demonstrates both the poor quality of Regulations governing court President selection processes, as well as a failure to implement selection procedures in a fair, transparent and independent manner.⁷³

Recommendations

97. It is recommended that the KJC strictly adheres to Decision 47/2017 of 6 March 2017 to conclude the recruitment process for 61 judges begun in 2016. The results of the new written test must be final for the 75 candidates, out of the original 176 candidates who obtained 45 points or more in the initial recruitment process.

98. It is recommended that the KJC drafts separate and different selection criteria for the recruitment of Presidents of Basic Courts, the President of the Court of Appeals and the President of the Supreme Court, reflecting their different roles within the judicial system. Selection requirements should be based on objective criteria, including the merit and integrity of candidates.

99. It is recommended that the KJC revises its arrangements for undertaking recruitment processes of judges. The concern is to devise a process for the recruitment of judges that puts sufficient distance between KJC members and the recruitment process, so that the KJC may not direct a change in the recruitment rules after the recruitment process has begun. One option is to delegate the task of recruitment of judges to a permanent, special commission which has a pre-established procedure and criteria for judicial selection clearly defined by law. Such an arrangement is in line with international standards, set out above in OSCE/ODIHR Kyiv Recommendation 8, that judicial councils should establish 'special commissions' for judicial selection. The special commission could consist of judges and other professionals including professors and jurists. It could also consist of professional human resources recruitment professionals.

2.4 Appointment of judges

International standards

■ OSCE/ODIHR Kyiv Recommendations

Recruitment Process

21. In order to ensure transparency in the selection process, the procedure and criteria for judicial selection must be clearly defined by law. The vacancy note, as well as the terms and conditions, should be publicly announced and widely disseminated. A list of all candidates applying (or at least

⁷² KLI (December, 2016), *Efficiency, Accountability and Integrity of Judicial System and Prosecutorial System: Analysis of the implementation of legal obligations by Judicial Council and Prosecutorial Council*, available at <http://kli-ks.org/>

⁷³ See the letter sent by the US and UK Ambassadors to the Head of the KJC in March 2017 (in Albanian), <http://kallxo.com>

a short list) should be publicly available. The selection body should be independent, representative and responsible towards the public ... It should conduct an interview at least with the candidates who have reached the final round, provided that both the topic of the interview and its weight in the process of selection is predetermined.

23. Where the final appointment of a judge is with the State President, the discretion to appoint should be limited to the candidates nominated by the selection body (e.g. Judicial Council, Qualification Commission or Expert Commission; see paras 3-4). Refusal to appoint such a candidate may be based on procedural grounds only and must be reasoned. In this case the selection body should re-examine its decision. One option would be to give the selection body the power to overrule a presidential veto by a qualified majority vote. All decisions have to be taken within short time limits as defined by law.

- Venice Commission (2010), Report on the Independence of the Judicial System Part 1: The Independence of the Judges⁷⁴

38. The Venice Commission strongly recommends that ordinary judges be appointed permanently until retirement. Probationary periods for judges in office are problematic from the point of view of independence.

- Venice Commission Report on Judicial Appointments (2007)⁷⁵

40. The Venice Commission considers that setting probationary periods can undermine the independence of judges, since they might feel under pressure to decide cases in a particular way. [...]

41. In countries with relatively new judicial systems there might be a practical need to first ascertain whether a judge is really able to carry out his or her functions effectively before permanent appointment. If probationary appointments are considered indispensable, a "refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office".

- Bangalore Principles, 'The Implementation Measures'

13.4 Because the appointment of judges on probation could, if abused, undermine the independence of the judiciary, the decision whether or not to confirm such appointment should only be taken by the independent body responsible for the appointment of judges.

Analysis of the situation in Kosovo

100. The Constitution, the Law on Courts, the Law on the Kosovo Judicial Council and KJC Regulations set out the process for appointing judges including the criteria for selecting judges.

101. Judges are appointed, reappointed and dismissed by the President of Kosovo upon the recommendation of the KJC.⁷⁶ Article 18(2) of the Law on the Kosovo Judicial Council states that if the President of Kosovo refuses to appoint or reappoint any candidate, the President shall within 60 days provide written reasons for the refusal to the KJC. The KJC may submit a refused nominee one additional time to the President, together with its written justification, or propose another candidate.

⁷⁴Venice Commission (March 2010), *Report on the Independence of the Judicial System Part I: The Independence of Judges*, CDL-AD(2010)004, adopted by the Venice Commission at its 82nd Plenary Session, available at www.venice.coe.int/

⁷⁵Venice Commission (March 2007), *Report on Judicial Appointments*, CDL-AD(2007)028, available at www.venice.coe.int/

⁷⁶Official Gazette of Kosovo (2008), *Constitution of Kosovo*, Article 104 and Law on KJC, Article 18, both available at <https://gzk.rks-gov.net>

102. Articles 26 and 27 (4) of the Law on Courts sets out the minimum and specific qualifications that candidates for judges must possess⁷⁷ and Article 17(4) of the Law on the Kosovo Judicial Council sets out a list of criteria that shall be taken into account when nominating a candidate for appointment or reappointment.⁷⁸ Article 22(2) of the Law of the Kosovo Judicial Council additionally states that in appointing President Judges of Basic Courts, the KJC shall take into consideration specialised managerial training or experience.

103. The mechanism of 'presidential appointment or rejection' of candidates for judgeships may enable political interference with judicial independence. During the 2009/2010 reappointment process it has been documented that the President controversially vetoed appointments for unknown reasons.⁷⁹

104. Newly appointed judges are appointed for an initial three-year mandate, after which their performance is evaluated and, if successfully evaluated, they may be re-appointed. Article 105 of the Constitution states that 'The initial mandate for judges shall be three years. The reappointment mandate is permanent until the retirement age as determined by law or unless removed in accordance with law.'

105. The Law on Courts does not explicitly mention the three-year probationary period but alludes to it in article 28/A (1.5), that states that the judge's mandate ends 'if not reappointed with permanent mandate'. The Law on the Kosovo Judicial Council also does not explicitly mention the three-year probationary mandate but, again, alludes to it in Article 19 when describing the

⁷⁷ Official Gazette of Kosovo (2010), Law on Courts, Article 26, as amended by Law No. 05/L-032 (OG 17/2015), available at <https://gzk.rks-gov.net/>

"1. Candidates for appointment as a judge under Article 104 and Article 108 of the Constitution shall meet the general conditions as follows:

- 1.1. be a citizen of Kosovo;
- 1.2. have a Law degree valid in Kosovo;
- 1.3. have passed the bar examination accredited according to the applicable law in Kosovo;
- 1.4. have high professional reputation and personal integrity;
- 1.5. not have been convicted of a criminal offence;
- 1.6. have at least three (3) years of experience in the legal field; and
- 1.7. have passed the exam for Judge, in accordance with the terms and procedures set by a special regulation adopted by the Council.

2. For the purpose of this Article, experience in the legal field shall include experience on legal matters in national and international institutions and organisations, experience as a notary and as a private enforcement agent."

In addition to the minimum qualifications above, Article 27 (4) sets the following specific qualifications for candidates to be appointed or promoted as judges:

- "4.1. to serve as a judge in the Serious Crimes Department or for Juveniles within the Basic Court, the candidate shall have at least three (3) years of experience as a judge in the criminal field or as a prosecutor;
- 4.2. to serve as a judge in the Department for Administrative Matters or Department for Commercial Matters in the Basic Court, the judge shall have at least six (6) years of experience in the legal field including experience in administrative and commercial matters;
- 4.3. to serve as a judge in the Court of Appeals, the judge shall have at least five (5) years of experience as judge;
- 4.4. to serve as a judge in the Supreme Court, the judge shall have at least eight (8) years of experience as judge."

⁷⁸ Official Gazette of Kosovo (2010), *Law on KJC*, Article 17, available at <https://gzk.rks-gov.net/>

- "4.1. professional knowledge, work experience and performance, including an understanding of, and respect for human rights;
- 4.2. capacity for legal reasoning as proven through professional activities in the legal field, including as a judge, prosecutor or lawyer, academic work and other professional activities;
- 4.3. professional ability based on previous career results, including participation in organised forms of training in which performance has been assessed;
- 4.4. capability and capacity for analysing legal problems;
- 4.5. ability to perform impartially, conscientiously, diligently, decisively and responsibly the duties of the office;
- 4.6. communication abilities;
- 4.7. conduct out of office; and
- 4.8. personal integrity."

⁷⁹ Council of Europe (2015), *Assessment report on compliance with international standards in the anti-corruption area*, available at www.coe.int/

performance assessment requirements for judges, where newly appointed judges with ‘initial term’ are evaluated at least twice: ‘once after the initial training and once at the end of the initial term’, where the ‘initial term’ is taken to mean the three-year probationary period. The OSCE has commented that ‘the difficulty with such probationary periods is that they presumably apply a lower threshold for dismissal than those facing permanent judges; otherwise, there would be little need for the probationary period.’⁸⁰

106. Re-appointment after the probationary period is confirmed or rejected by the President of Kosovo.⁸¹ The President has therefore two opportunities to reject a recommendation for appointment of a judge by the KJC, which raises concerns about the potential for undue executive interference with judicial independence. In addition, the three-year probationary period for newly appointed judges may impede their independence and subject them to pressure to perform in ways that will ensure re-appointment.

Recommendations

107. It is recommended that the President’s decision to refuse a nominee should be in accordance with prescribed criteria upon which the President can refuse a nomination and delivered to the KJC in a timely and transparent manner. In addition, there should be clear grounds on which a rejected nominee for a judgeship can appeal the President’s decision.

108. It is recommended to consider reviewing the probationary system of appointment of judges which envisages an initial 3-year term prior to final confirmation for tenure.⁸² Options include a constitutional amendment that judges are appointed permanently until retirement or, where the probationary period is considered necessary in Kosovo, a legal guarantee that ‘refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office’.⁸³

2.5 Vetting of judges before appointment and on promotion

International Standard

■ OSCE/ODIHR Kyiv Recommendations

22. “If there are background checks, they should be handled with utmost care and strictly on the basis of the rule of law. The selecting authority can request a standard check for a criminal record and any other disqualifying grounds from the police. The results from this check should be made available to the applicant, who should be entitled to appeal them in court. No other background checks should be performed by any security services. The decision to refuse a candidate based on background checks needs to be reasoned.”⁸⁴

⁸⁰ OSCE (2012), *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, available at www.osce.org

⁸¹ Official Gazette of Kosovo (2010), *Law on KJC*, Article 18.1: ‘The President shall appoint and reappoint (author’s emphasis) judges and lay judges upon the proposals of the Council and in compliance with the Constitution and the law.’ available at <https://gzk.rks-gov.net>

⁸² Council of Europe (2015), *Assessment report on compliance with international standards in the anti-corruption area*, available at www.coe.int/

⁸³ Venice Commission (2005), *Opinion on Draft Constitutional Amendments concerning the Reform of the Judicial System in “the Former Yugoslav Republic of Macedonia”*. CDL-AD(2005)038, par.30. See also Task Force on European Integration (undated draft paper), *Discussion paper on justice system in Kosovo*, available at www.mei-ks.net/

⁸⁴ OSCE/ODIHR (2010), *Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia: Judicial Administration, Selection and Accountability*, available at www.osce.org/odihr/, accessed on 10 March 2017.

Analysis of the situation in Kosovo

109. The CoE expert reviewed Kosovo laws and interviewed judges, officials in the KJC Evaluation and Verification Unit and officials in international organisations based in Kosovo about the procedure for vetting judges before appointment and upon promotion.

110. There is no procedure or criteria for vetting judges set out in the Law on Courts or the Law on the Kosovo Judicial Council. There is no secondary legislation, namely a Regulation drafted by the Kosovo Judicial Council, setting out the procedure for vetting judges or the criteria by which they should be vetted. The risk of candidates for judgeships or judges seeking promotion being barred from appointment or promotion because of unethical or illegal vetting procedures is high. Furthermore, there is no clear legal obligation to inform candidates for judgeships of the results of information collected during vetting procedures and background checks. At the same time the lack of set criteria by which candidates for judgeships or promotion within the judiciary are checked or vetted, increases the risk that candidates who engage in unethical behaviour or have inappropriate backgrounds are selected for the judiciary.

111. After the 2009/2010 re-appointment process for judges, the responsibility for vetting of candidates for judgeships was transferred from the IJPC, the body that vetted candidates for appointment or re-appointment to the judiciary, to the KJC Evaluation and Verification Unit.

112. Currently, despite the lack of a legal basis for vetting procedures, the Unit prepares a file on each candidate which is considered by the KJC Evaluation Committee. Until 2013 the evaluation included a review of a candidate's financial assets, which were verified by the Financial Intelligence Unit. Now it is only upon appointment, and not during the pre-appointment vetting process, that judges' financial assets are checked. Once appointed judges are obliged to submit a declaration of their assets to the Anti-Corruption Agency. However, the ACA only has the capacity to verify a small sample of asset declarations, which are selected at random by a lottery system (see 7.3 below for further analysis of the weaknesses of the verification system for asset declarations).

113. Since 2013 there is a new asset declaration form for judges. Newly appointed judges' declarations of assets do not require detail about their debts and loans, for example debts to the electricity supplier, KEK. Nor does a judge's asset declaration form require information about the source or type of property they hold or income they receive, whether the income is from, for example, employment, remittances, business or interest on a bank account. There is a difference between the asset declaration requirements for newly appointed judges and judges appointed before 2013. The pre-2013 requirements provide more details about judges' wealth and assets. One interviewee stated that the lack of information about prospective judges 'leads us to putting rotten apples into the system'. The CoE expert requested copies of templates to compare but they were not forthcoming.

114. When judges are promoted to more senior positions in the judiciary they are re-vetted. Many judges complain about the administrative burden of being subjected to a fresh vetting process. The KJC Evaluation and Verification Unit counters that judges applying for promotion are only subject to vetting of new developments and that they do not repeat vetting of past financial and other matters.

Recommendations

115. It is recommended that the vetting process for judges is enshrined in law and the KJC adopt clear and comprehensive criteria for vetting procedures of judges based on objective and transparent criteria.

116. It is recommended to enshrine in law that applicants for judgeship and judges being considered for promotion should be given access to the information gathered during vetting procedures or background checks. They should have the opportunity to appeal results of vetting procedures or background checks to the courts.

2.6 Performance Assessments

International standards

- CoE (2010) 12

Assessment

58. Where judicial authorities establish systems for the assessment of judges, such systems should be based on objective criteria. These should be published by the competent judicial authority. The procedure should enable judges to express their view on their own activities and on the assessment of these activities, as well as to challenge assessments before an independent authority or a court.

- CCJE, Opinion No. 17 (2014) on the Evaluation of Judges' work, the quality of justice and respect for judicial independence

5. The basis and main elements for formal evaluation (where it exists) should be set out clearly and exhaustively in primary legislation. Details may be regulated by subordinate legislation which should also be published. The Council for the Judiciary (where it exists) should play an important role in assisting in formulating these matters, especially the criteria for evaluation (paragraph 30).

10. Individual evaluation of judges should - in principle - be kept separate, both from inspections assessing the work of a court as a whole, and from disciplinary procedures (paragraphs 29, 39).⁸⁵

Paragraph 26. Judicial systems should use information gathered in evaluation procedures not only to evaluate individual judges but also to provide material which can assist in improving the organisational structure of courts and the working conditions of judges. It would be particularly unjust that an individual judge be evaluated negatively because of problems caused by poor working conditions that he or she cannot influence, such as for example delays caused by massive backlogs, or because of lack of judicial personnel or an inadequate administrative system.

- OSCE/ODIHR Kyiv Recommendations

Professional Evaluation of Judges

27. Where professional evaluations of judges are performed, they must not be used to harm independent adjudication. The evaluation of judges' performance shall be primarily qualitative and focus upon their skills, including professional competence (knowledge of law, ability to conduct trials, capacity to write reasoned decisions), personal competence (ability to cope with the work load, ability to decide, openness to new technologies), social competence (ability to mediate, respect for the parties) and, for possible promotion to an administrative position, competence to lead. These same skills should be cultivated in judicial training programmes, as well as on the job.

⁸⁵ CCJE (2014), [Opinion No. 17 on the Evaluation of Judges' work, the quality of justice and respect for judicial independence](https://www.coe.int/t/e/treaties/035/Opinion%20No%2017%20on%20the%20Evaluation%20of%20Judges%27%20work%2C%20the%20quality%20of%20justice%20and%20respect%20for%20judicial%20independence.pdf), available at www.coe.int

28. *Judges shall not be evaluated under any circumstances for the content of their decisions or verdicts (either directly or through the calculation of rates of reversal). How a judge decides a case must never serve as the basis for a sanction. Statistics on the efficiency of court operations shall be used mainly for administrative purposes and serve as only one of the factors in the evaluation of judges. Evaluations of judges may be used to help judges identify aspects of their work on which they might want to improve and for purposes of possible promotion. Periodic exams for judges (attestations) that may lead to dismissal or other sanctions are not appropriate for judges with life tenure.*

29. *The criteria for professional evaluation should be clearly spelled out, transparent and uniform. Basic criteria should be provided for in the law. The precise criteria used in periodic evaluations shall be set out further in regulations, along with the timing and mechanisms of performing evaluations.*

Independent Evaluations

30. *While a Judicial Council may play a role in specifying the criteria and the procedure, professional evaluations should be conducted at the local level. Evaluations shall be conducted mainly by other judges. Court chairpersons should not have the exclusive competence to evaluate judges, but their role should be complemented by a group of judges from the same and other courts. That group should consider also the opinions of outsiders who regularly deal with the judge (such as lawyers) and law professors, with respect to the diligence, respect for the parties and rules of procedure by a judge.*

31. *Evaluations should include review of the judge's written decisions and observation of how he or she conducts trials. Evaluations shall be transparent. Judges should be heard and informed about the outcome of the evaluation, with opportunities for review on appeal.*

Independent Criminal Adjudication

34. *The accusatory bias of justice systems in most countries of Eastern Europe, South Caucasus and Central Asia requires remedies. Acquittals are still considered a black mark or failure. To diminish pressure on judges to avoid acquittals, a change in the system of their professional evaluation (and if appropriate, considering changes in the assessment of prosecutors and investigators as well) is strongly recommended. The number of acquittals should never be an indicator for the evaluation of judges. Judges need to gain real discretion in reviewing requests for approval of pre-trial detention. Appellate review of acquittals shall be limited to the most exceptional circumstances.*

Analysis of the situation in Kosovo

117. Article 19 of the Law on the Kosovo Judicial Council states that newly appointed judges should undergo two performance assessments, once after their initial training and once after the end of their three-year initial term. Thereafter, performance assessments of permanent judges should be conducted every three (3) years in such a way that in every year 1/3 of all judges in Kosovo are the subject of a performance assessment.

