



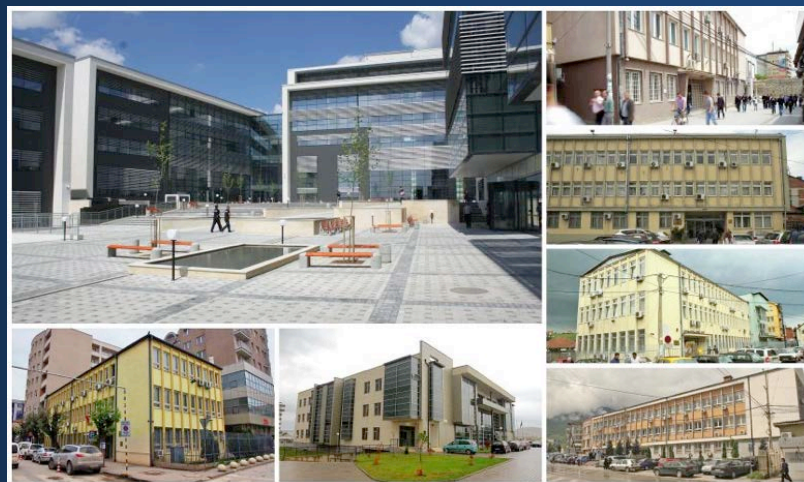
**USAID**  
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# STOCKTAKING REPORT

## KOSOVO JUDICIAL COUNCIL AND COURTS

### JANUARY 2016

## JUSTICE SYSTEM STRENGTHENING PROGRAM IN KOSOVO (JSSP)



January 2016

#### **DISCLAIMER**

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# STOCKTAKING REPORT KOSOVO JUDICIAL COUNCIL AND COURTS

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JUSTICE SYSTEM STRENGTHENING PROJECT  
IN KOSOVO (JSSP)

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*On the cover: Kosovo court buildings. Clockwise from top left: Palace of Justice, home of the Supreme Court, Court of Appeals, and Pristina Basic Court; Mitrovica Basic Court at Vushtrri; Gjakova Basic Court; Peja Basic Court; Gjilan Basic Court; and Ferizaj Basic Court.*

# ACKNOWLEDGEMENT

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## LIST OF ACRONYMS

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ACDC	Advocacy Center for Democratic Culture
ATRC	Advocacy Training and Resource Center
BIRN	Balkan Investigative Reporting Network
CEPEJ	Commission for the Efficiency of Justice (Council of Europe)
CLARD	Center for Legal Aid and Regional Development
CLE	Contract Law Enforcement Program (USAID, 2013-2016)
CLEP	Continuing Legal Education Program
CMIS	Case Management and Information System
CPRU	Court Performance Review Unit
CSO	Civil Society Organization
CSP	Comprehensive Settlement Proposal
ECR	Electronic Case Registry
EROL	Effective Rule of Law Program (USAID, 2011-2015)
EU	European Union
EULEX	European Rule of Law Mission
FTE	Full Time Employee
GOK	Government of Kosovo
IFCE	International Framework for Court Excellence
IJPC	Independent Judicial and Prosecutorial Commission
ILEP	Initial Legal Education Program
IT	Information Technology
JAS	Judicial Audit Section
JIU	Judicial Inspection Unit
JSA	Justice Sector Agreement
JSRAK	Justice System Reform Activity in Kosovo (USAID (2003-June 2007))
JSP	Justice Support Program (USAID, 2007-2011)
JSSP	Justice System Strengthening Program (USAID, 2015-2019)
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KJPC	Kosovo Judicial and Prosecutorial Council
KLI	Kosovo Law Institute
KPC	Kosovo Prosecutorial Council
LOC	Law on Courts
LOKJC	Law on the Kosovo Judicial Council
M&E	Monitoring and Evaluation
MDPI	Millennium DPI Partners, LLC
MOF	Ministry of Finance
MOJ	Ministry of Justice
MPA	Ministry of Public Administration
NCSC	National Center for State Courts
NED	National Endowment for Democracy
NGO	Non-Governmental Organization
ODC	Office of Disciplinary Counsel
UNM	University of North Mitrovica



UNMIK      United Nations Mission in Kosovo  
USAID      United States Agency for International Development

## KEY TERMS AND DEFINITIONS

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The following key terms are defined to ensure a common understanding among stakeholders of this report.

2013 Restructuring	The jurisdictional reorganization of the Kosovo court system through which first instance jurisdiction was consolidated in seven Basic Courts and second instance jurisdiction in one unified Court of Appeals. The Basic Courts are located in the seven major towns of Kosovo (Pristina, Mitrovica, Gjilan, Ferizaj, Prizren, Gjakova, and Peja) and assumed all first instance jurisdiction previously held by the Municipal Courts, District Courts, the Supreme Court, Minor Offenses Courts, and the Commercial Court. Municipal Courts in other town centers became branches of these seven Basic Courts. The Court of Appeals is located in Pristina and assumed all second instance jurisdiction previously held by the District Courts, High Minor Offenses Court, and the Supreme Court. Specialized Minor Offenses Courts, High Minor Offenses Court, and the Commercial Court were eliminated.
2016 Decentralization	The transfer of administrative competencies from the Kosovo Judicial Council's (KJC) Secretariat to Kosovo courts. Transferred competencies include the management of human resources, budget and finances, and procurement and logistics.
Backlog	The total number of backlogged cases. Backlog changes on a daily basis as cases are disposed and new cases in the inventory fall beyond the 24-months mark.
Backlogged Case	A pending case older than 24-months. The definition of a backlogged case is set by the KJC.
Case Inventory	The total number of pending cases. The case inventory includes both backlogged cases and cases which were filed at any time between the day of calculation and the 24-months mark.
Clearance Rate	The ratio of disposed cases divided by new cases filed in a given period. When expressed as a percentage, a clearance rate of 100% or above represents an effective court that is able to handle the inflow of new cases and address any residual backlog. A clearance rate below 100% places a court at risk of building backlog, as it is no longer able to remain current with its inflow of new cases.
Disposed Case	A case filed with a court and which has been formally closed by a judge, recorded as closed in the court's registers, and reported as

closed to the KJC's Statistics. Until a case is reported as closed, and as a result disposed, it remains part of the inventory. Cases that are suspended or interrupted procedurally may not be formally closed and may remain part of the inventory as a result.