118. Article 19/A of the Law on the Kosovo Judicial Council provides for a 'Judges Performance Assessment Committee'(JPAC), led by a judge member of the KJC and composed of judges 'with experience in Kosovo judicial system (sic)' to perform assessments of judges. The assessments carried out by the JPAC will be the basis for making decisions on the promotion, demotion or dismissal of judges. Article 19/A(3) states that assessments should be based on 'objective requirements, measurable and completely transparent (sic)' and should reflect 'valuable methods of international practices level and which are excessively reasonable and transparent (sic)'.

119. The KJC is tasked by the law to establish rules and regulations on the manner and procedure of performance assessments.⁸⁶ On 30 August 2016 KJC adopted Regulation No. 11/2016 on judges' performance assessment that establishes the procedures and criteria for the performance assessment of judges at all levels in Kosovo, except for court presidents and lay judges, whose assessment will be regulated by a further special regulation.

120. On 6 October 2016 the KJC established the Judges Performance Assessment Committee (JPAC), which consists of 13 judges from all court levels excluding presidents of courts and KJC members (decision No. 128/2016).

121. The CoE expert was informed that a new methodology has been developed, in accordance with the Regulation, so that every committee member will be responsible for evaluating a group of ten (10) judges and will visit courts to carry out evaluations. One Basic Court judge whose performance was recently evaluated reported that the process included a qualitative review of ten (10) of his cases. A random selection of, at a minimum, any five of a judge's cases for each year of evaluation has to be reviewed in line with the court registrar's order, according to Article 28 of the Regulation and KJC Decision No. 135/2016 of 28 October 2016.

122. JPAC will be responsible for evaluating candidates for promotion to the Court of Appeals and the Supreme Court. The KJC confirmed in interviews with the CoE expert that three Supreme Court judges will evaluate judges from the Supreme Court⁸⁷ and that Supreme Court judges will evaluate Court of Appeals and Basic Court judges.

123. The Regulation explicitly states in Chapter IV the factors to be taken into account in evaluating a judge's performance. This is in line with international standards that advise that a judge's performance should be assessed in the full context of the court in which he/she works, including conditions 'such as the increase/decrease in the court's backlog, availability of trained assistants (secretaries, bailiffs, etc.) and equipment (computers, printers, etc.) ... The productivity levels should be fixed with reference to the average productivity of other judges, and after mandatory consultations with the judges of the courts concerned.'⁸⁸

124. Some NGOs in interview with the CoE expert recommended that performance evaluations of judges should include consideration of the number of cases dismissed by judges because of the expiry of the statute of limitations. They contended that this would raise awareness amongst judges of a concern in the wider Kosovo legal community that, through incompetence or corruption, many cases are barred because of the expiry of statutory limitations.

125. While the recommendation has merit any inclusion in judges' evaluations of the number of cases barred because of the expiry of statutory limitations would have to include consideration of the stages in the prosecution and judicial systems where delays take place. Delays are not necessarily attributable to judges' behaviour and do not necessarily lead to a negative evaluation of an individual judge. It must be bore in mind that an individual judge cannot be evaluated negatively because of 'problems caused by poor working conditions or problems he or she cannot influence such as for example delays caused by massive backlogs, or because of lack of judicial personnel or an inadequate administrative system.'⁸⁹

⁸⁶ Official Gazette of Kosovo (2010), *Law on KJC*, Article 19(1), available at <https://gzk.rks-gov.net>

⁸⁷ A subcommittee of three Supreme Court's judges to evaluate the performance of judges of Supreme Court was set up by the KJC on 1 November 2016.

⁸⁸ Venice Commission (2015), *Opinion on the Laws on the Disciplinary Liability and Evaluation of Judges of the 'former Yugoslav Republic of Macedonia'*. The Venice Commission has made recommendations concerning the "former Yugoslav Republic of Macedonia" system for evaluating judges that contains useful advice for Kosovo: Opinion No. 825/2015, p.23, available at www.venice.coe.int/

⁸⁹ See CCJE Opinion No. 17 above.

Recommendations

126. It is recommended that the Judges Performance Assessment Committee (JPAC) focus on a qualitative assessment of judges' performances and avoid a purely numerical or 'quantitative' approach to evaluating judges' performances, as numbers of cases resolved or numbers of procedural deadlines complied with does not reflect the complexity of cases that individual judges handle. The number of acquittals should never be an indicator for the evaluation of judges. Rather than focusing on numbers of cases barred because of the expiry of statutory limitations, evaluations could include analysis of reasons for cases barred because of the expiry of statutory limitations.

127. It is recommended that serving judges evaluate judges at their court level or below, but not judges sitting in a higher level court. Supreme Court judges should evaluate Supreme Court judges and consideration should be given to engaging recently retired Supreme Court judges to carry out evaluations.

2.7 Promotion of judges

International standards

(See above international standards listed at 3.1)

■ OSCE/ODIHR Kyiv Recommendations

Membership of Bodies Deciding on Judicial Selection

8. Members of special commissions for judicial selection (see para 3) should be appointed by the Judicial Council from the ranks of the legal profession, including members of the judiciary. Where Judicial Councils, Qualification Commissions or Qualification Collegia are responsible directly for judicial selection (see para 4), the members should be appointed to fixed terms of office. Apart from a substantial number of judicial members in this selection body, the inclusion of other professional groups is desirable (law professors, advocates) and should be decided on the basis of the relevant legal culture and experience. Its composition shall ensure that political considerations do not prevail over the qualifications of a candidate for judicial office (see para 21).

Analysis of the situation in Kosovo

128. The KJC is responsible for organising the promotion procedure for judges. Regulation 06/2016 amending 'Regulation No. 01/2014 on Promotion Procedure for Judges' governs the process. The Regulation provides for an 'Application Review Panel' to consist of 5 judges selected by the KJC by a vote, 2 of whom must be KJC members who sit on the KJC Committee on Appointments. The KJC appoints the President of the Panel. Panel members are compensated for their work.

129. The Regulations include provision for a 'Reconsideration Committee' to handle complaints by candidates about promotion decisions. The Panel consults the case files of candidates which includes the most recent performance evaluation of a judge. Where the last performance evaluation was conducted more than one year before the application deadline, an *ad hoc* evaluation is required. The Panel is then obliged to interview the applicants using a consistent methodological approach.

130. During the CoE expert's mission in Kosovo, judges remarked that promotion procedures are slow and cumbersome for candidates. One reason for delays is the slow pace of performance evaluations. The KJC Evaluation and Verification Unit that is responsible for performance evaluations,

including, where necessary, *ad hoc* evaluations, stated that their work is delayed by the courts who fail to update and submit court statistics that are used in the evaluation of a judge's performance, such as the number of cases resolved within a time period and the number of cases sent for retrial. In addition, the Unit remarked that courts are slow in responding to requests about judges.

Recommendation

131. It is recommended that Application Review Panels that consider applications from judges for promotions within the judiciary include legal professionals such as law professors and advocates in addition to KJC members.

2.8 Transfer of judges

International standards

■ Council of Europe Recommendation (2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities

Tenure and irremovability

52. A judge should not receive a new appointment or be moved to another judicial office without consenting to it, except in cases of disciplinary sanctions or reform of the organisation of the judicial system.⁹⁰

Analysis of the situation in Kosovo

132. Article 20 of the Law on the Kosovo Judicial Council enables the KJC, with the approval of the president of the respective court, to transfer a judge to another court. The Law states that the transfer shall be in accordance with the 'KJC Regulation on Transfer and Assignment of Judges'⁹¹ The Decision on the Regulation on Transfer and Assignment of Judges was adopted by the KJC only very recently in February 2017⁹², despite Article 20 stating that it should be drafted within thirty (30) days from the entry into force of the Law on the Kosovo Judicial Council.

133. The Chairperson of the KJC may in extraordinary circumstance temporarily transfer a judge to another court for not more than 30 days unless a longer period is approved by the KJC.⁹³ Judges may appeal directly to the Supreme Court against a decision of the KJC making a permanent transfer or a transfer that exceeds 6 (six) months. The Regulation has enabled serious crime departments in Basic Courts to be adequately staffed as well as enabled the extension of the 6 (six) month period during which judges are transferred, so that they may adjudicate serious crime cases from indictment to final judgment, which often takes much longer than the period of 6 (six) months. Transferred judges receive a pay rise.

134. The Basic Court in Pristina bears the greatest caseload burden and requires a greater number of transferred judges. Judges interviewed by the CoE expert mentioned that it is not an attractive

⁹⁰ Council of Europe (November 2010), *Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities*, available at www.coe.int/

⁹¹ Official Gazette of Kosovo (2010), *Law on KJC*, Article 20(2), available at <https://gzk.rks-gov.net>

⁹² UNMIK (February 2017), *Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo*, available at www.securitycouncilreport.org/

⁹³ Official Gazette of Kosovo (2010), *Law on KJC*, Article 20(3), available at <https://gzk.rks-gov.net>

option to be transferred to the Basic Court in Pristina given the huge caseload, concerns about the health and safety risks of the newly constructed building and challenges in accessing its location outside Pristina without a private car.

Recommendations

135. It is recommended that the KJC ensure that all courts are adequately and permanently staffed so that there is not an over-reliance on the transfer of judges in order to staff courts.

136. It is recommended that the recent adoption of the KJC Regulation on Transfer and Assignment of Judges guides the effort by the KJC to, in a timely fashion, organise the temporary transfer of judges to the Pristina Basic Court to assist with its heavy caseload burden.

2.9 Suspension and removal from office of president judges and supervising judges

International standards

- Consultative Council of European Judges (CCJE) (2001), Opinion No. 1 on standards concerning the independence of judges and the irremovability of judges⁹⁴

60. The CCJE considered

(a) that the irremovability of judges should be an express element of the independence enshrined at the highest internal level...;

(b) that the intervention of an independent authority, with procedures guaranteeing full rights of defence, is of particular importance in matters of discipline; and

(c) that it would be useful to prepare standards defining not just the conduct which may lead to removal from office, but also all conduct which may lead to any disciplinary steps or change of status, including for example a move to a different court or area."

- Bangalore Principles, The Implementation Measures

16. Removal of Judges from Office

16.1 A judge may be removed from office only for proved incapacity, conviction of a serious crime, gross incompetence, or conduct that is manifestly contrary to the independence, impartiality and integrity of the judiciary.

Analysis of the situation in Kosovo

137. The suspension and removal from office of President Judges and Supervising Judges is distinct from the dismissal of judges from judicial office as a result of the disciplinary process for judges, which is discussed below at section 6.10. The procedures apply only to the suspension and removal of a judge from his/her position as a President or Supervising Judge in a court, and does not constitute the judge's dismissal from judicial office.

⁹⁴ CCJE (2001), [Opinion No. 1 on standards concerning the independence of judges and the irremovability of judges](http://www.coe.int), available at www.coe.int

138. Article 103(4) of the Constitution and Article 23 of the Law on the Kosovo Judicial Council briefly outline the grounds and procedure for suspending and removing a President Judge or Supervising Judge from office. The KJC may remove a President Judge or Supervising Judge where they are convicted of a criminal offence, except for minor offences and where the KJC makes a finding of mismanagement, corruption, incompetence or a failure to fulfil the duties of office. The KJC is obliged to take into consideration the opinion of the judges of the respective court or branch of the court. The President Judge or Supervising Judge is suspended during the period of the KJC's investigations from the position of President Judge or Supervising Judge, but not suspended from judicial office.

139. The KJC has drafted further procedures on the matter of suspending and removing a President Judge or supervising judge from office that it, confusingly and inappropriately, has included in a Regulation that deals with a range of issues concerning judges: Regulation No. 09/2016 on the Selection Procedures, Appointment, Evaluation, Suspension and Dismissal of Court Presidents and Supervising Judges. The Kosovo Law Institute has criticised the drafting process, as well as the inherent confusion, in Regulation 09/2016.⁹⁵

Recommendation

140. It is recommended that a separate Regulation on the suspension and removal from office and/or dismissal of Court Presidents and Supervising Judges is adopted by the KJC.

2.10 Discipline of judges

International standards

- Council of Europe Recommendation (2010)12

Disciplinary Proceedings

25. Disciplinary proceedings against judges shall deal with alleged instances of professional misconduct that are gross and excusable and that also bring the judiciary into disrepute. Disciplinary responsibility of judges shall not extend to the content of their rulings or verdicts, including differences in legal interpretation among courts; or to examples of judicial mistakes; or to criticism of the courts.

Independent Body Deciding on Discipline

26. There shall be a special independent body (court, commission or council) to adjudicate cases of judicial discipline (see para 9). The bodies that adjudicate cases of judicial discipline may not also initiate them or have as members persons who can initiate them. These bodies shall provide the accused judge with procedural safeguards, including the right to present a defence and also the right to appeal to a competent court. Transparency shall be the rule for disciplinary hearings of judges. Such hearings shall be open, unless the judge who is accused requests that they be closed. In this case a court shall decide whether the request is justified. The decisions regarding judicial discipline shall provide reasons. Final decisions on disciplinary measures shall be published.

⁹⁵ See KLI (December 2016).

Analysis of the situation in Kosovo

141. The Office of Disciplinary Counsel (ODC) is established under Article 43 of the Law on the Kosovo Judicial Council.⁹⁶ It serves both the KJC and the KPC and in the case of the KJC is responsible for investigating the alleged misconduct of judges.⁹⁷ The office is also established – and named differently: the Office of Disciplinary Prosecutor – under the Law on the Kosovo Prosecutorial Council. The establishment of the same office by two separate Laws using different wording, at least in the English translations of the laws, is confusing and is one manifestation of the confusion and disorganisation that runs through the law, procedures and functioning of the ODC.

142. The KJC and KPC in a joint meeting on 20 January 2016 adopted Regulation (01/2016), on the Organisation and Functioning of the ODC. The Regulation is an improvement on the functioning of the ODC, but officials in both local institutions in Kosovo as well as international organisations advise Kosovo authorities to regulate the organisation and functioning of the ODC by a basic law and not through secondary legislation. The Ministry of Justice has established a working group to consider drafting a new law on the ODC.

143. Dissatisfaction with the performance of the ODC has led to discussions in Kosovo about whether to locate the ODC within the Ministry of Justice. Such a move would compromise the independence of the ODC and is not supported by some strategic partners. However, the poor performance of the ODC justifies a fresh examination of how the body should be reformed and improved. Another option under discussion is whether to appoint an oversight board to supervise the ODC, an option that requires careful consideration of who would elect the Board and whether the option engenders risks of interference in the process of disciplining judges.

144. The process for investigating and disciplining judicial misconduct is outlined in the Law on the Kosovo Judicial Council. The ODC can initiate an investigation when a complaint is filed at the ODC or on its own initiative. In both cases an investigation can proceed if there is a ‘reasonable basis’ to believe a judge has engaged in misconduct.⁹⁸

145. The ODC must notify in writing the Disciplinary Committee, a KJC committee, and the judge of the results of an investigation and shall determine whether a recommendation of disciplinary action should be presented to the Disciplinary Committee.⁹⁹ The Disciplinary Committee consists of 3 (three) members of the KJC, two of whom must be judges and one of whom may be a non-judge member of the KJC. One of the judge members must also take the role of the Chairperson of the Disciplinary Committee.¹⁰⁰ The law states that ‘Judges are appointed by the Council’, but omits to state who or which body appoints any third non-judge members of the Disciplinary Committee (who must also be a member of the Council).¹⁰¹

146. Chapter VI of the Law on the Kosovo Judicial Council sets out the disciplinary procedure for judges, which includes the conduct of proceedings of ‘Disciplinary Sessions’ held before the Disciplinary Committee (further developed by the procedures and rules promulgated by the KJC).¹⁰² It also sets out the disciplinary measures that may be imposed and the further procedure for handling

⁹⁶ The English version of the law translates the Albanian title of the office as ‘Office of Disciplinary Counsel’, when in fact ‘Office of the Disciplinary Prosecutor’ would be a better translation. The English translation of the Law on the Kosovo Prosecutorial Council translates the office correctly as ‘Office of the Disciplinary Prosecutor’.

⁹⁷ KJC Law and Law on Courts also mention ‘lay judges’. Although this position has been abolished in the criminal system as of January 2013, lay judges will serve where required by Law as provided for by Article 28 of the Law on Courts.

⁹⁸ Official Gazette of Kosovo (2010), *Law on KJC*, Article 45, available at <https://gzk.rks-gov.net>

⁹⁹ Official Gazette of Kosovo (2010), *Law on KJC*, Article 45, available at <https://gzk.rks-gov.net>

¹⁰⁰ Official Gazette of Kosovo (2010), *Law on KJC*, Article 33, available at <https://gzk.rks-gov.net>

¹⁰¹ Official Gazette of Kosovo (2010), *Law on KJC*, Article 33, available at <https://gzk.rks-gov.net>

¹⁰² See Regulation (01/2016), on the Organisation and Functioning of the ODC.

any Disciplinary Committee recommendation for the dismissal of a judge, which must be made to the KJC, sitting with all members present.

147. The KJC determines whether the misconduct of a judge justifies the recommendation to dismiss and, if so, makes a recommendation for dismissal of the judge to the President of Kosovo, within 15 days. The President may decide to approve or disapprove the recommendation of the KJC for dismissal and that decision must be 'formally notified' by the KJC to the judge, before it is enforced.¹⁰³ Provision is also made in the law for appeals against decisions by Disciplinary Committees, by either a judge or the ODC, which are made to the KJC. Council members who were members of the Disciplinary Committee may not participate in the appeal process.¹⁰⁴

148. Amendments to the disciplinary procedure have included a controversial 'amnesty' amendment, article 36(5), that states that the disciplinary 'proceedings shall not be initiated and implemented in the Commission [sic]¹⁰⁵ after the expiry of one (1) year from the notification received from the Office of Disciplinary Counsel for the alleged violation and two (2) years from the date of the alleged violation.'

149. The result is that cases are barred from further determination – that is further investigation by the ODC - if one year has expired since the date they were notified to the ODC, or two years have expired since the alleged violation took place. The Director of the ODC has stated in a meeting with the CoE expert that the effect of the amendment is to give amnesty in hundreds of cases.¹⁰⁶ There will be no accountability or sanctioning of judges accused of misconduct in these cases.

150. A further effect of the amendment is that the ODC is now obliged to complete investigations within one year from notification of cases or in a potentially shorter time period if the date on which the ODC is notified of the case is close to 2 years after the date of the alleged violation. Given that the ODC has already a backlog of 'hundreds' of cases - many of which will now be barred by the time limits set out in Article 36(5) – that it has struggled to process efficiently, the prospect of the current ODC being able to process new cases within the new time limit is low. Indeed there is a concern that the ODC will prioritise cases to investigate, further leading to a perception of selective justice in Kosovo with impunity for selected judges.

151. The ODC is under-staffed and under-resourced to carry out its responsibilities. In addition, there are concerns about the efficiency of the ODC. The ODC did not produce statistics to the CoE experts detailing the number of cases under investigation, the types and number of cases recommended to the Disciplinary Committee for the initiation of disciplinary proceedings, the types and number of disciplinary measures imposed by the Disciplinary Committee, numbers of dismissals recommended by the KJC or statistics on the time it takes to dispose of a case from initial notification to the ODC through investigation stages until a determination is made by the Disciplinary Committee and, where relevant, a decision on dismissal is made by the KJC.

152. Although no statistics were made available on the number of cases recommended for disciplinary action by the ODC that result in a decision by the KJC to dismiss a judge, ODC and KJC officials stated that a common practice of judges is to resign their position before the KJC considers Disciplinary Committee recommendations for their dismissal. The practice enables judges to avoid an official dismissal and to seek employment in another part of the justice system, such as at the Bar, or, after a short time, return to apply to work as a judge.

¹⁰³ Official Gazette of Kosovo (2010), *Law on KJC*, Article 38, available at <https://gzk.rks-gov.net>

¹⁰⁴ Official Gazette of Kosovo (2010), *Law on KJC*, Article 39, available at <https://gzk.rks-gov.net>.

¹⁰⁵ It is unclear what body the 'Commission' refers to. This appears to be a mistake at least in the English translation since the Albanian version refers to the [Disciplinary] 'Committee'. The same amendment has been made to the Law on the Kosovo Prosecutorial Council and the term used in the English version is 'Committee' (Article 25, para. 3).

¹⁰⁶ See also KLI (December 2016).

153. There are no legal provisions about who has authority to carry out an audit of the ODC.

Recommendations

154. It is recommended that the Ministry of Justice drafts a new basic law on the organisation and functioning of the ODC. The ODC (or in the case of the Law on the Kosovo Prosecutorial Council, the 'ODP') provisions in the Law on the Kosovo Judicial Council and Kosovo Prosecutorial Council should be repealed and replaced by the separate new law.

155. It is recommended that the Ministry of Justice working group includes in its review the 'amnesty' amendment to assess whether the one year time limit to investigate complaints against judges is realistic in the context of the present composition and functioning of the ODC (the KLI recommends a 2-year time limit). The effect of the amnesty on the ODC's backlog of cases should be evaluated and the number of cases affected reported. It should be assessed whether the ODC is adequately staffed, financed and its officers are competent in terms of qualifications, training and powers to fulfil their mandate.

156. It is recommended that the Ministry of Justice working group on the ODC reviews the loophole in the law that enables judges to resign their positions before the full KJC can consider recommendations from the Disciplinary Committee for their dismissal, and subsequently enables judges to work as an advocate at the Bar or to apply to return at a later date as a judge.

157. It is recommended that the ODC establishes an efficient tracking mechanism that registers cases received, actions taken and records their progress through the investigation stage, the Disciplinary Committee of the KJC, appeals to the KJC and the final stage when KJC considers recommendations for sanction or dismissal.

158. It is recommended that the Disciplinary Committee of the KJC handles cases in a timely manner and time limits are imposed for its initial handling of recommendations for disciplinary action. (KLI recommended 6 months).

159. It is recommended that the KJC completes in a timely fashion its determination of recommendations for dismissal (KLI recommends 3 months) and any appeals to its decision.

2.11 KJC role in inspection of courts and judicial system

International standards

- CCJE, Opinion no. 10 (2007) on the Council for the Judiciary at the service of society

78. The CCJE is of the opinion that the Council for the Judiciary can make a positive contribution to the promotion of quality of justice... As to developing policy measuring quality, it is important that the Council for the Judiciary can obtain from the courts relevant data and statistics.

79. The Council for the Judiciary should supervise the organisation of the inspection service so that inspection is compatible with judicial independence. This is particularly important where inspection services belong to the executive.¹⁰⁷

¹⁰⁷ CCJE (2007), *Opinion No. 10 on the Council for the Judiciary at the service of society*, available at www.coe.int

Analysis of the situation in Kosovo

160. The office of the Court Performance Review Unit (CPRU) functions as an Inspectorate of the judicial system. The functions of the current CPRU were previously carried out by the Judicial Inspection Unit of UNMIK that, until 2006, covered inspection of both the judicial system and the prosecutorial system.

161. Article 29 of the Law on the Kosovo Judicial Council establishes the CPRU, under the direction of the KJC and its Committee for Court Administration. Its purpose is to 'assess the work of the courts and propose[s] to the Council policies or directives for reforming or improving the work of the courts.'¹⁰⁸ Regarding the budget of the unit, Article 29.3 states that the 'Secretariat shall provide such budgetary support to the Court Performance Review Unit as the Council may direct'.

162. The CPRU carries out audits and assesses the performance of courts, not individual judges.¹⁰⁹ Every year it proposes a report plan of issues to audit and assess that is presented for approval or modification by the KJC. Space is left for the KJC to propose topics on an *ad hoc* basis as needs arise.

163. The CPRU assesses whether there are trends in the work of the courts or one-off occurrences. The CPRU informed the CoE expert that it has reported on, amongst other topics, the problem of cases being barred because of the expiry of statutory limitations; the need for sentencing guidelines; the need for an independent notary office; the issue of fake signatures in property documentation; the perception that the Court of Appeals issues more lenient sanctions in criminal cases than the Basic Courts and the issue of whether there is a need for, and which body should issue, sentencing guidelines.¹¹⁰

164. The CPRU holds an 'end of year meeting' to report on its findings and recommendations. The KJC Committee for Court Administration is responsible for follow-up and implementation of recommendations. The CPRU reported to the CoE expert that there is little follow-up on its recommendations.

165. Under the recent amendment to the Law on the Kosovo Judicial Council (Law No. 05/L-033) provisions were repealed that previously prevented the Director of the Secretariat and the Director of the Court Performance Review Unit from 'accepting additional compensation...for other duties or employment from any other source.' (See articles 28(3) and 30(3) of the Law on the Kosovo Judicial Council). The CoE expert heard reports from interlocutors that projects to improve the judicial system can be a source of additional earnings for KJC officials, and can lead to a lack of focus on official tasks as well as a tendency to unnecessarily prolong external projects in order to maximise earnings.

Recommendations

166. It is recommended that the permanent committee of the KJC to which the CPRU reports, the Committee for Court Administration, reviews and takes action on recommendations made by the CPRU.

167. It is recommended that *ad hoc* committees are established by the KJC to consider and implement recommendations from CPRU reports that deal with specific issues such as the problem of large numbers of cases dismissed because of the expiry of statutory limitations.

¹⁰⁸ Official Gazette of Kosovo (2010), *Law on KJC*, Article 29, available at <https://gzk.rks-gov.net>

¹⁰⁹ The inspection unit in the Kosovo Prosecutorial Council, inappropriately, covers also evaluations of individual prosecutors.

¹¹⁰ Not all reports are publicly available. The KJC website provides access to a select number of CPRU reports, www.gjyqesori-rks.org/

168. It is recommended that the recommendations of the CPRU feed into the Strategic Plan for the Judiciary (the current plan covers 2014 – 2019).

169. It is recommended that KJC officials are subject to the same restriction on earning additional compensation from activities external to their jobs as judges and prosecutors, namely that they may only earn up to 25% of their basic salary from participation in external professional activities.

2.12 Judicial Budget

International standards

- OSCE/ODIHR Kyiv Recommendations

Budgetary Advice

6. Without prejudice to existing responsibilities of the government for proposing the judicial budget and of parliament for adopting the budget, it would be advisable for a body representing the interests of the judiciary, such as a Judicial Council, to present to the government the budgetary needs of the justice system in order to facilitate informed decision making. This body should also be heard by parliament in the deliberations on the budget. Judicial Councils may play a role also in the distribution of the budget within the judiciary.

- Council of Europe Recommendation (2010) 12

40. Councils for the judiciary, where existing, or other independent authorities with responsibility for the administration of courts, the courts themselves and/or judges' professional organisations may be consulted when the judicial system's budget is being prepared.

- Opinion No. 2 of the CCJE on the funding and management of courts provides:

5. The CCJE agreed that although the funding of courts is part of the State budget presented to Parliament by the Ministry of Finances, such funding should not be subject to political fluctuations. Although the level of funding a country can afford for its courts is a political decision, care must always be taken, in a system based on the separation of powers, to ensure that neither the executive nor the legislative authorities are able to exert any pressure on the judiciary when setting its budget. Decisions on the allocation of funds to the courts must be taken with the strictest respect for judicial independence. 10. Although the CCJE cannot ignore the economic disparities between countries, the development of appropriate funding for courts requires greater involvement by the courts themselves in the process of drawing up the budget. The CCJE agreed that it was therefore important that the arrangements for parliamentary adoption of the judicial budget include a procedure that takes into account judicial views.

11. One form which this active judicial involvement in drawing up the budget could take would be to give the independent authority responsible for managing the judiciary – in countries where such an authority exists – a co-ordinating role in preparing requests for court funding, and to make this body Parliament's direct contact for evaluating the needs of the courts. It is desirable for a body representing all the courts to be responsible for submitting budget requests to Parliament or one of its special committees."

Analysis of the situation in Kosovo

170. The process for approval of the judicial budget was recently changed after a series of complaints about executive cuts to the judicial budget that amounted to interference with the independence of the judiciary.¹¹¹ Previously the KJC submitted the judicial budget directly to the Ministry of Finance. The KJC now submits budget proposals directly to the Kosovo Assembly, who agrees upon the budget.¹¹²

171. The new provisions in the Law on the Kosovo Judicial Council do not mirror the process set out in Article 20 of the Law on Public Financial Management and Accountability, which states that each budget organisation shall be responsible for submitting its budget to the Minister. If the budget organisation does not do so, under Article 66(1) the Minister has the authority to develop a budget for the organisation based on the preceding year. Section 63.3 of the law on Public Financial Management and Accountability states that in the event of conflict between the provisions of the law and others, the Law on Public Financial Management and Accountability prevails. Judicial officials reported that the Ministry of Finance has interpreted the laws to hold that the KJC must continue to submit the judicial budget to the Ministry of Finance.

172. Despite the change in the law, in practice KJC officials must continue to undertake the budget consultation process with Ministry of Finance officials and, indeed, the Assembly of Kosovo is not likely to vote on a budget contrary to the agreement of the Ministry of Finance.

173. KJC officials explained to the CoE expert that the Ministry of Finance allocates the budget based on the monetary funds allocated and spent in the preceding year, and does not take account of the high number of vacant positions for judges and court personnel in the judicial system, which in fact require an increase in the budget of the judicial system in order to be filled. For example, the March 2015 payroll showed 350 judge positions filled and for which salary is budgeted, out of a total of 462 judge positions, and 1,600 court personnel positions filled and receiving salary, out of a total of 1,707 court personnel positions. The Ministry of Finance allocated a budget for 2016 based on the number of positions filled and receiving a salary and did not provide monetary funds to cover the vacant positions. As a result the KJC is blocked from recruiting sufficient numbers of judges and court personnel to operate the courts and judicial system.¹¹³

Recommendations

174. It is recommended that the Law on Public Financial Management is amended to conform to the budget submission process set out in the Law on Kosovo Judicial Council.

175. It is recommended that the Kosovo Judicial Council ensures that the budget for each year is effectively allocated, maintains accurate and current accounts and conducts audits in compliance with Article 15(2) of the Law on the Kosovo Judicial Council.

176. It is recommended that the Ministry of Finance allocates additional monetary funds to cover vacant judge and court personnel positions in the next financial year.

¹¹¹ Kosovo Law Institute (April 2016), *Legality of the Judicial and Prosecutorial Council: Monitoring of Kosovo Judicial and Prosecutorial Councils: Analysis and recommendations regarding the judicial package of the judiciary*, available at <http://kli-ks.org/>

¹¹² Official Gazette of Kosovo (2010), *Law on KJC*, Article 15.1, as amended by Law No. 05/L-033, available at <https://gzk.rks-gov.net>

¹¹³ Information provided by KJC Secretariat officials in a meeting with the CoE expert.

3. Working life of a judge

3.1 Salary

International Standards

- Council of Europe Recommendation (2010)12¹¹⁴

Remuneration

53. *The principal rules of the system of remuneration for professional judges should be laid down by law.*

54. *Judges' remuneration should be commensurate with their profession and responsibilities, and be sufficient to shield them from inducements aimed at influencing their decisions. Guarantees should exist for maintaining a reasonable remuneration in case of illness, maternity or paternity leave, as well as for the payment of a retirement pension, which should be in a reasonable relationship to their level of remuneration when working. Specific legal provisions should be introduced as a safeguard against a reduction in remuneration aimed specifically at judges.*

55. *Systems making judges' core remuneration dependent on performance should be avoided as they could create difficulties for the independence of judges.*

- Venice Commission (2010) Report on the Independence of the Judicial System Part 1¹¹⁵

The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants.

- Principle 7, UN Basic Principles on the Independence of the Judiciary

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

- Venice Commission (2010)

51. To sum up, the Venice Commission is of the opinion that for judges a level of remuneration should be guaranteed by law in conformity with the dignity of their office and the scope of their duties. Bonuses and non-financial benefits, the distribution of which involves a discretionary element, should be phased out.

Analysis of the situation in Kosovo

177. Article 29 of the Law on Courts sets out the salaries of all levels of judges. The President of the Supreme Court receives a salary 'not less than that of the Prime Minister of Kosovo'. All other judges receive a salary on a scale relative to the President of the Supreme Court.

178. Article 29(2) of the Law on Courts states that 'the salary of a judge shall not be reduced during the term of office to which the judge is appointed, except as a disciplinary sanction imposed under the authority of the Kosovo Judicial Council'.

¹¹⁴ Council of Europe (November 2010), [Recommendation \(2010\)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities](#), available at www.coe.int/

¹¹⁵ Venice Commission (March 2010), [Report on the Independence of the Judicial System Part I: The Independence of Judges](#), CDL-AD(2010)004, adopted by the Venice Commission at its 82nd Plenary Session, available at www.venice.coe.int/

179. Two issues concerning salary were raised with the CoE expert during the mission in Kosovo. First, judges dealing with serious crimes considered unfair that prosecutors in the Office of the Special Prosecutor received a higher salary. Second, serious crime judges were awarded a salary increase of 300 Euros in 2016 and were uncertain if the salary increase would be made permanent after January 2017. The increase was awarded to reflect the changes made to handling serious crimes required by the EU visa liberalisation process. Changes included the requirement that panels of three judges in Basic Courts hear serious crimes, which increased the workload of judges from the serious crime department, as well as indeed judges from other departments (see below at section 10.1).

Recommendations

180. It is recommended that the Kosovo Judicial Council budget maintains the salary increase for serious crime judges.

181. It is recommended that there is a parity of salary levels between prosecutors and judges at similar professional levels.

3.2 Training

International standards

- OSCE(ODIHR) Kyiv Recommendations

Improvement of Special Training of Judges

19. *Where schools for judges are part of the selection procedures, they have to be independent from the executive power. Training programmes should focus on what is needed in the judicial service and complement university education. They should include aspects of ethics, communication skills, the ability to settle disputes, management skills and legal drafting skills. Where a Judicial Council exists, it may adopt recommendations for the legal education of judges. This includes the specification of relevant skills and advice on the continuing education of judges.*

20. *Special training as referred to in para 19 should also be provided for representatives of other legal professions joining the judiciary.*

- Council of Europe Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities¹¹⁶

Training

56. *Judges should be provided with theoretical and practical initial and in-service training, entirely funded by the state. This should include economic, social and cultural issues related to the exercise of judicial functions. The intensity and duration of such training should be determined in the light of previous professional experience.*

57. *An independent authority should ensure, in full compliance with educational autonomy, that initial and in-service training programmes meet the requirements of openness, competence and impartiality inherent in judicial office.*

¹¹⁶ Council of Europe (November 2010), [Recommendation \(2010\)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities](#), available at www.coe.int/

Analysis of the situation in Kosovo

182. The Academy of Justice (AJ)¹¹⁷ provides training for judges. All judges must undertake initial training for one year upon appointment.¹¹⁸ Training on EU Law and the CPEJ is included in the curricula. However, the EC Kosovo 2016 Report states that the KJI is 'yet to conduct such training' for newly appointed judges.¹¹⁹

183. Judges, across all courts, expressed interest in training on financial and corruption crimes. Judges in the Court of Appeals expressed a need for judges to be trained on types of crimes related to customs, public procurement and tax evasion. Judges were of the opinion that a general lack of expertise in these matters may explain high retrial rates and low conviction rates in corruption cases. In addition, some judges mentioned a need for training on war crimes and sexual violence.