Judiciary	The system of courts of law and the judges within those courts; specifically the seven Basic Courts, the Appellate Court, the Supreme Court and the KJC.
Justice Sector	The state agencies in Kosovo responsible for the provision, management and oversight of justice, including the ODC, State Prosecutors, the Kosovo Prosecutorial Council (KPC), the judiciary, court administration personnel, the KJC, the Kosovo Judicial Institute (KJI) and the Ministry of Justice (MOJ).
New Case or Filing	A case received by a court and which has been formally accepted by the intake office, recorded as open in the court's registers, and reported as open to the KJC's Statistics Department.
Norm	A quantitative measure of the productivity of judges on a monthly or annual basis. The norm sets the number of cases a judge is expected to dispose in a month. While intended as an orientation, it has by and large become the ceiling of the activity of judges on a monthly basis. The applicable norms are regulated under the KJC's Regulation on Determining the Working Norm for Judges (2012).
Pending Case	A case filed with a court and not yet disposed. A pending case may have been suspended or interrupted for objective reasons.
Time Standard	A quantitative measure of the efficiency of judges on a monthly or annual basis. The time standard sets the maximum number of days deemed appropriate for the processing of a case from filing to disposition.

## EXECUTIVE SUMMARY

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The USAID Justice System Strengthening Program (JSSP) is pleased to present this Stocktaking Report, a rapid assessment of the judiciary to assess the impact of judicial reforms, including the 2013 court restructuring, to identify gaps and deficiencies in the legal and operational framework of the Kosovo Judicial Council (KJC) and courts, and to evaluate preparedness for the 2016 decentralization of administrative competencies from the KJC Secretariat to Kosovo courts. The report also details the current situation for courts in the north, and provides an overview of civil society efforts to enhance the rule of law. The methodology included reviewing and analyzing the legal framework, collecting data and statistics, and interviews with key personnel in the judiciary. The results, summarized in key findings and recommendations, provide a baseline for JSSP interventions to improve the effectiveness and efficiency of the administration of justice in Kosovo. The report also includes a review of past rule of law projects in Kosovo, highlighting their support and achievements.

**Strengthen the Efficiency and Effectiveness of the Administration of Justice.** The Kosovo judiciary underwent transformational reforms with the 2009–2010 reappointment of judges and the adoption of new laws on courts and on the KJC in 2010. In January of 2013, the 2010 Law on Courts (LOC) came into full effect, restructuring the judiciary into a three-tiered system with seven Basic Courts, one Appellate Court, and one Supreme Court. In 2015, the LOC and the Law on the KJC (LOKJC) were amended, and the KJC initiated a decentralization of administrative competencies from the KJC to Court Presidents, which was scheduled to take effect on January 1, 2016, but has been delayed in most courts. This Stocktaking Report assesses the impact of these reforms which altered the KJC’s membership and mandate, the geographic and jurisdictional restructuring of Kosovo courts, and the decentralization of key administrative competencies for human resources management, budget and finances, and procurement and logistics from the KJC to Kosovo courts. At the time of this report, the effective transfer of responsibilities and authority in practice has been delayed indefinitely, and the KJC Secretariat continues to perform administrative support tasks. The Stocktaking concluded that budget reforms requiring that the Assembly directly approve the court budget have increased the independence of the judiciary. New regulations addressing gaps and deficiency in the ethics, discipline, and performance evaluations for judges remain pending, weakening the ability of the KJC to monitor integrity and enforce accountability.

The KJC is defined as a “fully independent institution” that performs its functions with the purpose of ensuring “an independent, fair, apolitical, accessible, professional and impartial judicial system.” The 2010 LOKJC regulates the organization and functions of the KJC, setting forth procedures for (1) the recruitment, appointment, reappointment, transfer, discipline, evaluation, promotion, and training of judges; (2) the management and administration of the courts; (3) the development and oversight of the judicial budget; and (4) the establishment of new courts and branches. The Stocktaking concluded that the KJC adopted a sound Strategic Plan for 2014–2019, with specific goals and objectives, but lacked a more detailed action plan delineating activities that need to take place to achieve the stated goals. The transition of the KJC Secretariat from a direct service provider to a policy development and monitoring and oversight body is not adequately addressed and will require further review. The KJC Secretariat lacks the skills and experience to competently perform their new role and will require further training and mentoring.

**Enhance the Accountability and Professionalism of Justice System Institutions and Actors.** The 2013 court restructuring did not change the complex set of laws, rules, regulations, and administrative instructions governing the management of human resources, budget and finances, or procurement within the Kosovo courts. Multiple institutions have responsibilities for staffing courts and limit the autonomy of the judiciary and individual courts in planning, implementing, and managing the fundamental aspects of the judicial human resources system. Similarly, the 2013 court restructuring did not have a visible impact on the operational efficiency of court processes and procedures or case records management. The Stocktaking concluded that judgeships increased by 38% and non-judicial staff levels by 17% in first and second instance courts between 2012 and 2015. There was a decrease in overall judicial efficiency since 2012, documented by caseload trends. There has been no visible cost savings resulting from the 2013 restructuring, and the budget for the judiciary has increased by 5% since 2012.