Recommendations

184. It is recommended that the KJC ensure the implementation of the requirement that all newly appointed judges receive training by the AJ for twelve months after appointment.

185. It is recommended that the KJC and Academy of Justice work with judges to identify training needs and topics, particularly in the area of organised crime and financial and corruption crimes.

3.3 Declaration of assets, income, liabilities and interests

International standards

■ UNCAC

5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.¹²⁰

Analysis of the situation in Kosovo

186. Judges in Kosovo are treated in the same way as other senior public officials concerning declarations of their assets. The Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials¹²¹ sets out the system for declaring assets as well as the nature of the assets to be declared, including those of family members, that include spouse, extra-marital spouse, parents and children living in a family communion with the senior public official. The declarations of assets are submitted annually using a standard form.

¹¹⁷ Official Gazette of Kosovo (2017), [Law on Academy of Justice](#) (Law No. 05/L-095, OG 6/2017) establishes the Academy of Justice (AJ) which is the successor to the Kosovo Judicial Institute (KJI).

¹¹⁸ Official Gazette of Kosovo (2010), Law on Courts, Article 27, available at <https://gzk.rks-gov.net/>

¹¹⁹ EC Kosovo (2016), [Kosovo 2016 Report](#), available at <https://ec.europa.eu/>

¹²⁰ [United Nations Convention against Corruption](#), available at www.unodc.org/

¹²¹ Official Gazette of Kosovo (2011), [Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Public Officials](#), (OG 16/2011) as amended and supplemented by Law No. 04/L-228 (OG 28/2014), available at <https://gzk.rks-gov.net>

187. Judges and their family members must declare property and revenues such as: (1) real estate; (2) movable property in value of over three thousand (3 000) Euros; (3) possession of shares in commercial enterprises; (4) valuable letters; (5) cash, in current accounts, in deposits and in loans in Euro or any other foreign currencies; (6) financial rights and obligations towards physical and legal persons and (7) personal income for the year, from the salary or participation on boards, commissions or any other activity resulting in personal income. Judges record the amount, type and source of each revenue and the amount and type of financial obligations including the name of creditors.

188. The asset declarations are submitted by judges (a) no longer than 30 days after initial appointment; (b) by 31 March each year for the previous year from 1 January to 31 December; (c) at any time at the request of the Anti-Corruption Agency (ACA) and (d) within 30 days of leaving office. After submission of the first asset declaration it is only necessary to record changes in assets. Declarations are posted within 60 days on the website of the ACA, with some personal data removed, that may be accessed in accordance with the legislation on access to public documents and on protection of personal data. The data may only be used further for investigation purposes.

189. The ACA administers and maintains the registry and is responsible for verification of declarations of assets. Verification is a long and complicated process and the ACA does not have the capacity to carry out in-depth verification of asset declarations (see also section 10.4 on the limitations of the ACA to investigate and verify public officials' assets and the failure to prosecute officials under the anti-corruption laws concerning illicit enrichment / inexplicable wealth).

Recommendation

190. It is recommended that the KJC, the Ministry of Justice and the ACA consider establishing a separate system of control of assets for judges (and prosecutors) given their legal role in supervision of ethical principles, in line with the previous recommendation made by the CoE.¹²²

3.4 Professional activities outside the judicial function

International Standards

■ Council of Europe (2010)

*21. Judges may engage in activities outside their official functions. To avoid actual or perceived conflicts of interest, their participation should be restricted to activities compatible with their impartiality and independence.*¹²³

Analysis of the situation in Kosovo

191. Article 106 of the Constitution sets out the principle of incompatibility of judicial office with other functions in state bodies, political parties and other activities. Article 32 of the Law on Courts sets out the professional activities judges may engage in outside their hours of work, or as expressed in the law, 'during the overtime'. Examples given are 'participation in scientific meetings, lectures or trainings and participation in the preparation of various legal projects'. Article 32(4) states that

¹²² CoE (2015), [Assessment report on compliance with international standards in the anti-corruption area](#), paragraph 172, www.coe.int/

¹²³ Council of Europe (November 2010), [Recommendation \(2010\)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities](#), available at www.coe.int/

judges' remuneration for participation in activities cannot exceed 25% of the basic salary and judges must inform the KJC of remuneration received.¹²⁴ In addition, the Code of Professional Ethics for Judges (CPEJ) that was revised and entered into force in September 2016 sets out the nature of professional activities that judges may engage in outside their professional duties as judges.¹²⁵

192. Judges receive remuneration for work on KJC committees. Judges and judicial officials receive additional remuneration from a thriving 'per diem' culture in Kosovo for work they carry out for international organisations and consultancy companies that are engaged in devising reforms for the judicial system. Concerns were expressed to the CoE expert that since work by some judicial officials on some international-led reform projects are a regular source of income for participants, the impetus to conclude such projects is diminished.

193. The KJC does not yet maintain and regularly update systems to record professional activities of judges and the remuneration that judges receive for activities engaged in during 'overtime' or outside their hours of work. NGOs commented to the CoE expert that they are aware of a number of judges whose secondary jobs, for example as lecturers in colleges or universities, conflict with their official working hours and are a distraction from their responsibilities as judges.

194. Some judges reported that on their proposal, the KJC addressed a request to the Ombudsperson in order to initiate a case to the Constitutional Court on whether it is fair that judges (and prosecutors) are not able to earn more than 25% of their salary from external professional activities. The Ombudsperson decided not to follow-up the request.

Recommendations

195. It is recommended that the KJC regularly update the system to record the professional activities of judges and remind judges of their obligations to (a) ensure that professional activities do not detract from their professional duties as judges (b) they are not permitted to earn more than 25% of their salary from professional activities.

196. It is recommended that ethics trainings for judges based on the CPEJ emphasise what is permissible and what is restricted concerning professional activities for judges and remind judges of the 25% ceiling on remuneration in addition to judicial salaries.

3.5 Independence of judges from internal control

International standards

■ OSCE/ODIHR Kyiv Recommendations

Internal Independence

35. The issuing by high courts of directives, explanations, or resolutions shall be discouraged, but as long as they exist, they must not be binding on lower court judges. Otherwise, they represent infringements of the individual independence of judges. In addition, exemplary decisions of high courts and decisions specifically designated as precedents by these courts shall have the status of recommendations and not be binding on lower court judges in other cases. They must not be used in order to restrict the freedom of lower courts in their decision-making and responsibility. Uniformity of interpretation of the law shall be encouraged through studies of judicial practice that also have no binding force.

¹²⁴ Official Gazette of Kosovo (2010), *Law on Courts*, available at <https://qzk.rks-gov.net/>

¹²⁵ KJC (2016), *Code of Professional Ethics for Judges*, Albanian version, available at www.gjyqesori-rks.org/

■ Council of Europe Recommendation (2010) 12

Chapter III – Internal independence

22. *The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not undermine individual independence.*

23. *Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law.*

24. *The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case.*

25. *Judges should be free to form and join professional organisations whose objectives are to safeguard their independence, protect their interests and promote the rule of law.*

Analysis of the situation in Kosovo

197. The principle of internal independence of the judiciary holds that judges are not subordinate to court presidents or to higher instances in their judicial decision-making. Notwithstanding this principle, the doctrine of precedent operates in common law countries to ensure consistency of decision-making, so that lower instance judges are obliged to follow higher court decisions on points of law.¹²⁶

198. Kosovo has a civil law culture and the legal tradition is that higher courts (following the reform of the court system, higher courts are the Court of Appeals and the Supreme Court) do not adopt guidelines that are binding on lower courts. The tradition is in keeping with the principle of internal independence, and the practice is that lower judges should follow in any case the decisions of the higher courts in order to avoid their decisions being quashed on appeal. The law, however, does give scope to the Supreme Court to issue guidelines: according to Article 22 (1.4) of the Law on Courts, the Supreme Court ‘defines principled attitudes and legal remedies for issues that have importance for unique application of Laws by the courts in the territory of Kosovo.’¹²⁷

199. There is a wide variation in the sentences imposed by different courts in corruption cases.¹²⁸ Court monitors in Kosovo have observed that sentencing guidelines issued by a higher court would contribute to consistency and certainty in the law, as well as lessen the risk that individual judges could exercise their authority to favour a particular party for corrupt reasons. The CoE expert was informed that there is a need for sentencing guidelines to harmonise sentencing policy in similar criminal cases. Judicial officials respond that sentencing guidelines would interfere with the independence of individual judges.

¹²⁶ See Venice Commission (2010)

¹²⁷ Notwithstanding the fact it may be a translation issue, it should be noted that this provision refers to notions of ‘principled attitude’ and ‘legal remedy’ while the Supreme Court judges encountered made reference to ‘legal position’ or ‘qëndrim parimor’ in Albanian (that is triggered ex officio by the Supreme Court) and ‘legal opinion’ or ‘mendim juridik’ in Albanian (that is issued by the General Session of the Supreme Court on concrete cases following a lower court request. 28 such cases were published on the Supreme Court website between 2013 and 2016).

¹²⁸ KIPRED (2015) and OSCE (2016), [Review of the implementation of the new Criminal Procedure Code of Kosovo](#), available at www.osce.org

Recommendations

200. It is recommended that, whilst respecting the internal independence of all judges in the judiciary, the Court of Appeals uses its 'Bulletin' publication to issue unifying opinions which can serve as a source of advice for lower court judges whilst not binding upon them.

201. It is recommended that the Supreme Court exercises its authority under Article 22(1.4) of the Law on Courts, through its own 'Bulletin' system, to contribute in unifying court sanctions and decisions, by intervening when necessary through 'legal positions' and 'legal opinions' for issues that have importance for unique application of laws by the courts in Kosovo.

3.6 Code of Professional Ethics for Judges (CPEJ)

International standards

- Council of Europe (2010) 12

Chapter VIII – Ethics of judges

72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.

73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.

74. Judges should be able to seek advice on ethics from a body within the judiciary.

Analysis of the situation in Kosovo

202. In March 2016 the KJC revised and adopted the CPEJ to bring it into line with the legal framework in force in Kosovo.¹²⁹ As per previous recommendations made by the CoE and others¹³⁰, the CPEJ was revised to include guidance on how judges should handle conflicts of interest, the acceptance of gifts and other advantages and regulate their participation in professional and other activities.

203. There is a need for rigorous training on the CPEJ to guide judges in their personal and professional behaviour. Judicial officials state that there is an informal culture in legal and political circles in Kosovo, and judges openly 'meet for lunch' with prosecutors, politicians and others who may interfere with the exercise of judicial functions. Judicial officials also report that when they encounter ethical dilemmas or have concerns about executive – or other – interference in their work, they do not know to whom to address questions. The ODP reports that they have been approached by judges with questions about ethics, but they have no mandate to respond or offer guidance. The Association of Judges only formally exists, and does not offer advice or support to judges on ethical dilemmas.

¹²⁹ Only the Albanian version is available online.

¹³⁰ See CoE (2015)

Recommendations

204. It is recommended that the Justice Academy develops a practical, interactive, 'case-study' training on the newly revised CPEJ that is delivered to both newly appointed judges as well as sitting judges.

205. It is recommended that the KJC considers how to strengthen the Association of Judges – or a similar body – to provide support to judges on handling ethical questions and conflicts of interest.

3.7 Working conditions of judges: managing workload, buildings, archives, IT support, research and libraries

International standards

■ Council of Europe (2010)

32. The authorities responsible for the organisation and functioning of the judicial system are obliged to provide judges with conditions enabling them to fulfil their mission and should achieve efficiency while protecting and respecting judges' independence and impartiality.

Resources

33. Each state should allocate adequate resources, facilities and equipment to the courts to enable them to function in accordance with the standards laid down in Article 6 of the Convention and to enable judges to work efficiently.

34. Judges should be provided with the information they require to enable them to take pertinent procedural decisions where such decisions have financial implications. The power of a judge to make a decision in a particular case should not be solely limited by a requirement to make the most efficient use of resources.

35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts.

36. To prevent and reduce excessive workload in the courts, measures consistent with judicial independence should be taken to assign non-judicial tasks to other suitably qualified persons.

37. The use of electronic case management systems and information communication technologies should be promoted by both authorities and judges, and their generalised use in courts should be similarly encouraged.¹³¹

Analysis of the situation in Kosovo

206. The CoE expert visited each of the 7 Basic Courts in Kosovo, the Court of Appeals and the Supreme Court.

207. There is an informal practice amongst judges of bringing work home, outside court working hours. There is a concern that the security and confidentiality of court documents could be compromised by such an informal practice.

¹³¹ Council of Europe (November 2010), [Recommendation \(2010\)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities](https://www.coe.int/t/e/treaties/Convention_on_the_status_of_judges/Convention_on_the_status_of_judges_201012.htm), available at www.coe.int/

208. The CoE expert observed different working conditions across the courts. There is an ongoing court building programme with some new court buildings already erected, well-furnished and maintained and some courts operating in poor, cramped conditions as they await transfer to new premises.

209. The Basic Court in Mitrovica, on account of political reasons concerning relations between Kosovo and Serbia, suffers from its relocation to poor quality buildings in Vushtrri. Working conditions for judges and court administrators in the Mitrovica Basic Court are cramped and grim.¹³² There is one functional courtroom that must be shared between judges, resulting in many cases being heard by judges in cramped, ill-equipped offices.

210. The Basic Court in Pristina, part of the Palace of Justice that is located some 10 km outside Pristina, has been the subject of harsh criticism concerning its health and safety standards as well as the challenges experienced by judges and court staff in travelling there by public transport or private vehicles, including the risk that travel by public transport creates opportunities for court users to contact or confront judicial officials in inappropriate ways.¹³³ The architects firm responsible for construction of the building has carried out health and safety tests to assess the air quality in the building and has recommended that regular, adequate maintenance of the building takes place.¹³⁴

211. In all courts there is a severe lack of recording equipment for courtrooms.

212. In some of the old court buildings, space for Registry Offices and Archives storage is limited and files are stored in a haphazard fashion upon any available surface. In some courts the poor standard of court buildings poses a risk that archives may be damaged because of damp.

213. Most old court buildings do not provide a separate entrance to courtrooms for judges.

214. There is a shortage of computers for judges. Some judges stated that they must share old computers, some of which lack a USB function that creates additional delays in issuing court decisions.

215. The working conditions of some courts pose serious corruption risks: haphazard, disorganised Registries and Archive offices can easily lead to case files and documents being misplaced or lost; court proceedings held in judges' offices and a failure to record or transcribe proceedings creates a severe lack of transparency and accountability of court proceedings. The risk of corruption in court proceedings as a result of a lack of equipment and insufficient courtroom space is high.

216. Access to legal texts and documents is severely hampered by a lack of research support from Professional Associates, a lack of legal libraries, a lack of computers and a lack of accessible updated legal documents including laws and secondary legislation and court judgments. The AJ, that is responsible for the training of judges, is involved in projects to update and maintain online legal databases.

Recommendations

217. It is recommended that judges avoid and discourage *ex parte* communication and if such meetings take place with only one party to a case, the judge should disclose relevant information to the other parties involved, in line with judges' ethical commitments set out in the CPEJ.¹³⁵

¹³² BIRN Court Monitoring reports (2015) and (2016).

¹³³ BIRN Court Monitoring report (2015).

¹³⁴ BIRN Court Monitoring report (2015).

¹³⁵ Article 7 of the previous version of the CPEJ explicitly discouraged *ex parte* communication by judges. There is no similar explicit provision in the current CPEJ.

218. It is recommended that Court Presidents discourage the removal of documents from courthouses, but if judges need to work on cases from home, courts should implement a system to register the removal and return of case documents.

219. It is recommended that the KJC, through the CPRU, undertakes a court needs assessment to identify deficiencies in resources, and budget for adequate levels of recording equipment, computers and resources to provide adequate space and storage for Registry offices and Archive stores.

220. It is recommended that the KJC, specifically the CPRU inspects the conditions at the Palace of Justice, and represent the concerns of judicial officials based at the Palace of Justice to the appropriate executive authorities.

221. It is recommended that the KJC works with the AJ to ensure that legal documents are published and easily accessible to judicial officials.

3.8 Security

International standards

- Council of Europe (2010) 12 Recommendations

*38. All necessary measures should be taken to ensure the safety of judges. These measures may involve protection of the courts and of judges who may become, or are victims of, threats or acts of violence.*¹³⁶

Analysis of the situation in Kosovo

222. The CoE expert observed security arrangements in each of the Basic Courts visited as well as the Court of Appeals and Supreme Court. In most courts, particularly in the regions, it was not evident that there was a consistent operation of security protocols for accessing the court building and courtrooms. Court users can easily access all parts of courthouses, including courtrooms, without being subject to security checks.¹³⁷

223. Judges in the serious crimes division of the Pristina Basic Court raised concerns about the lack of personal security arrangements. They commented that prosecutors dealing with serious crimes, including corruption and organised crime, receive higher levels of security than judges.

224. The OSCE Justice monitoring section has reported on threats and intimidation experienced by execution judges in Basic Courts.¹³⁸

¹³⁶ Council of Europe (November 2010), *Recommendation (2010)12 of the Committee of Ministers to Member States on judges: independence, efficiency and responsibilities*, available at www.coe.int/

¹³⁷ OSCE (2012), *Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions*, OSCE (2010) *Intimidation of the judiciary: security of judges and prosecutors*, available at www.osce.org/kosovo/, accessed on 20 March 2017.

¹³⁸ OSCE (2016), *Justice Monitor: Third Edition*, available at www.osce.org/kosovo/

Recommendation

225. It is recommended that the KJC and court presidents review security measures for courts and draft plans, to be periodically updated, for handling threats to the physical security of judicial officials. The KJC should liaise with courts, police and municipal authorities to devise plans to improve security for judges both in and outside courthouses.

4. Court Administration and Management

4.1 Support and Administrative Staff

International standards

- Council of Europe Recommendation (2010)12

35. A sufficient number of judges and appropriately qualified support staff should be allocated to the courts.

36. To prevent and reduce excessive workload in the courts, measures consistent with judicial independence should be taken to assign non-judicial tasks to other suitably qualified persons.

- JIG Principles of conduct for court personnel

5. Performance of duties

(1) Court personnel shall at all times perform official duties properly and with diligence. They shall commit themselves exclusively to the business and responsibilities of their office during working hours.¹³⁹

Analysis of the situation in Kosovo

226. There is a lack of Professional Associates across all courts in Kosovo. 'Professional Associates' are legally qualified and have the function of both a 'legal secretary' and a 'court clerk', that is both administrative duties and substantive responsibilities. They administer, file and organise cases as well as assist judges in the substantive legal research and required drafting for judgments. They may also make legal decisions in some categories of cases. The position of 'legal secretaries' is gradually being phased out.

227. There is a concern about the politicisation of judicial officials. According to BIRN some court administrators are also political representatives in Municipal Assemblies.¹⁴⁰ There is no ethics code for court administrators and non-judicial staff.

228. Recruitment panels for court administrators are composed of members from that court. The KJC is responsible for 'hiring and supervision' of court administrators. Concerns were expressed to the CoE expert that KJC officials can unduly influence the recruitment process through court hiring panels.

¹³⁹ JIG (2004), *Principles of conduct for court personnel*, available at www.judicialintegritygroup.org/

¹⁴⁰ BIRN (2015). See also [the Resolution on inadmissibly KI30-14 of the Constitutional Court](#), available at www.gjk-ks.org/

229. Court administrators are subject to civil service law and in case of disputes may appeal to the civil service disciplinary oversight board. The situation could potentially pose a threat to judicial independence since it represents the potential for control and supervision of court administrators by the executive authority.

Recommendations

230. It is recommended that the ability of professional associates to make legal decisions is enhanced and provided for by law.

231. It is recommended that professional associates and court administrators collaborate in developing their own Code of Professional Ethics.

4.2 Decentralisation of administrative powers to courts

International standards

- Consultative Council of European Judges (2001) Opinion No. 2 on the funding and managing of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention of Human Rights¹⁴¹

13. If judges are given responsibility for the administration of the courts, they should receive appropriate training and have the necessary support in order to carry out the task. In any event, it is important that judges are responsible for all administrative decisions which directly affect performance of the courts' functions.

- Council of Europe Recommendation (2010) 12

41. Judges should be encouraged to be involved in courts' administration.

Analysis of the situation in Kosovo

232. The KJC Administrative Instruction on the Decentralisation Process provides for the decentralisation of budgeting, finance and human resources tasks from the KJC to the Basic Courts, the Court of Appeals and the Supreme Court as from the beginning of January 2016.¹⁴² The decentralisation process gives Presidents of Basic Courts, the Court of Appeals and the Supreme Court greater authority over court administration including procurement, finance, human resources and facilities management. Procurement Officer's positions have been created in all Basic Courts.

233. The decentralisation of administrative competences has been in practice for just over one year. Complaints were raised by judicial officials to the CoE expert about the increase in the workload and responsibilities of Presidents of Basic Courts and the decrease of responsibilities of Chief Administrators. Presidents of courts may delegate and share responsibility with court administrators for the overall management of the court.

¹⁴¹ CoE (2001), *Opinion no. 2 (2001) of the Consultative Council of European Judges (CCJE) for the attention of the Committee of Ministers of the Council of Europe on the funding and management of courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights*, available at www.coe.int

¹⁴² KJC (2015) *Administrative Instruction No. 01/2015 on Delegation of Responsibilities on staff, budget, finance, procurement and logistics issues*, available in Albanian at www.gjyqesori-rks.org/

Recommendation

234. It is recommended that the KJC inspection unit, the CPRU, carries out an inspection to review and report on the efficiency of the operation of the decentralisation of administrative competences from the KJC to the courts.

4.3 Public Outreach

International standards

- The Bangalore Principles of Judicial Conduct: The Implementation Measures¹⁴³

6.5 The judiciary should consider initiating outreach programmes designed to educate the public on the role of the justice system in society and to address common uncertainties or misconceptions about the justice system.

- Council of Europe Recommendation (2010) 12

19. Judicial proceedings and matters concerning the administration of justice are of public interest. The right to information about judicial matters should, however, be exercised having regard to the limits imposed by judicial independence. The establishment of courts' spokespersons or press and communication services under the responsibility of the courts or under councils for the judiciary or other independent authorities is encouraged. Judges should exercise restraint in their relations with the media.

20. Judges, who are part of the society they serve, cannot effectively administer justice without public confidence. They should inform themselves of society's expectations of the judicial system and of complaints about its functioning. Permanent mechanisms to obtain such feedback set up by councils for the judiciary or other independent authorities would contribute to this.

- Consultative Council of European Judges (CCJE) Opinion No. 7 on 'justice and society'¹⁴⁴

15. Whereas relations with individual justice users have traditionally been dealt with by the courts, albeit in an unstructured way, courts have been reluctant in the past to have direct relations with the members of the general public who are not involved in proceedings. Publicity of hearings in the sense enshrined in Art. 6 of the European Convention on Human Rights (ECHR) has been traditionally viewed as the only contact between courts and the general public, making the mass media the sole interlocutors for courts. Such an attitude is rapidly changing. The duties of impartiality and discretion which are the responsibility of judges are not to be considered today as an obstacle to courts playing an active role in informing the public, since this role is a genuine guarantee of judicial independence. The CCJE courts should act as "communicators" and "facilitators". The CCJE considers that, while courts have to date simply agreed to participate in educational programmes when invited, it is now necessary that courts also become promoters of such programmes.

16. The CCJE considered direct initiatives of the courts with the public, not depending on the activity of the media and/or actions for which other institutions are responsible. The following measures were considered and recommended:

- creation of offices in courts in charge of reception and information services;

¹⁴³ Judicial Integrity Group (2010), [Measures for the Effective implementation of the Bangalore Principles of Judicial Conduct](http://www.judicialintegritygroup.org/), available at www.judicialintegritygroup.org/

¹⁴⁴ CCJE (2005), *Opinion No. 7 on 'justice and society'*, available at www.coe.int

- distribution of printed materials, opening of Internet sites under the responsibility of courts;

- organisation by courts of a calendar of educational fora and/or regular meetings open in particular to citizens, public interest organisations, policy makers, students (“outreach programmes”).

17. A specific discussion was devoted by the CCJE to these “outreach programmes”. The CCJE notes with interest that in some countries courts have been known to organise, often with the support of other social actors, educational initiatives that bring teachers, students, parents, lawyers, community leaders and the media into the courts to interact with judges and the justice system. Such programmes usually incorporate the use of professionals with prepared resources and provide a network for teachers’ professional development.

Analysis of the situation in Kosovo

235. In meetings with the CoE expert, judges acknowledged the low esteem in which judges in Kosovo are held in Kosovo society – and beyond. They acknowledged the commonly held perception of citizens – and others – that the judiciary is corrupt. There was a view amongst some judges, particularly Presidents and judges of Basic Courts, that judges could improve public perception and understanding of the judiciary by making themselves available to citizens through both educational speeches and lectures as well as media interviews to explain court processes. Such ‘public outreach’ is distinct from judges’ meetings with parties to ongoing cases.

236. In all Basic Courts visited by the CoE expert the position of Public Information Officer was filled. The duty of Public Information Officers is to communicate with the media and maintain the website of the courts. Public Information Officers have mostly a journalistic background. They informed the CoE expert that they were not competent to publish court decisions on court websites because that required a legal professional, for example a Professional Associate, to appropriately anonymise court decisions before publication, in accordance with the Administrative Instruction.¹⁴⁵ The Court of Appeals employs a Public Information Officer, as does the Supreme Court.

237. Some Basic Courts hold weekly meetings with court users, including Ferizaj and Prizren. These are opportunities for members of the public and indeed parties in cases to raise issues with the President of the Basic Court. Most courts reported that, on request, they provide court users and others with complaint forms that they can submit and which the President of the Court will handle.

238. The level of contact that Basic Court judges encourages with citizens fits with the Kosovo culture of hospitality and informality but also raises a concern that information-sharing and public outreach could intentionally or unintentionally result in judicial independence and due process being undermined, as parties to cases could directly petition or pressure judges to rule in their favour.

Recommendations

239. It is recommended that the newly appointed Public Information Officers fully engage with public outreach activities in their communities, including working with schools, universities, the media and the general public to inform them about the role of the court in society and its processes.

240. It is recommended that public outreach activities continue but that judges are aware that *ex parte* communication is an abuse of the CPEC and they should take care not to treat parties to cases unequally.

¹⁴⁵ KJC (2016), [Administrative Instruction No. 02/2016 on anonymisation and publication of final court judgments](http://www.gjyqesori-rks.org/), available at www.gjyqesori-rks.org/

4.4 Statistics

International standards

- CEPEJ, Guidelines in the field of the efficiency of justice
 2. *All data regarding performance and quality of the judicial system should be collected and presented through a compatible and consistent methodology applicable to all the branches and bodies of the judiciary so as to be able to evaluate the efficiency of the means allocated to them.*
 3. *Each member state should have specific statistical institutional arrangement(s) in order to collect, coordinate, aggregate and process the information from various statistic providers needed for evaluating*
 12. *Public availability of data collected at national level should be ensured, namely through publication on Internet.*
 21. *A large part of the cases before the European Court of Human Rights concerns the violation of the “reasonable time” of a proceeding provided for by Article 6 of the European Convention on Human Rights. Given that it is difficult to offer effective solutions for optimum and foreseeable timeframes unless we first have detailed knowledge of the situation, special attention should be paid to information collection on length of proceedings.¹⁴⁶*

Analysis of the situation in Kosovo

241. The collection of relevant court statistics in an orderly manner, updated at regular intervals and maintained in a transparent manner can be an effective means to prevent or identify corruption. The collection of statistics in Kosovo is patchy at best and systems for collection are not regularly maintained. There are no figures on the disposition time of cases that is the length of time it takes to complete proceedings from the filing of an indictment to the issuance of a final judgement.

242. Under the terms of the ‘Anti-corruption plan’ devised by the KJC to meet the requirements of the EU visa liberalisation roadmap, courts are obliged to, on a monthly basis, submit statistics to the KJC on the progress of certain categories of corruption crimes (see section 10.3). The prioritisation of statistics collection on anti-corruption cases works more effectively than the collection of statistics in other case categories, although there are still problems with statistical collection in this realm. The KJC does not make publicly accessible a detailed breakdown of court statistics.

Recommendations

243. It is recommended that the KJC ensure that courts have adequate computers, a standardised statistics collection methodology and court personnel who are trained to collect and submit regular statistics on court performance.

244. It is recommended that the KJC develop a standardised methodology for the collection of court statistics on the disposition time of cases.

¹⁴⁶ CEPEJ, *Guidelines in the field of the efficiency of justice*, available at www.coe.int/

5. Case management system

5.1 Case allocation

International standards

- CoE (2010) 12

24. The allocation of cases within a court should follow objective pre-established criteria in order to safeguard the right to an independent and impartial judge. It should not be influenced by the wishes of a party to the case or anyone otherwise interested in the outcome of the case.

- Bangalore Principles

3.2 The division of work among the judges of a court, including the distribution of cases, should ordinarily be performed under a predetermined arrangement provided by law or agreed by all the judges of the relevant court. Such arrangements may be changed in clearly defined circumstances such as the need to have regard to a judge's special knowledge or experience. The allocation of cases may, by way of example, be made by a system of alphabetical or chronological order or other random selection process.¹⁴⁷

Analysis of the situation in Kosovo

245. The CoE expert visited each of the 7 Basic Courts in Kosovo. In addition, the CoE expert visited the Court of Appeals and the Supreme Court. Since 2013, courts have guided by the amended article 24 of the Regulation on internal organisation of courts.¹⁴⁸ In almost all courts visited case allocation is carried out manually by a lottery system. Cases are stacked in piles and numbered. Each judge chooses a number and is allocated that pile of cases.

246. In the Basic Court of Ferizaj, case allocation is done by an electronic programme supported by EULEX. Some cases are allocated outside the electronic programme, namely cases of detention on remand which require immediate attention given that the accused is in prison.

247. Since the system does not take into account the possibility of excluding judges who have a large number of complex cases, it was decided that judges with lesser caseloads or less complex cases, could handle the urgent detention on remand cases.

248. Despite the lottery system being in place, officials from international organisations and civil society organisations stated that they believed it was possible for court clerks to influence the direction of cases to particular judges.¹⁴⁹

Recommendation

249. It is recommended that Court Administrators, who are designated by the Regulation on Internal Organisation of Courts to oversee the case allocation system, ensure that the principle of random allocation of cases to judges is respected.

¹⁴⁷ Judicial Integrity Group (2010), *Measures for the Effective implementation of the Bangalore Principles of Judicial Conduct*, available at www.judicialintegritygroup.org/

¹⁴⁸ Regulation on Internal Organisation of Courts, amended by the KJC Decision No. 40 of 22 February 2013.

¹⁴⁹ CoE (2015), *Assessment report on compliance with international standards in the anti-corruption area*, paragraph 141, available at www.coe.int/

5.2 Lawful removal of judges from cases

International standards

- CoE (2010) 12

9. A case should not be withdrawn from a particular judge without valid reasons. A decision to withdraw a case from a judge should be taken on the basis of objective, pre-established criteria and following a transparent procedure by an authority within the judiciary.

61. Judges should adjudicate on cases which are referred to them. They should withdraw from a case or decline to act where there are valid reasons defined by law, and not otherwise.

- Bangalore Principles

3.3. A case should not be withdrawn from a particular judge without valid reasons. Any such reasons and the procedures for such withdrawal should be provided for by law or rules of court.¹⁵⁰

Analysis of the situation in Kosovo

250. The process for judges to recuse themselves from hearing cases in which there is a conflict of interest, and for reassignment of cases to another judge, is set out in Criminal Procedure Code (Chapter III: Disqualification, Articles 39-43), Law on Contentious Procedure (Articles 67-72) and Article 2.5 of CPEJ (recusal).

251. Interlocutors interviewed by the CoE expert raised two concerns about the practice of judges' recusal. First there is a concern that judges do not recuse themselves where they have a conflict of interest. Second, there is a concern that judges recuse themselves inappropriately in order to either avoid adjudicating politically sensitive cases or to enable other, more partial, judges to adjudicate a case.

Recommendation

252. It is recommended that judges recuse themselves where there is a conflict of interest and that Court Presidents enquire into judges' reasons for requesting recusal. The case should be re-allocated according to the random assignment system laid out in the Regulation on Internal Organisation of Courts.

5.3 Transparency of judicial decision-making

International standards

- OSCE Kyiv Recommendations

Professional Accountability through Transparency

32. Transparency shall be the rule for trials. To provide evidence of the conduct of judges in the courtroom, as well as accurate trial records, hearings shall be recorded by electronic devices

¹⁵⁰ Judicial Integrity Group (2010), *Measures for the Effective implementation of the Bangalore Principles of Judicial Conduct*, available at www.judicialintegritygroup.org/

providing full reproduction. Written protocols and stenographic reports are insufficient. To enhance the professional and public accountability of judges, decisions shall be published in databases and on websites in ways that make them truly accessible and free of charge. Decisions must be indexed according to subject matter, legal issues raised, and the names of the judges who wrote them. Decisions of bodies deciding on discipline shall also be published (see also para 26).

33. To facilitate public trust in the courts, authorities should encourage the access of journalists to the courts, and establish positions of press secretary or media officer. There shall be no barriers or obstacles to journalists attending trials.

Analysis of the situation in Kosovo

253. The present section examines three aspects of transparency of court proceedings in Kosovo: the publication of court schedules, the publication of final court judgements and the recording and publication of transcripts of court hearings.

254. All Basic Courts except the Basic Court of Pristina displayed court schedules on monitors in the main entrance hall. Some Basic Courts visited by the CoE expert published court schedules on websites.

255. There is a lack of transparency of judicial decisions and final judgements. Final judgements are not routinely published. Court hearings are not routinely recorded, transcribed and published.

256. Article 6(3) of the Law on Courts obliges courts to 'publish the final judgments in their official website, in a time limit of sixty (60) days from the day the decision becomes final, in accordance with the legislation in force and rules of the Kosovo Judicial Council ...and by ensuring the protection of personal data.' Article 250(3) of the Criminal Procedure Code requires judges to provide written decisions.¹⁵¹ Despite this requirement lawyers and prosecutors report that they sometimes do not receive written judgements.¹⁵²

257. To implement the basic law the KJC must adopt secondary legislation. So far, the KJC has adopted Administrative Instruction (02-2016), on anonymisation and publication of final court judgments.¹⁵³ The KJC is also obliged to adopt the 'Regulation on Classification and Qualification of Documents in the Judicial System of Kosovo'.