The Stocktaking Report analyzed caseload and backlog in Kosovo regular courts over the period of 2011–2015, using official statistics published annually by the KJC Secretariat. Data trends show a decrease in efficiency over this period. In some case categories, clearance rates have dropped significantly and backlog is growing at an accelerated pace. The Stocktaking concluded that the efficiency of judges has decreased by over 50% since restructuring, despite doubling the number of judges adjudicating criminal cases and civil, commercial, and administrative disputes in first instance courts. The increase in the number of judges and, for some case categories, the decrease in new case intake, has enabled courts to maintain clearance rates close to 100%, limiting the growth of backlog. Clearance rates for 2015 are at 90% in first instance courts and 96% in second instance courts, both below the threshold of 100% at which backlog starts clearing without creating new backlog.

**Support the Functions and Integration of the Judicial Structures in the North.** Since 1999, northern Kosovo has been subject to two distinct legal systems, one established by the United Nations Mission in Kosovo (UNMIK), followed in 2008 by the transition of powers from UNMIK to the European Rule of Law Mission (EULEX), now the responsibility of the Government of Kosovo (GOK), with certain competencies retained by EULEX. Practically, the legal system of Kosovo has not been implemented in the north, which retains a parallel judiciary operating within the Serbian legal system. In June 2013, decisions by the Chief State Prosecutor of Serbia and the High Judicial Council of Serbia resulted in prosecutors and courts in the parallel system ceasing work on most new cases. Also in 2013, the Government of Serbia modified its LOC to provide that the court system in Kosovo would be subject to a forthcoming “special law,” which is expected to remove jurisdiction of the parallel courts from Serbia so that they may be integrated within the Kosovo legal system.

In April 2013, delegations from Kosovo and Serbia reached an agreement normalizing relations known as the “Brussels Agreement.” Article 10 of the Brussels Agreement states that the judicial authorities in the north will be integrated and operate within Kosovo’s legal framework. This includes the formation of a panel of the Kosovo Appellate Court that will be composed of a majority of Kosovo Serbian judges. The panel will sit permanently in northern Mitrovica. In February 2015, delegations from Kosovo and Serbia reached a Justice Sector Agreement (JSA), consisting of 15 articles and a table providing for the formation of courts and prosecution offices in the north. The JSA provides for one basic court for the Mitrovica Region with two locations: one each in North and South Mitrovica.

**Role of Civil Society in Justice Sector Reforms.** While there are over 7,000 registered non-governmental organizations (NGOs) in Kosovo, only approximately 700 of them are active, and those focusing on rule of law are limited. Civil society organizations (CSOs) are able to operate freely, but the relationship with the government is strained. The GOK adopted its first Strategy for Cooperation with Civil Society (2013–2017); however, its implementation is slow and intermittent. A number of CSOs are involved in monitoring as watchdogs of judicial and government entities, including monitoring of cases in the courtroom. However, this has proven to be difficult since some judges still conduct hearings in their private offices and many courtrooms are too small to accommodate the public. Some CSOs have been involved in drafting legislation and/or provided comments during the legislative development process. CSOs are still largely dependent on support from international donors, resulting in a public perception that CSOs pursue the agenda of their donors, instead of the interests of the public. Recently, CSO priorities have begun to shift, offering more focus on rule of law, human rights, and public policy. One notable deficit is the lack of CSOs that conduct investigative journalism, perhaps out of fear of retaliation. NGO capacity is stronger in Pristina than in the regions, particularly the North where few organizations exist.

**Priority Recommendations.** Recommendations are listed at the end of each section of the report, which follows the objectives of the JSSP contract. Below are a few of the highlights.

- Intensify efforts to draft and adopt secondary legislation to ensure full compliance with and implementation of the LOKJC.
- Become more proactive with individual courts and their personnel, develop means for monitoring their performance and for providing technical assistance to them.
- Establish standards for performance in collaboration with the KJC and Court Presidents, particularly regarding specific time standards for case processing.
- Develop sound financial management and budgetary capacities among the Court Presidents and financial and budget management personnel, and tie budget and financial planning to strategic goals of the court.
- Review the case flow management processes, procedures, and practices to improve efficiency and reduce unnecessary time delays, and remove arbitrary delays in case assignment, initial review, and implement date-based reviews by the judge.
- Develop, adopt, and implement performance standards for judicial staff along with appropriate accountability and monitoring systems.
- Develop a targeted plan to address the downward trend in efficiency at the first instance level. The plan should include efforts to improve the quality of first instance decisions to address the documented increase in appeals.
- Combine a focus on backlogged cases with measures to prevent cases from becoming backlogged, including reforms to improve case processing efficiency and enforce time standards for case processing.
- Develop a roadmap with the KJC to address issues related to changes in the law and accompanying regulations that will be required for integration.
- Support the KJC to forecast the budgetary impact of the resumption of court operations in the North and request allocation of funds for startup and maintenance of these new courts.
- Ensure that the KJC issues job vacancies and a recruitment plan for non-judicial staff once final agreement is reached between Serbia and Kosovo regarding contract provisions and locations.
- Enhance collaboration between CSOs and the KJC to conduct “court user surveys” based on actual experience with the courts.

- Conduct regular public forums and roundtables to inform the public about justice sector reforms, especially the integration process in the North.

# PART I: SCOPE AND METHODOLOGY

---

This Stocktaking Report is a rapid review of the legal framework governing the KJC membership and mandate and of the operations of the KJC and courts. Special attention is given to core functions of the appointment and discipline of judges and the administration of the judiciary, especially in light of the decentralization of administrative competencies from the KJC to courts effective January 1, 2016. This report seeks to document the impact of the 2013 restructuring on financial, human, and operational efficiency. The 2013 restructuring rationalized court jurisdiction by consolidating first instance jurisdiction in seven Basic Courts and their branches and second instance jurisdiction in a single Court of Appeals. The report reviews court caseload before and after restructuring. Special attention is given to case backlog, a long-standing challenge for the Kosovo judiciary, as documented in reports issued both by the judiciary and external partners. Where relevant, the report highlights key findings and recommendations. Annexes provide additional detail about specific findings discussed in this report.

The JSSP Team initiated the Stocktaking immediately upon program inception to document the state of the Kosovo judiciary following the 2013 restructuring of courts, and to answer the following questions:

- Is the applicable legal and regulatory framework for the Kosovo judiciary adequate to enable the KJC and courts to fulfill their mandate effectively?
- Are the organizational structure, leadership, and working methods of the KJC suitable to fulfill its mandate effectively?
- What impact has the 2013 restructuring had on the financial, human, and operational efficiency of Kosovo courts?
- Are the KJC and Kosovo courts prepared for the 2016 decentralization of administrative competencies from the KJC Secretariat to courts?

The JSSP Team collected quantitative and qualitative data designed to document and evaluate the state and suitability of the legal and regulatory framework, operational practice, and work processes of the KJC and courts as well as to measure the impact of the 2013 restructuring of courts and preparedness of courts and the KJC for the 2016 decentralization. The JSSP Team utilized a three-pronged approach for this stocktaking exercise, which included:

1. Desk review and analysis of legal and regulatory framework.
2. Desk review and analysis of official reports and data pertaining to human resources, annual budgets, court statistics, KJC and Committee meetings, and non-legal documents related the 2013 restructuring and 2016 decentralization.
3. Structured interviews with representatives of the KJC and courts.

Documents relating to the 2016 decentralization were reviewed, most importantly the two KJC Administrative Instructions governing the decentralization process. The following data was also collected and analyzed as part of the Stocktaking process:

- Official budget information from the Ministry of Finance (MOF) for the period 2012–2016.
- Official personnel data from the KJC Human Resources Department for the years 2012, 2013, and 2015–2016.



- Official caseload statistics from the KJC Statistics Department for the period 2011–2015.
- Official backlog reports of courts as of June 30, 2015, from the KJC Statistics Department.
- Official case activity reports of courts for January–September 2015 for serious crimes, criminal cases, and civil disputes from the KJC Statistics Department.

Beginning in late December 2015, the JSSP Team conducted semi-structured interviews of key stakeholders in seven Basic Court seats and seven Basic Court branches. The interviews utilized a standard questionnaire for judicial personnel focused on the impact of the 2013 restructuring, key operational systems, backlog, and court readiness for the 2016 decentralization. (See Annex I for a copy of the questionnaire.)

Structured interviews with judicial and non-judicial staff served as a tool to validate the data received by the KJC Secretariat and to explore the impact of the restructuring process on the courts. Data gathered from questionnaires were tabulated and answers were grouped by respondents (i.e., Basic Court, court branches, judges, court administrators, and other non-judicial staff). This grouping process enabled the team to identify any variations in the way the various groups responded.

All of this information has been synthesized in relation to planned activities for the JSSP and is presented here as the basis for moving forward. This Stocktaking Report details the current status of the judiciary, provides recommendations for future reforms to build on previous USAID rule of law efforts and forms a baseline for JSSP going forward.

## PART 2: PREVIOUS USAID RULE OF LAW EFFORTS

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### 2.1 COURT ADMINISTRATION IN KOSOVO (2001–2003)

In 2000, the United Nations Mission in Kosovo (UNMIK) established judicial institutions on a temporary basis, pending a vetting and reappointment of all judges. The Court Administration Program was expected to develop a strategy for administration of justice; establish systems for budget, personnel, accounting, physical and evidentiary security, physical facility management, procurement, and petty cash; conduct training for court actors on the new systems; automate the new systems, if practicable and necessary; establish case and statistical tracking; facilitate public access; and improve file purging, archiving, and records management. The program completed a number of manuals, provided training to many Kosovar judicial staff, which was generally considered of high quality, and conducted work on file purging and archive management that had an important impact in a few courts and may provide a model for similar work in other courts. The program, however, had significant flaws that ranged from an overambitious scope in a short (two-year) timeline to resistance from UNMIK, and to some extent Kosovars, to the introduction of an “American style” judiciary where more budgetary and management control rests with the courts themselves. With needs and priorities within UNMIK having shifted between the initial assessment in early 2000 and the launch of the project a year later in January 2001, the program began in an environment where the tasks and activities were no longer considered appropriate by UNMIK.