258. The Kosovo judicial authorities adopted a model similar to the Montenegrin, Croatian and German systems for anonymising court decisions before publication, which prioritises the privacy rights of individuals in court cases.¹⁵⁴ The system is proving difficult to implement given the constraints

¹⁵¹ Official Gazette of Kosovo (2012), [Criminal Procedure Code](#), Law No. 04/L-123, adopted by the Kosovo Assembly on 13.12.2012, effective date of 01.01.2013, promulgated by decree of the President of Kosovo on 21.12.2012, available at <https://gzk.rks-gov.net>

¹⁵² In 2016 the OSCE carried out a review of the operation of the Criminal Procedure Code which included surveying lawyers and prosecutors and noted that '18 per cent of the lawyers who responded to the questionnaire responded that they "seldom or never" receive the written decision, and 43 per cent of the prosecutors responded the same.' OSCE (June 2016), [Review of the Implementation of the New Criminal Procedure Code in Kosovo](#), available at www.osce.org/kosovo/

¹⁵³ KJC (2016), [Administrative Instruction No. 02/2016 on anonymisation and publication of final court judgments](#), available at www.gjyqesori-rks.org/

¹⁵⁴ The package of amendments to the four judicial laws requires the publication of all final judgments of all courts. EROL investigated the process and procedure now in use in the court system for making judgments final. EROL also evaluated the Kosovo legal requirements necessary to anonymise information in judicial decisions to comply with the law. Based on detailed models in use in Croatia and Montenegro, EROL drafted a proposed instruction on the procedure for anonymisation by court personnel of private information such as names of parties and a procedure for posting anonymised final judgments on the judicial website.' See the USAID (December 2015), [Kosovo Effective Rule of Law Program Final Project Report \(March 24, 2011 – August 31, 2015\)](#), <http://pdf.usaid.gov/> The KJC, in the Focus Group sessions of the present corruption risk assessment held in Tirana on 23 and 24 February 2017, stated that on a study trip to meet German judges, judicial officials from Kosovo learned about the German system and chose to emulate that model in Kosovo.

on resources in Kosovo courts. Judicial officials and court administrators in the Basic courts, as well as the Court of Appeals, stated to the CoE expert that the low number of judgements published on court websites is attributable to the lack of qualified staff to anonymise judgements in accordance with the Administrative Instruction.

259. In other countries there is not such a strict anonymisation standard as that which has been adopted for the Kosovo judicial system. For example, in the UK, anonymisation of judgements before publication is not the norm. There, publishing judgements with the identities of parties is viewed as being in the general public interest and in keeping with the fact that court proceedings are generally held in public.¹⁵⁵

260. Court transcripts of criminal hearings in Basic Courts are not routinely recorded stenographically or audio or video-recorded as required by Article 315(2) of the Criminal Procedure Code. The OSCE Justice Monitoring programme compiles statistics on such practices and reports that very low numbers of trial sessions are recorded in compliance with the law.¹⁵⁶ NGOs and international officials have commented that court transcripts are often not issued until one year after hearings and that in most cases judges merely dictate a summary of the case. Rarely are there verbatim records of testimony and sessions held.¹⁵⁷ There is a lack of audio and visual equipment in courtrooms so in many cases it is impossible to meet the court-recording requirements set out in the Criminal Procedure Code.

261. The Court of Appeals it is not legally obliged to produce transcripts of its sessions. The Court of Appeals does not invite parties to hearings and there is a lack of transparency of Court of Appeals decision-making.¹⁵⁸

Recommendations

262. It is recommended that all courts display court schedules on publicly viewable monitors in the main entrances to courts as well as on court websites.

263. It is recommended that the KJC adopt the Regulation on Classification and Qualification of Documents in the Judicial System of Kosovo to ensure transparency of court documents, including the publication of court transcripts, decisions and final judgements, by setting out the rules and procedures for the qualification and classification of documents. The Regulation should be harmonised with other relevant legislation in Kosovo concerning information classification and security verification.¹⁵⁹

264. It is recommended that the KJC support courts to regularly publish final court decisions on their websites, including by ensuring Public Information Officer's positions in courts are recruited and appointed in a timely fashion and court staff are specifically trained on the classification, qualification and publication of the various forms of court information and documents.

265. It is recommended that judges should use audio or audio-video recording facilities where they are available. Where they are unavailable, judges should ensure that the written record accurately reflects the hearings.

¹⁵⁵ Venice Commission (July 2011), *The Anonymity Requirement in Publishing Court Decisions*, Krisztina Kovács (Counsellor, Constitutional Court of Hungary), available at www.academia.edu/

¹⁵⁶ OSCE (2016), *Justice Monitor: Third Edition*, available at www.osce.org/kosovo/

¹⁵⁷ OSCE (June 2016), *Review of implementation of the new Criminal Procedure Code in Kosovo*, available at www.osce.org/kosovo/

¹⁵⁸ Official Gazette of Kosovo (2010), Law on Courts, available at <https://gzk.rks-gov.net/>

¹⁵⁹ See the in-depth analysis of the KLI on this issue: KLI (April, 2016) and (December 2016).

5.4 Electronic case management systems

International standards

- CoE (2010) 12

37. The use of electronic case management systems and information communication technologies should be promoted by both authorities and judges, and their generalised use in courts should be similarly encouraged.

Analysis of the situation in Kosovo

266. There is no comprehensive electronic case management system functioning in Kosovo's courts. The exception is the tracking mechanism for high-level corruption cases and organised crime (see section 10.2).

267. Many judicial officials interviewed by the CoE expert referred to the imminent operation of the Government of Norway sponsored case management system. However, views were expressed by local and international officials with close knowledge of the project that there are delays in the development of the case management system.¹⁶⁰

Recommendation

268. It is recommended that the case management system for courts is introduced via pilot schemes and judicial officials and, in particular, court administrators including legal secretaries and professional associates, are provided with training on how to operate electronic case management systems.

6. Handling corruption cases

International standards

269. International standards on the right to a fair trial¹⁶¹ and the equality of arms between parties¹⁶² are directly applicable in Kosovo under Article 22 of the Constitution. The courts have a duty to ensure that all parties in cases, including corruption cases, are subject to the same procedural rights and application of criminal laws.

Analysis of the situation in Kosovo

270. The annual EU Progress reports set out an overview, in broad terms, of the progress Kosovo is making in detecting, prosecuting, adjudicating and convicting corruption crimes.¹⁶³ The CoE expert interviewed local and international interlocutors on a selection of the key issues concerning the judicial system's handling of corruption cases. The main issues and obstacles to the courts' effective adjudication of corruption cases are set out below in 10.1 to 10.7.

¹⁶⁰ KIPRED (2016), *Impunity in Kosovo: the fight against high profile corruption*, available at www.kipred.org/

¹⁶¹ Article 6, European Convention on Human Rights and Fundamental Freedoms

¹⁶² Article 14, International Covenant on Civil and Political Rights

¹⁶³ The latest is EC Kosovo 2016 Report.

271. The issues and obstacles analysed in the present report concerning the courts' handling of corruption cases are not exhaustive and reference should be made to the myriad procedural and substantive concerns with the law identified by the network of justice and court monitors operating in Kosovo. The OSCE Mission in Kosovo, based on its extensive justice monitoring programme, shared with the CoE expert their experience and results in monitoring how courts handle crimes generally. The most recent OSCE report on OSCE justice monitors' analysis of the operation of the Criminal Procedure Code in Kosovo provides detailed, evidence-based suggestions for reforms of the criminal procedure code and the operation of the courts that can aid anti-corruption reformers.¹⁶⁴ In addition, BIRN¹⁶⁵, KIPRED¹⁶⁶ and KLI¹⁶⁷ are highly knowledgeable civil society sources that monitor how courts operate.

272. In 2013 the Chief Prosecutor issued an Administrative Instruction¹⁶⁸ for prosecutors prioritising the focus of their anti-corruption investigations by defining the officials and the corrupt acts that are considered as high-profile corruption (acts with a monetary value of more than 500,000 Euros).

273. In September 2015 the KJC adopted the 'Action Plan on combatting corruption' ('Action Plan')¹⁶⁹ which includes the obligation for Basic Court Presidents and the President of the Court of Appeals to identify all corruption cases, especially those close to statutory limitation so that procedures could be suspended to prevent cases being dismissed because of the expiry of time limits.

274. The 'Action Plan' requires all corruption cases to be categorised by position of the defendant as well as the level of financial gain or criminal damage caused by the criminal offence. These cases were to be prioritised and reports and statistics on their progress presented monthly to the KJC 'supervisory committee' responsible for the implementation of the 'Action Plan'. The supervisory committee is responsible for reviewing the reports and implementing measures to increase the efficiency of courts with regards to the prioritised corruption cases. Neither Court Presidents have met the reporting commitments, nor has the KJC supervisory committee fulfilled its obligations under the Action Plan.¹⁷⁰

275. As has been already discussed in section 8.4, publicly available statistics on how courts handle corruption cases are unreliable. KIPRED has examined the collection of statistics and concluded that the KPC and the KJC track and record statistics in different manners.¹⁷¹

276. Nonetheless the following table compiled by the KJC sets out the number of corruption cases dealt with by Basic Courts and the nature of decisions taken in those cases in the first half of 2016. The number of inherited cases from the previous reporting period was 407 cases concerning 957 defendants, while the number of incoming cases was 116 with 209 defendants. Out of the total number of 523 cases in progress, 159 cases were resolved and 338 cases are ongoing.

277. The corruption cases concern all corruption offences listed in Chapter XXXIV of the Criminal Code.¹⁷² The table refers to number of persons involved in cases. The number of cases is much smaller. There are 16 cases concerning 'official corruption and criminal offences against official duty' involving

¹⁶⁴ OSCE (2016), *Criminal Procedure report* and *OSCE justice monitoring reports*, available at www.osce.org/kosovo/

¹⁶⁵ BIRN (2015), *Annual Court Monitoring Reports*, available at <http://birn.eu.com/>;

¹⁶⁶ KIPRED, www.kipred.org

¹⁶⁷ KLI, <http://kli-ks.org/en/>

¹⁶⁸ State Prosecutor (2013), *Instruction*, available at www.psh-ks.net/

¹⁶⁹ The Action Plan is only available in Albanian.

¹⁷⁰ KLI reports (April 2016) and (December 2016)

¹⁷¹ KIPRED (2016), *Impunity in Kosovo: the fight against high profile corruption*, available at www.kipred.org/

¹⁷² Official Gazette of Kosovo (2012), *Criminal Code*, available at <https://gzk.rks-gov.net/>

1,666 persons. There are 268 cases involving Article 422 of the Criminal Code ‘abuse of official position or authority’ that involve 735 persons. There are 100 cases concerning Article 425 ‘misappropriation in office’ with 144 persons involved. There are 63 cases concerning Article 428 ‘accepting bribes’ that involve 126 persons. 38 cases concern Article 429 ‘giving bribes’ and involve 44 persons. 38 cases concern Article 429 ‘giving bribes’ and involve 44 persons.

Investigation and adjudication of corruption offences in Kosovo in the first half of 2016 ¹⁷³	Total persons in criminal reports	Convicted persons with imprisonment	Fine	Probation	Other penalties	Acquittals	Dismissing judgments	Other alternative decisions	Total	Defendants with ongoing judicial proceedings
Official corruption and criminal offences against official duty	1,166	31	27	29	2	65	42	142	338	828
Abuse of official position or authority	735	15	10	13		54	34	120	246	489
Misappropriation in office	144	6		9		3	4	2	24	120
Fraud in office	11	1				1			2	9
Accepting bribes	126	6	6	1	2		2	7	24	102
Giving bribes	44	1	8	2				10	21	23
Trading in influence	10	1	3	3		2			9	1
Falsifying official documents	17	1				1	1		3	14
Unlawful collection and disbursement	38						1	1	2	36
Other related offences ¹⁷⁴	41			1		4		2	7	34

278. The following 7 (seven) sections set out some of the main corruption risk areas concerning how the courts handle corruption cases, as well as recommendations for reform.

6.1 Three judge panels for serious crime cases.

279. As part of the ‘Action Plan’ three-member judicial panels for serious crime cases are required. Serious crimes cases are crimes for which a tariff of more than 10 (ten) years imprisonment may be imposed.

280. Judges have remarked that the requirement obliges courts to juggle the schedules of all judges across the civil and criminal departments to ensure the availability of three judges. Delays are caused in other non-serious crime cases, as well as civil cases, as judges are taken off their caseload to prioritise the establishment of three-member panels.

281. BIRN has reported that court monitors observed, on occasion, the incomplete composition of the three-member trial panels.¹⁷⁵

¹⁷³ Based on KJC Secretariat data of the first and second quarters of 2016 for basic courts of Kosovo. Figures refer to persons.

¹⁷⁴ They include offences such as misuse of official information, conflict of interests, unauthorised use of property, giving bribes to a foreign public official, issuing unlawful judicial decisions, disclosing official secrets, unlawful appropriation of property during a search or execution of a court decision as well as failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations.

¹⁷⁵ BIRN (2015), *Annual Court Monitoring Report*, p.26, available at <http://birn.eu.com/>

Recommendations

282. It is recommended that the KJC ensures that vacant judge positions are appropriately budgeted for and filled so that courts can meet its obligations to compose three-judge panels in serious crimes cases.

283. It is recommended that the KJC and Court Presidents devise a comprehensive strategy for transfer of judges to courts to help ease the demands on judges created by the requirement for three-judge panels in serious crimes cases.

284. It is recommended that Court Presidents comprehensively review their court's capacity for staffing three-judge panels and organise judges' schedules accordingly.

285. It is recommended that the Ministry of Justice and the KJC consider whether there are types of serious crime cases that may be exempted from the three-member panel requirement, in order to ease the burden on the courts. One suggestion made during the present assessment was to exempt cases concerning illegal weapons possession.

6.2 IT-tracking mechanism for high-profile corruption and organised crime cases and reporting obligations

286. Under the terms of the visa liberalisation process the KPC established between September and December 2015 an integrated case management system that tracks a selected number of high profile serious organised crime and corruption cases. The IT tracking mechanism is a comprehensive case management system that enables the progress of a case concerning high-profile corruption and organised crime to be tracked from the police and prosecution investigation stages through the court system with information about final convictions. It includes details about the confiscation and sequestration of assets.

287. A 'Central Coordinator for Organised Crime' has competence and resources to lead multidisciplinary teams of financial investigations and is tasked with monitoring how courts follow up on financial crime prosecutions. It was not clear in interviews with Basic Court judges who in the courts are designated as contacts with the Central Coordinator for Organised Crime.

288. As part of the 'Action Plan' the courts are obliged to report monthly to the KJC on how many new corruption cases they receive (see above section 8.4 on statistics).

Recommendation

289. It is recommended that the Basic Courts and the Court of Appeals designate a contact to share statistics and information on financial crime prosecutions with the Central Coordinator for Organised Crime (see also recommendations in section 8.4 on statistics).

6.3 Court system clogged with low-level corruption cases

290. Both local and international officials interviewed by the CoE expert commented that Basic Courts are weighed down by trying to process a significant number of low-level corruption cases, particularly dealing with the prosecution of cases concerning the 'abuse of official position'. One President of a Basic Court said that his court was clogged up with low-level cases concerning the abuse of official position, dealing with very small sums of between 50 and 100 Euros.

291. Local and international officials interviewed by the CoE expert stated that the failure to process such cases in a timely fashion is due to a lack of efficiency, competence and resources in the courts, rather than corruption in the courts. One reason for such deficiencies is a lack of defence lawyers, which means that a small number of lawyers represent the accused in a large number of 'abuse of official position' cases. The small pool of defence lawyers leads to difficulties scheduling consecutive hearings in individual cases because lawyers are also engaged on many other cases. Another reason given for courts being clogged with low-level corruption cases is that prosecutors do not drop cases for fear of fostering a perception that they have taken bribes to do so. Prosecutors are also not taking advantage of alternative dispute resolution mechanisms such as plea-bargaining and mediation. There is a danger that prosecutors are indicting through campaigns that is indicting cases to publicly demonstrate they are taking a strong stand against corruption.

292. In addition, some judges stated that delays are caused by a lack of continuity in the prosecution service, where one prosecutor investigates and indicts and a different prosecutor is assigned to the court case. Judges stated that they would encourage the same prosecutor to stay with the case through the trial in order to make proceedings more efficient. Judges stated that in the round they are accommodating and postpone cases so prosecutors have time to better prepare cases.

293. However, there is a problem with a lack of preparation of prosecution indictments. In particular, judges noted that cases dealing with abuse of official position are not well prepared. Indictments are rejected due to a lack of sufficient evidence or are dismissed due to violations while securing evidence.¹⁷⁶

Recommendation

294. It is recommended that the Anti-Corruption Agency and the Prosecution service should focus their limited capacity for investigations on high profile or high-value corruption cases.

6.4 Inexplicable wealth: shift of burden of proof standard from prosecution to the public official under investigation

295. There is a growing call in Kosovo by the EU, NGOs and international officials to reassess the law related to verifying, investigating and prosecuting inexplicable wealth¹⁷⁷, where wealth held by a public official does not match the income recorded in the official's declaration of assets.¹⁷⁸ Indeed the visa liberalisation roadmap from 2013 specifically required Kosovo authorities to 'conduct proactive investigations of inexplicable wealth.'¹⁷⁹

296. The call comes amidst a background of rapid and visible enrichment of senior public officials in Kosovo, whilst the ACA and the prosecutorial service lack the capacity, resources and expertise to investigate the sources of the wealth acquired. Furthermore, the ACA has followed the practice of randomly verifying 20% of public officials' asset declarations which increases the likelihood that

¹⁷⁶ For more detail and evidence gathered by court monitors in Kosovo see KIPRED (2016), www.kipred.org/ OSCE (2016), *Criminal Procedure report* and *OSCE justice monitoring reports*, available at www.osce.org/kosovo/

¹⁷⁷ Official Gazette of Kosovo (2011), *Law on Declaration, Origin and Control of Property of Senior Public Officials and on Declaration, Origin and Control of Gifts of all Official Persons*, available at <https://gzk.rks-gov.net>

¹⁷⁸ KIPRED (2016), *Impunity in Kosovo: the fight against high profile corruption*, available at www.kipred.org/; see also EC Kosovo 2016 Report.