### 2.2 JUSTICE SYSTEM REFORM ACTIVITY IN KOSOVO (MAY 2003–JUNE 2007)

The Justice System Reform Activity in Kosovo (JSRAK) was initiated in May 2003 and concluded in June 2007. The program sought to assist with planning and legal drafting to establish an effective and impartial Kosovar justice system, strengthen the capacity of courts to operate fairly and efficiently, develop oversight mechanisms to ensure respect for ethics, and increase public awareness. The program was implemented in a highly volatile and changing political environment in Kosovo, marked by the transition from UNMIK to local counterparts. During the first 18–20 months, the program worked with the United Nations (UN) and other donors to lay the groundwork for reform of the judiciary and transition to local counterparts. During the remainder of the program, work focused on assistance to Kosovo institutions, most importantly the newly established Ministry of Justice (MOJ) and Kosovo Judicial and Prosecutorial Council (KJPC), to assist them in implementing decisions and initiating operations. In February 2007, the Special Envoy of the UN Secretary General, Marti Ahtisaari, set forth parameters for the resolution of Kosovo’s status, called the “Status Settlement Agreement” or the “Ahtisaari Plan.”

Key achievements:

- Operationalization of the MOJ and the KJPC upon creation in April 2006, including transfers of competencies from the UNMIK Department of Justice and Department of Judicial Administration.
- Development of internal operating procedures for the KJPC Secretariat and of the first long-term strategic plan for the KJPC.

- Installation of audio recording equipment, which was tested and used in seven courts and one prosecution office. Equipment transferred to the KJPC Secretariat in 2007.
- Maintenance and purging of archival records improved in all Municipal Courts. Record retention schedules drafted for the first time in Kosovo.
- Improvement of case processing efficiency and reduction of backlog in civil execution cases that included proactive resolution of case processing obstacles and institutionalizing partnerships with large creditors.
- Training of judges and court staff in core competencies, including court management and administration, techniques of case management and record keeping, and time standards.
- Adoption of time standards for case processing by the KJPC in April 2006.
- Revision of the codes of ethics for judges, prosecutors, and lay judges and delivery of ethics training for more than 350 judges and prosecutors with the Kosovo Judicial Institute (KJI).
- Establishment of the Judicial Inspection Unit (JIU) and Judicial Audit Section (JAS), in collaboration with UNMIK's Department of Justice. The JIU and JAS continue to operate today under the names Office of Disciplinary Counsel (ODC) and Court Performance Review Unit (CPRU).
- Brochures and pamphlets describing citizen rights, the role and functions of the judiciary, and how to access courts.
- Training of a core group of journalists to report on court cases and on reforms in the judiciary.
- Production of video for public service announcements broadcast on Kosovo Albanian and Kosovo Serbian TV stations as well as a TV documentary broadcast on Radio Television of Kosovo (RTK).

### **2.3 JUSTICE SUPPORT PROGRAM (JUNE 2007–MAY 2011)**

The USAID Justice Support Program (JSP) began in June 2007 and provided technical assistance, training, and material support to increase the effective functioning of justice sector institutions in Kosovo. At the start of the program, the judicial system in Kosovo was being transferred from UN authority to the control of newly established GOK institutions. The program supported nascent local institutions, including the KJC, the Office of the Chief State Prosecutor, and the MOJ, to establish new organizational structures, develop and implement strategic plans, and operate effectively in an atmosphere characterized by political uncertainty. A wave of political developments impacted judicial institutions. Kosovo declared independence in February 2008 and adopted a Constitution by April 2008, which provided for a permanent, independent judicial branch that serves all citizens equally. In March 2008, violent protests in front of the Mitrovica District Court resulted in the displacement of court operations to Vushtrri where the court continues to work on a provisional basis. By that same month, most members of the judiciary and prosecution service from the Kosovo-Serb community resigned their positions. By 2010, the uncertainty had given way to an era of renewal as new leadership took control of Kosovo's judicial branch and quickly sought to solidify and strengthen court operations.

Key achievements of JSP include:

- Support to one-time vetting and re-appointment of judges and prosecutors under the Independent Judicial and Prosecutorial Commission (IJPC). The process was completed by October 2010 and best practices transferred to the KJC and, upon establishment, to the Kosovo Prosecutorial Council (KPC).

- Drafting of four justice sector laws that strengthen independence and accountability, remove jurisdictional inefficiency, and improve access to judicial services for all communities. The laws (LOCs, LOKJC, Law on Prosecutors, Law on KPC) were adopted in October 2010.
- Renovation of ten “Model Courts” in partnership with the KJC between September 2009 and April 2011. Standards and best practices achieved in the Model Courts were rolled out to all courts through the KJC’s Court Management Manual drafted with JSP assistance.
- Drafting of the first National Backlog Reduction Strategy (2010–2012) under the leadership of the KJC and the Supreme Court setting goals for the reduction of case backlog.
- Support to the Initial Legal Education Program, Continuing Legal Education Program, and Promotional Program of the KJI with the development of 40 new legal courses or curricula and provision of 84 training courses representing more than 2,000 person-training-days.
- Establishment of the KPC and transfer of responsibilities, assets, and personnel from the MOJ and KJC to the KPC.

JSP had six tasks, and the achievements of each are discussed below.

### **2.3.1 Task 1—Improve the Capacity of the KJC to Operate Effectively and Efficiently an Independent Judiciary**

JSP assisted the KJC and its Secretariat to support and manage the courts effectively and set necessary rules and procedures; to support the vetting of judges and court restructuring; and to increase public awareness, inform demand for accountability, and support for the judiciary. Between 2007 and 2011, the Secretariat increasingly developed, analyzed, and revised policies and procedures regulating the courts, strengthened court reporting mechanisms, introduced needs-based budget management methodologies and supply procedures, invested in facilities to promote access and transparency, and communicated more effectively with other institutions, the media, and the public.

The program provided Legislative Drafting Training (2008), Legal Writing and Reasoning Training (2009), and ongoing mentoring to the Legal Office/Department of the KJC. With JSP assistance, the KJC Legal Office/Department adopted a “judicial impact review process” to assess laws for their impact on the judiciary. The Legal Office/Department reviewed more than 40 laws between 2009 and 2011 and initiated drafting of subsidiary rules and procedures as needed. JSP also assisted the Legal Office/Department with policy formulation and the drafting of guidelines, circulars, instructions, and manuals on various topics ranging from court security to the transfer of judges. Manuals, codes, and guidelines developed by JSP in partnership with KJC and other justice sector counterparts include:

- Uniform Court Fees (adopted by KJC in 2008)
- Guidelines on Accurate Statistical Reporting and Register Maintenance (December 2008)
- Courthouse Design Standards (endorsed by KJC Secretariat in June 2009)
- Manual on Court Management and Standard Operating Procedures (adopted by KJC in April 2010)
- Code of Conduct for Judicial Administration Employees (adopted by KJC in June 2010)
- National Backlog Reduction Strategy (adopted by KJC in November 2010)
- Law on Courts, Law on KJC, Law on Prosecutors, and Law on KPC (adopted by Assembly in 2010).

Between 2009 and 2010, JSP provided support to the IJPC for the vetting of candidates for re-appointment as judges and prosecutors. Following completion of the re-appointment in October 2010, JSP facilitated the transfer of competencies from the IJPC to the KJC including transposition of vetting, selection, and appointment procedures, transfer of files, and media outreach for coverage of the transition.

In March 2010, JSP conducted field work to update and adjust the case weights developed in 2002–2003. A full report with recommendations for next steps was presented to the KJC in June 2010 and endorsed in February 2011 for future implementation under the court restructuring process.

JSP implemented a multi-faceted public awareness and outreach campaign resulting in 158 initiatives over the life of the program. JSP utilized televised media to showcase reforms, dispel myths, and increase understanding of the judiciary. JSP produced and broadcast public service announcements (2008), a 15-episode television drama series “Inside Justice” (2009–2010), and a series of “Justice in Motion” documentaries presenting the accomplishments of Model Courts, the vetting and reappointment of judges and prosecutors, and the opportunities for citizens to learn more about justice. In addition to media productions, JSP organized numerous special events on Law Day, European Justice Day, and the inauguration of renovated court facilities.

### **2.3.2 Task 2—Improve Court Administration**

A Model Courts Program was established in December 2007 following a competitive selection process designed by JSP in consultation with the KJC and court representatives. JSP facilitated the adoption and implementation of improvement plans to achieve standards of records management, backlog reduction, case processing efficiency, communications, access to court, and open proceedings. In April 2009, four additional courts joined the Model Courts Program. An additional 10 courts benefited from JSP assistance to implement selected model court standards. The sustainability of the Model Court Program was secured with the adoption by the KJC of Model Courts best practices in April 2010 through the promulgation of the Manual on Court Management and Standard Operating Procedures. The Manual, developed with the Model Court Consortium, was praised in the European Progress Report published in October 2010. Key achievements of the Model Courts Program include:

- More than 1,000 person-training-days delivered for skills building for court staff on records management, case flow, ethics, communications, and basic computer use.
- 17 Central Records Management Offices established and more than 200,000 color-coded case file folders provided.
- Two budget cycles completed with submission of court input to the KJC.
- “Learn about Justice” coloring books designed in three languages and distributed to more than 6,000 second and third graders in 40 schools working with Model Courts.
- 14 “Know-Your-Court” brochures designed and printed.
- Three procedural brochures explaining how to file a claim, how to file an appeal, and how to request enforcement, designed and printed.
- Court fee posters made visible for transparency.
- 29 new courtrooms serving 13 regular courts created through facility renovations.

JSP completed facility renovations in all 10 Model Courts between June 2009 and May 2011, starting in Ferizaj and ending in Mitrovica. The Model Court Renovation standards, including central records room, transparent administrative offices with glass partitions and public service counters, new

courtrooms, furnished public areas, information booth, new signage, new shelving, were incorporated by the KJC in its own facility projects.

JSP also focused on civil execution, working with courts to reduce case backlog through negotiated settlements with large volume creditors. The Handbook for Practical Implementation of Civil Execution Procedures in Kosovo was released in November 2007 providing a practical resource for judges and clerks dealing with enforcement cases. JSP participated in efforts to revise the Law on Execution Procedures in 2008 and 2010, conducted a feasibility study of the transfer of competence for enforcement to private bailiffs in 2008, and participated in the development of debates on structural changes to the systems for the execution of judgments in 2009. JSP provided extensive training to execution clerks, conducting 22 sessions for the 70 professional court staff working on enforcement between 2009 and 2010. In December 2010, JSP designed a six-module curriculum for new clerks.

JSP provided secondary support to the MOJ for the establishment of the notary system in Kosovo, resulting in the drafting of secondary legislation for the examination, selection, appointment, and discipline of notaries and for the operation of notary offices as well as the adoption and implementation of an outreach plan to inform the public about notaries.

### **2.3.3 Task 3—Improve Professionalism and Ethics of Judges and Court Staff (Completed in 2010)**

JSP provided extensive support, technical assistance, and training to the KJI. JSP supported KJI staff and instructor development as well as the KJI's three training programs, the Initial Legal Education Program (ILEP), the Continuing Legal Education Program (CLEP), and the Promotional Program. Between 2007 and 2011, JSP developed 40 new legal courses or curricula for delivery through or in partnership with KJI. JSP provided more than 84 training courses representing more than 2,000 person-training-days. JSP-sponsored classes included ethics (ILEP, CLEP, Promotional), legal writing and reasoning (ILEP, Promotional), case management (ILEP, Promotional), and administrative and constitutional law (ILEP).