Group for Legal and Political Studies, *Confiscation of illicit wealth in Kosovo: Time to think for a new policy?* (2015), available at <http://legalpoliticalstudies.org/>

¹⁷⁹ European Union (2013), *Visa liberalisation with Kosovo roadmap*, available at <http://eeas.europa.eu/>

those who are corrupt will not have their assets verified. The EU has recommended that the ACA target asset declarations of officials in senior positions that may be prone to corruption.¹⁸⁰ The current situation remains that prosecution of cases where there is inexplicable wealth is low.¹⁸¹

297. Currently, the burden of proof for asset confiscation lies with the prosecution. This is in line with EU norms on the presumption of innocence and the human right to protect an individual's property from arbitrary confiscation. However, given the background of corruption in Kosovo it is reasonable to reconsider the balance of the burden to prove inexplicable wealth, including, as some in Kosovo advocate¹⁸², shifting the burden to prove the origin of wealth from state prosecutors to those under investigation.

Recommendations

298. It is recommended that the Ministry of Justice, together with legal, judicial and prosecutorial officials, examine the consequences of a shift of the burden of proof for asset confiscation in cases concerning the inexplicable wealth of senior public officials.

299. It is recommended that the capacity and resources of the ACA are strengthened to audit asset declarations, including with more effective inspection powers.

6.5 Criminalisation of submission of false asset declarations

300. The Law on Declaration of Assets obliges senior public officials to file asset declarations within 30 days of taking up a new post, and annually thereafter. Since the 2013 amendments to the Kosovo Criminal Code, it has been a criminal offence to submit a false asset declaration (Article 437) with a punishment of between 3 years and, if data was falsified, 5 years imprisonment.

301. The OSCE has recorded an inconsistent application of the law, including failures by the ACA to inform senior public officials of their obligations to file asset declarations and an inconsistent approach to investigations of failures to submit, as well as the submission of false declarations by the Prosecution Service and adjudication by the courts, that results in indictments and judgements that do not contain adequate reasoning.¹⁸³

302. There is also a question as to whether the criminalisation of false submission of an asset declaration form has encouraged more accurate asset declarations or, in fact, deterred officials from completing and submitting asset declarations at all, for fear of the punishment.¹⁸⁴

Recommendation

303. It is recommended that the Ministry of Justice review the implementation of Article 437 of the Criminal Code and the amendments to the Law on Declaration of Assets in line with the *Guidelines on Ex-Post Evaluation of Legislation* made mandatory on all government agencies and ministries by government decision in July 2015.¹⁸⁵

¹⁸⁰ EC Kosovo 2015 Report

¹⁸¹ KIPRED (2016)

¹⁸² *Ibid.*

¹⁸³ OSCE (2015), *Review of Criminal Cases relating to Failure to File Declarations of Assets by Senior Public Officials*, available at www.osce.org/kosovo/

¹⁸⁴ KIPRED (2016) at p.6

¹⁸⁵ OSCE (2015), *Review of Criminal Cases relating to Failure to File Declarations of Assets by Senior Public Officials*, available at www.osce.org/kosovo/

6.6 Courts' reluctance to implement law to order confiscation of illegally obtained assets

304. Courts are not using their authority to order confiscation of illegally obtained assets.¹⁸⁶

305. The Criminal Procedure Code and 'Law on Extended Powers for Confiscation of Assets acquired by Criminal Offences' sets out the law related to the confiscation process. Kosovo has established an agency, attached to the Ministry of Justice, to manage seized and confiscated assets.¹⁸⁷

306. The law on confiscation is complex and proving too cumbersome to use.¹⁸⁸ The 2015 Council of Europe PECK report analyses extensively the legal provisions relating to confiscation.¹⁸⁹

307. The CoE expert was informed that a parliamentary working group has been set up to monitor implementation of the law on confiscation of assets, but it has not regularly convened.

308. The most recent EU Progress report on Kosovo states: 'Asset freezing and seizures have increased but final confiscations remain low. In 2015, the estimated total value of frozen, sequestered and confiscated assets was EUR 20.6 million. The value of permanent confiscations increased from EUR 130,000 in 2014 to EUR 450,000 in 2015. From January to June 2016 the total estimated value of temporary sequestered assets was EUR 1 million, whereas the total value of permanent confiscations was EUR 236,000 (totalling EUR 1.2 million). There were also pending requests for final court confiscation in the amount of EUR 25,744.'¹⁹⁰

Recommendation

309. It is recommended that the Ministry of Justice convenes an expert working group to review the law on confiscation, taking into account the recommendations made by local and international experts, including the previous CoE recommendations from 2015:

*'636. Among the existing authorities there is currently no agency specifically mandated to undertake the task of asset recovery. Additionally, law enforcement authorities, do not proactively seek to identify or pursue criminal proceeds in the course of their investigations. Moreover, the Assessment Team is of the view that prosecutorial authorities have no priority with pursuing criminal proceeds. The Assessment Team was even informed of cases where such property had not been seized/ confiscated even within procedural reach of prosecution authorities. Therefore, in order to improve confiscation of proceeds, **it is recommended (i) to establish an entity within the existing structure with particular reference to identification, tracking and freezing proceeds of crime; and (ii) to enhance the effectiveness of the system through introducing mandatory benchmarks for law enforcement in pursuing illicit funds in the case of any investigation of a proceeds-generating offence.***

637. Confiscation of instrumentalities and proceeds of crime are regulated by Articles 69 and 96 to 99 CC...The possibilities of confiscation are in the above respect well regulated by the criminal code. On the other hand, Kosovo legislation does not explicitly provide for a confiscation of objects intended to be used and the conditions for confiscation in the CPC 278 restrict the opportunities to confiscate in accordance with the Article 96 CC in a way that is contrary to the international

¹⁸⁶ See KIPRED (2016) at p. 19

¹⁸⁷ Official Gazette of Kosovo (2016), *Law on Managing Sequestered and Confiscated Assets*, available at <https://gzk.rks-gov.net>

¹⁸⁸ See EC Kosovo 2016 Report, <https://ec.europa.eu/>

¹⁸⁹ CoE (2015), beginning at paragraph 618.

¹⁹⁰ EC (2016), *Kosovo 2016 Report*, available at <https://ec.europa.eu/>

standards. Criminal Procedure Code should thus be changed to be in line with the Criminal Code where the confiscation should be done in all cases where “such person knew or should have known that the material benefit was acquired by the commission of a criminal offence”. In cases of corruption, it is – as mentioned above - possible to confiscate without obtaining a conviction of the perpetrator according to Article 281 CPC. But it is only possible to confiscate proceeds of crime, if the material benefit or an amount of money corresponding to the material benefit is found. It may hinder the effective prosecution of corruption offences, if a perpetrator for example can hide proceeds from a crime abroad. **It is therefore recommended to ensure that objects intended to be used in a criminal offence can be confiscated and to enlarge the scope of the provisions on confiscation of instrumentalities and proceeds of crime in order to provide for better possibilities of using confiscation effectively in cases of corruption.**

6.7 Two year investigation time-limit

310. Article 159 of the Kosovo Criminal Procedure Code sets the time-limit for the prosecution investigation period for corruption cases at 2 (two) years, at which point criminal proceedings should end if the prosecutor has not filed an indictment. The time-limit may be extended for another 6 months in specific cases where a criminal investigation is complex (Article 159.2). The well-documented experience in Kosovo is that the time limit requirement is both too short to enable prosecutors to investigate cases and take decisions on indictments and that the time limit is deliberately allowed to run out, to enable the dismissal of high profile corruption cases.¹⁹¹

311. There is uncertainty around when the time-limit expires for the prosecution to take a decision on indictment. There are differing views expressed in a Supreme Court circular and a Supreme Court Panel decision. The Supreme Court circular states that the indictment should be made within the 2 (two) year investigation period. The Supreme Court panel decision holds that the indictment should be made ‘within a reasonable time’ after the end of the 2 (two) year period.¹⁹²

312. In any case the view amongst judicial, prosecutorial, local and international officials interviewed by the CoE expert is that the time limit to investigate cases including large bribery and corruption cases is too short.¹⁹³

Recommendations

313. It is recommended that the Supreme Court clarify the meaning of Article 159 of the Kosovo Criminal Procedure Code, in particular the two conflicting opinions issued by the Supreme Court.

314. It is recommended that the Ministry of Justice convene a working group, including police, prosecution and judicial officials, to make a recommendation to revise and extend the two-year investigation time limit.

¹⁹¹ For details of high profile corruption cases that have been dismissed because of the failure to indict within the 2 (two) year time limit see KIPRED (2016) at page 14.

¹⁹² Neither document is publicly available. See KIPRED (2016).

¹⁹³ See EC Kosovo 2015 and 2016 Reports.

V. CONCLUSIONS AND RECOMMENDATIONS

1. It is recommended that senior political officials including the Minister of Justice, as well as spokespersons for the judiciary, including the President of the KJC, speak out publicly against the intimidation of judges, publicly condemn personalised media attacks on the judiciary and individual judges and demonstrate their support for an independent judiciary.
2. It is recommended that international organisations continue to support training programmes for the media on the role of the judicial system in Kosovo society including advice for journalists on how to report on the work of courts and individual cases, as well as how to hold judges and courts accountable, without interfering in the judicial process or compromising the independence of the judiciary.
3. It is recommended that judges are reminded by Court Presidents as well as by CPEJ related trainings on the risks of *ex parte* communication and their obligations to disclose such communications.
4. It is recommended that the Law on the Kosovo Judicial Council be amended to reflect the changes to the composition of the KJC as set out in Constitutional Amendment 25 that amends Article 108 of the Constitution.
5. It is recommended that the KJC is supported with expert legal drafting assistance to draft the series of Regulations it is obliged to adopt to implement the package of laws relating to the judicial system. Assistance should be sought from legal drafters in the Ministry of Justice who have an overview of laws relating to the justice system as a whole, and have received substantial support to improve drafting skills as well as harmonise secondary legislation with existing laws.
6. It is recommended that the KJC ensures that all secondary legislation is publicly accessible on its website. Not all KJC Regulations and other secondary legislation are currently available at the time of writing the present assessment. The secondary legislation is essential for judicial officials and others to understand judicial procedures for recruitment, appointment, promotion, transfer and dismissal, amongst others, of judges.
7. It is recommended that the Ministry of Justice establish a working group to consider the proposal for a constitutional amendment to enable the Constitutional Court to conduct judicial review of KJC decisions and regulations relating to the career development of judges and judicial candidates.
8. It is recommended that the KJC strictly adheres to Decision 47/2017 of 6 March 2017 to conclude the recruitment process for 61 judges begun in 2016. The results of the new written test must be final for the 75 out of the original 176 candidates who obtained 45 points or more in the initial recruitment process.
9. It is recommended that the KJC drafts separate and different selection criteria for the recruitment of Presidents of Basic Courts, the President of the Court of Appeals and the President of the Supreme Court, reflecting their different roles within the judicial system. Selection requirements should be based on objective criteria, including the merit and integrity of candidates.
10. It is recommended that the KJC revises its arrangements for undertaking recruitment processes of judges. The concern is to devise a process for the recruitment of judges that puts sufficient distance between KJC members and the recruitment process, so that the KJC may not direct a change in the recruitment rules after the recruitment process has begun. One option is to

delegate the task of recruitment of judges to a permanent, special commission which has a pre-established procedure and criteria for judicial selection clearly defined by law. Such an arrangement is in line with international standards, set out above in OSCE/ODIHR Kyiv Recommendation 8, that judicial councils should establish 'special commissions' for judicial selection. The special commission could consist of judges and other professionals including professors and jurists. It could also consist of professional human resources recruitment professionals.

11. It is recommended that the President's decision to refuse a nominee should be in accordance with prescribed criteria upon which the President can refuse a nomination and delivered to the KJC in a timely and transparent manner. In addition, there should be clear grounds on which a rejected nominee for a judgeship can appeal the President's decision.
12. It is recommended to consider reviewing the probationary system of appointment of judges which envisages an initial 3-year term prior to final confirmation for tenure. Options include a constitutional amendment that judges are appointed permanently until retirement or, where the probationary period is considered necessary in Kosovo, a legal guarantee that 'refusal to confirm the judge in office should be made according to objective criteria and with the same procedural safeguards as apply where a judge is to be removed from office'.
13. It is recommended that the vetting process for judges is enshrined in law and the KJC adopt clear and comprehensive criteria for vetting procedures of judges based on objective and transparent criteria.
14. It is recommended to enshrine in law that applicants for judgeships and judges being considered for promotion, should be given access to the information gathered during vetting procedures or background checks. They should have the opportunity to appeal results of vetting procedures or background checks to the courts.
15. It is recommended that the Judges Performance Assessment Committee (JPAC) focus on a qualitative assessment of judges' performance and avoid a purely numerical or 'quantitative' approach to evaluating judges' performances, as numbers of cases resolved or numbers of procedural deadlines complied with does not reflect the complexity of cases that individual judges handle. The number of acquittals should never be an indicator for the evaluation of judges. Rather than focusing on numbers of cases barred because of the expiry of statutory limitations, evaluations could include analysis of reasons for cases barred because of the expiry of statutory limitations.
16. It is recommended that serving judges evaluate judges at their court level or below, but not judges sitting in a higher level court. Supreme Court judges should evaluate Supreme Court judges and consideration should be given to engaging recently retired Supreme Court judges to carry out evaluations.
17. It is recommended that Application Review Panels that consider applications from judges for promotions within the judiciary include legal professionals such as law professors and advocates in addition to KJC members.
18. It is recommended that the KJC ensure that all courts are adequately and permanently staffed so that there is not an over-reliance on the transfer of judges in order to staff courts.
19. It is recommended that the recent adoption of the KJC Regulation on Transfer and Assignment of Judges guides the effort by the KJC to, in a timely fashion, organise the temporary transfer of judges to the Pristina Basic Court to assist with its heavy caseload burden.

20. It is recommended that a separate Regulation on the suspension and removal from office and/or dismissal of Court Presidents and Supervising Judges is adopted by the KJC.
21. It is recommended that the Ministry of Justice drafts a new basic law on the organisation and functioning of the ODC. The ODC (or in the case of the Law on the Kosovo Prosecutorial Council, the 'ODP') provisions in the Law on the Kosovo Judicial Council and Kosovo Prosecutorial Council should be repealed and replaced by the separate new law.
22. It is recommended that the Ministry of Justice working group includes in its review the 'amnesty' amendment to assess whether the one year time limit to investigate complaints against judges is realistic in the context of the present composition and functioning of the ODC (the KLI recommends a 2-year time limit). The effect of the amnesty on the ODC's backlog of cases should be evaluated and the number of cases affected reported. It should be assessed whether the ODC is adequately staffed, financed and its officers are competent in terms of qualifications, training and powers to fulfil their mandate.
23. It is recommended that the Ministry of Justice working group on the ODC reviews the loophole in the law that enables judges to resign their positions before the full KJC can consider recommendations from the Disciplinary Committee for their dismissal, and subsequently enables judges to work as an advocate at the Bar or to apply to return at a later date as a judge.
24. It is recommended that the ODC establishes an efficient tracking mechanism that registers cases received, actions taken and records their progress through the investigation stage, the Disciplinary Committee of the KJC, appeals to the KJC and the final stage when KJC considers recommendations for sanction or dismissal.
25. It is recommended that the Disciplinary Committee of the KJC handles cases in a timely manner and time limits are imposed for its initial handling of recommendations for disciplinary action. (KLI recommended 6 months).
26. It is recommended that the KJC completes in a timely fashion its determination of recommendations for dismissal (KLI recommends 3 months) and any appeals to its decision.
27. It is recommended that the permanent committee of the KJC to which the CPRU reports, the Committee for Court Administration, reviews and takes action on recommendations made by the CPRU.
28. It is recommended that *ad hoc* committees are established by the KJC to consider and implement recommendations from CPRU reports that deal with specific issues such as the problem of large numbers of cases dismissed because of the expiry of statutory limitations.
29. It is recommended that the recommendations of the CPRU feed into the Strategic Plan for the Judiciary (the current plan covers 2014 – 2019).
30. It is recommended that KJC officials are subject to the same restriction on earning additional compensation from activities external to their jobs as judges and prosecutors, namely that they may only earn up to 25% of their basic salary from participation in external professional activities.
31. It is recommended that the Law on Public Financial Management is amended to conform to the budget submission process set out in the Law on Kosovo Judicial Council.
32. It is recommended that the Kosovo Judicial Council ensures that the budget for each year is effectively allocated, maintains accurate and current accounts and conducts audits in compliance with Article 15(2) of the Law on the Kosovo Judicial Council.

33. It is recommended that the Ministry of Finance allocates additional monetary funds to cover vacant judge and court personnel positions in the next financial year.
34. It is recommended that the Kosovo Judicial Council budget maintains the salary increase for serious crime judges.
35. It is recommended that there is a parity of salary levels between prosecutors and judges at similar professional levels.
36. It is recommended that the KJC ensure the implementation of the requirement that all newly appointed judges receive training by the Academy of Justice for twelve months after appointment.
37. It is recommended that the KJC and Academy of Justice work with judges to identify training needs and topics, particularly in the area of organised crime and financial and corruption crimes.
38. It is recommended that the KJC, the Ministry of Justice and the ACA consider establishing a separate system of control of assets for judges (and prosecutors) given their legal role in supervision of ethical principles, in line with the previous recommendation made by the Council of Europe.
39. It is recommended that the KJC regularly update the system to record the professional activities of judges and remind judges of their obligations to (a) ensure that professional activities do not detract from their professional duties as judges (b) they are not permitted to earn more than 25% of their salary from professional activities.
40. It is recommended that ethics trainings for judges based on the CPEJ emphasise what is permissible and what is restricted concerning professional activities for judges and remind judges of the 25% ceiling on remuneration in addition to judicial salaries.
41. It is recommended that, whilst respecting the internal independence of all judges in the judiciary, the Court of Appeals uses its 'Bulletin' publication to issue unifying opinions which can serve as a source of advice for lower court judges whilst not binding upon them.
42. It is recommended that the Supreme Court exercises its authority under Article 22(1.4) of the Law on Courts, through its own 'Bulletin' system, to contribute to unifying court sanctions and decisions, by intervening when necessary through 'legal positions' and 'legal opinions' for issues that have importance for unique application of laws by the courts in Kosovo.
43. It is recommended that the Justice Academy develops a practical, interactive, 'case-study' training on the newly revised CPEJ that is delivered to both newly appointed judges as well as sitting judges.
44. It is recommended that the KJC considers how to strengthen the Association of Judges – or a similar body – to provide support to judges on handling ethical questions and conflicts of interest.
45. It is recommended that judges avoid and discourage *ex parte* communication and if such meetings take place with only one party to a case, the judge should disclose relevant information to the other parties involved, in line with judges' ethical commitments set out in the CPEJ.
46. It is recommended that Court Presidents discourage the removal of documents from courthouses, but if judges need to work on cases from home, courts should implement a system to register the removal and return of case documents.