JSP provided technical assistance to develop the JIU (later the ODC) to streamline procedures, reduce backlog, and improve the quality of filings and advocacy before the Disciplinary Committee. Backlog decreased by more than 50% in Years 1 and 2 and an additional 32% in Year 3. During the same period, the rate of approval of JIU/ODC findings by the KJC increased from 20% in Year 1 to more than 80% in Years 2 and 3, reflecting a better quality in filings and the selection of cases brought forth. During the reappointment process (2009–2010), the jurisdiction of the JIU/ODC and KJC Disciplinary Committee were restricted and JSP shifted support to the Vetting Unit of the Independent Judicial and Prosecutorial Commission (IJPC) by seconding the Head of the Unit.

In 2010, JSP worked with working groups of court personnel and prosecution service personnel to develop new Codes of Ethics for judicial administration staff and prosecutorial administration staff, in line with the Civil Service Code of Conduct. Following adoption of the codes in June 2010, JSP supported the development of a training curriculum for judicial administration staff, which was delivered through the KJI in 2011.

The JAS, a long-term beneficiary of USAID assistance under the JSP predecessor program, JSRAK, was transferred from UNMIK to the KJC prior to the start of the reappointment. JSP assisted the JAS to evaluate and institutionalize audit practices in line with the transfer of authority. Following

reappointment, JSP worked with the JAS to establish its role in coordinating monitoring under the National Backlog Reduction Strategy adopted by the KJC in November 2010.

#### **2.3.4 Task 4—Support the Transformation of the Court System to More Effectively Represent and Serve Non-Albanian Populations (Completed in 2010)**

Political circumstances through the life of the program limited the ability of the program to engage in policy-making for recruitment of non-Albanian judges. After members of the KJC’s Advisory Committee on Minorities withdrew from the judiciary in 2008 following the declaration of independence, support to policy-making was discontinued. In 2009–2010, however, JSP assisted the IJPC in conducting outreach to non-Albanian communities through professional associations of judges, prosecutors, lawyers, and other jurists; through CSOs operating in non-majority communities; and through the media. These collaborative outreach efforts contributed to a number of minority candidates applying for positions within the judiciary. Most candidates, however, eventually withdrew prior to their appointment.

JSP provided skills building training, facilitated inter-institutional collaboration, and conducted community outreach in partnership with a number of organizations equipped to facilitate access to justice for minority communities. These included the Court Liaison Offices, the Legal Aid Commission, and the Kosovo Chamber of Advocates. Between October 2008 and September 2010, 6,456 citizens from non-majority communities received legal aid or victim’s assistance through JSP-supported organizations. The number of beneficiaries of assistance increased by 85% between the first and second years of assistance, evidence that skills-building, inter-institutional collaboration, and community outreach contributed to increased accessibility of justice.

#### **2.3.5 Task 5—Develop Ministry of Justice Legal Drafting and Policy Formulation and Guidance Skills (Completed in 2010)**

JSP assisted the MOJ and its Legislative Drafting Unit by developing and delivering a specialized training program, producing a Legislative Drafting Manual for use by current and future legal drafters, and assisting in the development of relevant legislation, most importantly the 2010 “justice package” of four justice sector laws: LOC, LOKJC, Law on Prosecutors, and Law on KPC. In its 2010 Progress Report, the EU noted “There has been progress in the justice sector. By adopting laws on courts, KJC, KPC, and prosecution, Kosovo has launched a major judicial reform. Furthermore, the law on courts introduces a new salary system, which will significantly improve the situation of judges.” Other laws drafted with JSP assistance included the Law on Contested Procedure, the Law on Execution Procedures, the Law on Obligations, the Law on the Ombudsman, the Law on Criminal Procedures, and the Law on the Execution of Criminal Sanctions.

JSP delivered comprehensive legal drafting training to MOJ and KJC legal officers. An 11-module program was delivered from January to December 2008 followed by five practical seminars on law-making, primary and secondary legislation, and the development of Regulatory and Financial Impact Assessments. Additional training on legislative drafting was provided to 90 legal officers working in ministries and the Assembly in October 2009. In 2009, JSP released the “Legislative Drafting Manual: A Practitioner’s Guide to Drafting Laws in Kosovo” and distributed more than 1,000 copies to the legal departments of all Kosovo ministries and the Assembly. A self-teaching legislative drafting training manual was compiled based on the training programs and distributed to all ministries and the Assembly for use by current and future legal officers. Use of the manual for capacity building continued under the USAID Kosovo Assembly Strengthening Program, implemented by the National Democratic Institute, following the end of Task 5 in 2010.

### **2.3.6 Task 6—Establish and Support the Organization and Critical Tools Necessary to Build an Effective Public Prosecutors Service (Completed in 2010)**

Following adoption of the Law on the KPC in October 2010, JSP facilitated implementation planning to establish the KPC by drafting the procedures for selection and appointment of KPC members and adapting the KJC internal rules for KPC operations. The KPC held its first meeting in March 2011 where the rules and procedures prepared by JSP were adopted. By the end of 2010, JSP facilitated the transfer of IJPC appointment best practices, MOJ responsibilities, and KJC responsibilities to the KPC. MOUs were signed in March 2011 between the KPC and MOJ and the KPC and KJC to formalize the transfers. JSP also assisted the KJC in developing job classifications and a salary structure for the KPC Secretariat.