47. It is recommended that the KJC, through the CPRU, undertakes a court needs assessment to identify deficiencies in resources, and budget for adequate levels of recording equipment, computers and resources to provide adequate space and storage for Registry offices and Archive stores.
48. It is recommended that the KJC, specifically the CPRU inspects the conditions at the Palace of Justice, and represent the concerns of judicial officials based at the Palace of Justice to the appropriate executive authorities.
49. It is recommended that the KJC works with the Academy of Justice to ensure that legal documents are published and easily accessible to judicial officials.
50. It is recommended that the KJC and court presidents review security measures for courts and draft plans, to be periodically updated, for handling threats to the physical security of judicial officials. The KJC should liaise with courts, police and municipal authorities to devise plans to improve security for judges both in and outside courthouses.
51. It is recommended that the ability of professional associates to make legal decisions is enhanced and provided for by law.
52. It is recommended that professional associates and court administrators collaborate in developing their own Code of Professional Ethics.
53. It is recommended that the KJC inspection unit, the CPRU, carries out an inspection to review and report on the efficiency of the operation of the decentralisation of administrative competences from the KJC to the courts.
54. It is recommended that the newly appointed Public Information Officers fully engage with public outreach activities in their communities, including working with schools, universities, the media and the general public to inform them about the role of the court in society and its processes.
55. It is recommended that public outreach activities continue but that judges are aware that *ex parte* communication is an abuse of the CPEC and they should take care not to treat parties to cases unequally.
56. It is recommended that the KJC ensure that courts have adequate computers, a standardised statistics collection methodology and court personnel who are trained to collect and submit regular statistics on court performance.
57. It is recommended that the KJC develop a standardised methodology for the collection of court statistics on the disposition time of cases.
58. It is recommended that Court Administrators, who are designated by the Regulation on Internal Organisation of Courts to oversee the case allocation system, ensure that the principle of random allocation of cases to judges is respected.
59. It is recommended that judges recuse themselves where there is a conflict of interest and that Court Presidents enquire into judges' reasons for requesting recusal. The case should be re-allocated according to the random assignment system laid out in the Regulation on Internal Organisation of Courts.
60. It is recommended that all courts display court schedules on publicly viewable monitors in the main entrances to courts as well as on court websites.

61. It is recommended that the KJC adopt the Regulation on Classification and Qualification of Documents in the Judicial System of Kosovo to ensure transparency of court documents, including the publication of court transcripts, decisions and final judgments, by setting out the rules and procedures for the qualification and classification of documents. The Regulation should be harmonised with other relevant legislation in Kosovo concerning information classification and security verification.
62. It is recommended that the KJC support courts to regularly publish final court decisions on their websites, including by ensuring Public Information Officer's positions in courts are recruited and appointed in a timely fashion and court staff are specifically trained on the classification, qualification and publication of the various forms of court information and documents.
63. It is recommended that judges should use audio or audio-video recording facilities where they are available. Where they are unavailable, judges should ensure that the written record accurately reflects the hearings.
64. It is recommended that the case management system for courts is introduced via pilot schemes and judicial officials and, in particular, court administrators including legal secretaries and professional associates, are provided with training on how to operate electronic case management systems.
65. It is recommended that the KJC ensures that vacant judge positions are appropriately budgeted for and filled so that courts can meet its obligations to compose three-judge panels in serious crimes cases.
66. It is recommended that the KJC and Court Presidents devise a comprehensive strategy for transfer of judges to courts to help ease the demands on judges created by the requirement for three-judge panels in serious crimes cases.
67. It is recommended that Court Presidents comprehensively review their court's capacity for staffing three-judge panels and organise judges' schedules accordingly.
68. It is recommended that the Ministry of Justice and the KJC consider whether there are types of serious crime cases that may be exempted from the three-member panel requirement, in order to ease the burden on the courts. One suggestion made during the present assessment was to exempt cases concerning illegal weapons possession.
69. It is recommended that the Basic Courts and the Court of Appeals designate a contact to share statistics and information on financial crime prosecutions with the Central Coordinator for Organised Crime (see also recommendations in section 4.4 on statistics).
70. It is recommended that the Anti-Corruption Agency and the Prosecution service should focus their limited capacity for investigations on high profile or high-value corruption cases.
71. It is recommended that the Ministry of Justice, together with legal, judicial and prosecutorial officials, examine the consequences of a shift of the burden of proof for asset confiscation in cases concerning the inexplicable wealth of senior public officials.
72. It is recommended that the capacity and resources of the ACA are strengthened to audit asset declarations, including with more effective inspection powers.
73. It is recommended that the Ministry of Justice review the implementation of Article 437 of the Criminal Code and the amendments to the Law on Declaration of Assets in line with the *Guidelines on Ex-Post Evaluation of Legislation* made mandatory on all government agencies and ministries by government decision in July 2015.

74. It is recommended that the Ministry of Justice convenes an expert working group to review the law on confiscation, taking into account the recommendations made by local and international experts, including the previous CoE recommendations from 2015:
75. It is recommended that the Supreme Court clarify the meaning of Article 159 of the Kosovo Criminal Procedure Code, in particular the two conflicting opinions issued by the Supreme Court.
76. It is recommended that the Ministry of Justice convene a working group, including police, prosecution and judicial officials, to make a recommendation to revise and extend the two-year investigation time limit.

VI. ANNEXES

Annex 1: List of courts, institutions, organisations, experts visited and interviewed

First on-site mission: 31 October 2016 to 4 November 2016

Judges and Support Staff in Seven Basic Courts in Kosovo:

- Pristina
- Peja
- Gjakova
- Prizren
- Ferizaj
- Gjilan and
- Mitrovica

Second on-site mission: 21 to 25 November 2016, Pristina

- Court of Appeal, (Judges and Support Staff)
- Supreme Court
- Civil society representatives monitoring courts and prosecution services
- Office of Disciplinary Prosecutor
- Kosovo Judicial Council
- Agency for Management of Sequestered and Confiscated Assets
- Chamber of Advocates
- Ministry of Justice
- OSCE Monitoring Unit
- USAID, UNDP and EU Project dealing with Judiciary

Third on-site mission: from 22 to 24 February 2017, Pristina and Tirana

- British Embassy
- Dutch Embassy
- Turkish Chamber of Commerce
- Court experts
- Focus Group in Tirana with main judiciary stakeholders as well as judges from the region

Missions	Total participants	No. Women	% Women	No. Men	% Men
First on-site mission	96	39	41%	57	59%
Second on-site mission	46	14	30%	32	70%
Third on-site mission	18	4	22%	14	78%
TOTAL	160	57	35%	103	65%

Annex 2: Questionnaire on perception and experience of corruption for judges and prosecutors

Questionnaire for judges, prosecutors and the staff of courts and prosecutors' offices in Kosovo on corruption risks in the judiciary and prosecution offices

This questionnaire forms part of a corruption risk-assessment of the judiciary and the prosecution service in Kosovo that is being carried out by the Council of Europe and the European Commission under the Project against Economic Crime in Kosovo (PECK II) in 2016/2017.

The questionnaire is a follow-up to two Council of Europe expert missions to assess corruption risks in the judiciary and prosecution offices undertaken during October and November 2016. The missions included meetings with judges and court staff in all Basic Courts in Kosovo, the Court of Appeals and the Supreme Court, as well as meetings with staff from the Kosovo Judicial Council, prosecutors and their staff at all prosecution offices, the Chair and staff of the Kosovo Prosecutorial Council, lawyers' associations, NGOs and the international community.

The present questionnaire seeks to avoid duplication of the International Bar Association (IBA) questionnaire that the Kosovo Democratic Institute intends to disseminate to judicial actors in January 2017. The present questionnaire has adapted some of the corruption related questions from the IBA questionnaire, but focuses on more detailed questions concerning corruption risks on which the Council of Europe experts gathered information during the two missions to Kosovo in October and November 2016.

There are 15 questions. Questions 1 – 9 are for all respondents; questions 10 and 11 are to be answered by JUDGES AND PROSECUTORS ONLY, questions 12 and 13 by JUDGES ONLY and 14 and 15 by PROSECUTORS ONLY.

The basic questionnaire should not take more than 15 – 30 minutes. Many questions include boxes where respondents can provide more detailed information.

For the purposes of completing the questionnaire certain key terms are defined here (all definitions are taken from the IBA questionnaire):

judicial corruption is defined as 'all forms of inappropriate influence that may damage the impartiality of justice and may involve any actor within the justice system, including (but not limited to) judges, prosecutors, lawyers, administrative court support staff, parties and public servants';

bribery is defined as encompassing:

- the promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; or
- the solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

extortion is defined as an extension of the act of bribery and states that 'the solicitation of bribes is the act of asking or enticing another to commit bribery, thus it becomes extortion when this demand is accompanied by threats that endanger the personal integrity or the life of the actors involved';

undue influence is defined as a situation in which ‘someone uses their power or authority in an unfair way in order to influence a legal decision’;

undue political influence is defined as the manipulation of policies, institutions and rules of procedure including, but not exclusively, in the allocation of resources and financing by political decision-makers, who abuse their position to sustain their power, status and wealth;

misuse of funds is defined as an act by a person who holds office in an institution, organisation or company and who dishonestly and illegally appropriates, uses or traffics public funds, public property or public assets, directly or indirectly for personal enrichment – or the enrichment of others – or other activities;

Bribery, extortion, undue influence, including undue political influence, and misuse of funds are all different aspects of **corruption**.

QUESTIONNAIRE

Questions – 1 – 15 (The questionnaire should take between 15 – 30 minutes to complete)

1. What is your gender?

- Male Female

2. What is your occupation?

- Judge
 Court employee
 Prosecutor
 Prosecutor’s office employee

3. For how many years have you worked in this capacity? Include your full period of service as a judge, court or prosecution office employee or prosecutor, and not merely the time spent in your current office or position.

- 0-4 years
 5-9 years
 10-19 years
 20-29 years
 30-39 years
 40 years or more

4. Please rate the level of corruption that you perceive in the different groups listed in the first column of the below table. For each group please place an x in one of the boxes ‘Very High’; ‘High’; ‘Moderate’; ‘low’; ‘Very Low’ or ‘Don’t Know/No opinion’

Rating corruption levels in different groups

	Very High (5)	High (4)	Moderate (3)	Low (2)	Very Low (1)	Don't Know/ No Opinion
Kosovo society in general						
The Judicial System in general						
The Judiciary						
Basic Court Judiciary						
Court of Appeals Judiciary						
Supreme Court Judiciary						
Court staff						
Police						
Prosecutors						
Basic Court Prosecutors						
Court of Appeals Prosecutors						
Chief State Prosecutor's Office						
Special Prosecutors Office						
Prosecution staff						
Advocates						

5. In your experience, have you encountered, or do you know of any other person who works within the justice system who has encountered, any form of corruption among judges, prosecutors or their staff, including bribery, extortion, political influence or misuse of funds?

- Yes I personally have encountered corruption
- Yes I know of another person who has encountered corruption
- No I have not personally encountered corruption
- No I do not know of another person who has encountered corruption

Please use the below box to describe your experience or views (question adapted from IBA questionnaire).

6. In your experience has the 2016 process to decentralise administrative duties from the Kosovo Judicial Council to the Basic Courts resulted in mismanagement of funds, judicial corruption or encumbered the operations of the courts in any other way?

- YES NO

Please describe.

7. What are the most common reasons for the unjustifiable failure of cases or for delays in resolving cases? Please choose as many reasons from the following list as you like or add your own as appropriate. Please use the boxes to describe particular experiences or examples.

- Shortage of judges and court staff to conduct hearings and process cases
- Lack of preparation by prosecutors, lawyers, judges or court staff
- Unjustifiable failure to initiate investigations
- Failure by investigators or prosecutors to carry out investigations in a competent manner or to obtain or secure necessary evidence
- Unreasonable failure of prosecutors to prefer charges
- Other failure by prosecutors to conduct cases in a competent manner
- Failure by investigators to complete their work before expiry of the statute of limitations
- Delay by prosecutors resulting in expiry of the statute of limitations
- Loss of or tampering with evidence or interfering with witnesses
- Other reasons for application of the statute of limitations or the failure of cases
- Judicial corruption
- Inadequate laws; lack of higher court guidance on application of the law
- Other

8. Do you have adequate working conditions including

	YES	NO	NOT APPLICABLE
a) Office space and environment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Technical equipment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Support staff	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Salary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Security from physical threats or intimidation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Access to legal materials (court judgments, statute law, regulations, etc., information about legal developments)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Adequate training (including continuing education)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

9. Do you have an effective relationship with:

	YES	NO	NOT APPLICABLE
a) Junior colleagues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Senior colleagues	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Staff who report to you	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Staff to whom you report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Please use the below box to describe your views and experience.

10. FOR JUDGES AND PROSECUTORS ONLY

Is there an effective working relationship between the judiciary and the prosecution service?

YES NO

Please use the below box to describe views and experiences concerning your working relationship with the prosecution service (or judiciary) and note any concerns, problems or improvements that could be made.

11. FOR JUDGES AND PROSECUTORS ONLY

Is there is a clear and transparent disciplinary procedure governing judges' or prosecutors' conduct (as applicable)?

YES NO

Please describe views and experiences of the disciplinary process in the below box.

12. FOR JUDGES ONLY

Does the Kosovo Judicial Council adequately fulfil its responsibilities to recruit and vet judges?

YES NO

Please describe views and experiences on the KJC's recruitment and vetting responsibilities in the below box.

13. FOR JUDGES ONLY

Does the Kosovo Judicial Council adequately fulfil its responsibilities to manage and audit the judiciary?

- YES NO

Please describe any views and experiences on the KJC's responsibilities to manage and audit the judiciary in the below box.

14. FOR PROSECUTORS ONLY

Do you think the new procedures for a role for the Kosovo Prosecutorial Council in relation to the recruitment, promotion and assessment of prosecutors and the management of the prosecution offices as compared with the former arrangements will represent:

Don't know	A serious disimprovement	Some disimprovement	Much the same	Some improvement	A substantial improvement
0	1	2	3	4	5

15. FOR PROSECUTORS ONLY

Is there an effective working relationship between prosecutors and the police and other investigators?

- YES NO

Please use the below box to describe views and experiences concerning your working relationship with the police or other investigators and note any concerns, problems or improvements that could be made.

Annex 3: Overview of recipients and respondents to the Questionnaire

Corruption Risk Assessment in Prosecution and Judiciary - PECK II Project

Number of recipients and respondents of the questionnaire

City	Judges	Responses	Prosecutors	Responses	Support Staff Court	Responses	Support Staff Prosecution	Responses
Gjakova	15	2	10	2	23	0	21	2
Prizren	41	10	16	1	119	2	29	1
Mitrovica	13	1	12	3	46	1	22	3
Prishtina	7	1	50	2	9	1	64	8
Ferizaj	24	3	14	0	78	0	19	0
Peja	34	4	13	3	113	12	27	2
Gjilan	32	1	15	1	82	17	30	0
Supreme Court	23	1	0	0	0	0	0	0
Appellate Prosecution	0	0	6	0	0	0	6	0
Special Prosecution				2				2
Prosecutorial Council	0	0	10	3	0	0	46	6
Sub-total	189	23	146	17	470	33	264	24
Total responses	97							

The **present publication** contains the first assessment of the areas of corruption risks in the Kosovo judicial system and makes recommendations for reform. Recommendations for reform are guided by international standards on effective judicial systems and draw on information and analysis collected from a series of meetings held between October 2016 and February 2017 with officials from the judiciary, prosecutorial service, police, government, civil service, civil society and international organisations in Kosovo. The assessment of corruption risks is performed through a participatory process of involved officials of different levels from relevant beneficiary institutions, other public institutions as well as active and interested stakeholders in the judicial system. Introducing and further strengthening management of corruption risks is of critical importance to effectively control and combat corruption in the judiciary.

The report has been prepared within the framework of the European Union and Council of Europe Joint Project against Economic Crime in Kosovo (PECK II), funded by the European Union and the Council of Europe, and implemented by the Council of Europe. The main objective of the project is to strengthen institutional capacities to counter corruption, money laundering and the financing of terrorism in Kosovo in accordance with European standards, through targeted technical assistance and assessment for improving and streamlining economic crime reforms.

www.coe.int/peck2

The Economic Crime and Cooperation Division (ECCD) at the Directorate General Human Rights and Rule of Law of the Council of Europe is responsible for designing and implementing technical assistance and co-operation programmes aimed at facilitating and supporting anti-corruption, good governance and anti-money laundering reforms in the Council of Europe member states, as well as in some non-member states.

www.coe.int/corruption

ENG

The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

www.coe.int

The European Union is a unique economic and political partnership between 28 democratic European countries. Its aims are peace, prosperity and freedom for its 500 million citizens – in a fairer, safer world. To make things happen, EU countries set up bodies to run the EU and adopt its legislation. The main ones are the European Parliament (representing the people of Europe), the Council of the European Union (representing national governments) and the European Commission (representing the common EU interest).

<http://europa.eu>