Between 2007 and 2010, JSP worked the Chief State Prosecutors to draft the Prosecution Administrative Manual to serve as a tool for case flow management in prosecution office. Implementation of the Manual, endorsed by the State Prosecution Office, started in May 2010 with support from EULEX prosecutors.

## **2.4 EFFECTIVE RULE OF LAW PROGRAM (MARCH 2011-AUGUST 2015)**

The USAID Kosovo Effective Rule of Law Program (EROL) began in March 2011 and offered significant technical assistance in rule of law development in Kosovo until August 2015. The purpose of the program was to build upon USAID's prior activities to advance rule of law in Kosovo. Specifically, it was charged with strengthening the independence, accountability, efficiency, and effectiveness of the justice system and bolstering public confidence in the rule of law by increasing public knowledge of and participation in the justice system.

The EROL program operated during a particularly turbulent period during which Kosovo's courts were reorganized. The program assisted the KJC and courts to inventory, ship, track, and verify over 240,000 cases by creating a transfer plan, deploying staff to courts to inventory and coordinate case transfers, and developing the Electronic Case Registry (ECR) to capture pending case information. Based upon earlier USAID rule of law programs, EROL designated a "model court" program and implemented it. This program included training, mentoring, infrastructural improvements, and refurbishments that took advantage of best practices and improved the efficiency and effectiveness of court services.

Because case backlog was an on-going problem, EROL assisted the KJC develop a backlog reduction plan that was fully adopted by the KJC and piloted in three courts: the basic court in Prishtina, Gjakova, and the branch court in Podujevo. Through this initiative, 11,000 cases were closed.

The EROL program also assisted the KPC with a long-term, strategic approach to policy making and problem solving. This included help with a strategic communications plan and analysis of regulations regarding appointments and transfer of staff.

EROL created a number of public information campaigns. The "This is Your Court" campaign, for example, produced public service announcements in five languages informing the public about the 2013 court restructuring.

EROL provided drafting assistance for 58 laws, regulations, or administrative instructions. These included technical advice on regulations and administrative instructions regarding: evaluation and performance of judges, submission of proposals for appointment of prosecutor candidates,



Constitutional Court rules of procedure, and the Law on State Advocacy. A full list of the laws, regulations, or administrative instructions is attached as Annex 3.

EROL participated in drafting 30 assessments. These were often followed up with assistance to develop follow-on systems, such as those for the MOJ's legal affairs and international legal cooperation departments, the KJI website and training database, the Constitutional Court database, and the KPC and KJC web portals.

Twenty-seven training course modules and curricula for both judges and court staff were developed through EROL assistance. This included both initial and continuing education programs. Technical assistance on training included study tours to the U.S. for personnel from the KJI, KJC, and KPC, and bench books for judges.

Other accomplishments included assistance for the development of a Forum of Women Judges and Prosecutors, the creation of seven information management systems, and repairs to 18 court facilities, including renovation plans for two court facilities in the north.

# PART 3: OBJECTIVE 1: STRENGTHEN THE EFFICIENCY AND EFFECTIVENESS OF THE ADMINISTRATION OF JUSTICE

## 3.1 BACKGROUND

The Kosovo judiciary underwent transformational reforms with the 2009–2010 reappointment of judges and adoption of the new LOC and LOKJC in 2010. On January 1, 2013, the 2010 LOC came into full effect, restructuring the judiciary into a three-tier system with seven Basic Courts, one Appellate Court, and one Supreme Court. In 2015, the LOC and the LOKJC were amended, and the KJC initiated a decentralization of administrative competencies from the KJC to Court Presidents, which was scheduled to take effect on January 1, 2016, but has been delayed in most courts. Taking stock of the impact of the 2013 restructuring and processes in fulfilling its mandate will document progress achieved and provide a baseline for JSSP support to the KJC and Kosovo’s courts as they embark on the next wave of reforms.

JSSP will collaborate with the KJC and courts to strengthen the efficiency and effectiveness of the administration of justice and the delivery of quality services. Under Objective 1, JSSP will support the KJC and Kosovo’s courts to consolidate gains in efficiency and management at the court level by facilitating the decentralization of administrative competencies, the restructuring of the KJC, and the institutionalization of systems and tools for effective court and case management. Below, we detail the gains achieved and the current status of reforms, on which we will build JSSP activities.

## 3.2 ORGANIZATION AND FUNCTIONS OF THE KJC

### 3.2.1 Composition

Article 108(6) of the Constitution requires that the KJC be composed of thirteen (13) members. Out of those thirteen, only five (5) members are judges elected by the members of the judiciary. The five (5) KJC members from the judiciary include two from among Basic Courts judges, one from the Court of Appeals, and two from the Supreme Court (which includes the Special Chamber

#### **Key Findings**

1. KJC adopted a Strategic Plan, a positive step toward more active leadership.
2. Effectiveness of the ODC has declined in recent years with no intervention to assess quality or efficiency until recently.
3. No regulations guiding the work of the CPRU and no supervision or follow up from the Court Administration Committee.

#### **European Standards for Council Membership, Role, and Functions**

The *European Charter on the Statute for Judges* provides that decisions affecting the selection, recruitment, appointment, career progress or termination of office of a judge should be undertaken by an authority independent of the executive and legislative powers. At least one-half of the membership of that authority should be judges elected by their peers following methods guaranteeing the widest representation of the judiciary.

Similarly, the *Council of Europe Recommendation CM/Rec 2010(12)*, addressing the role and functions of Councils for the judiciary, stipulates: “No 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.”

on privatization-related issues and the Appeals Panel of the Kosovo Property Agency). The remaining eight KJC members are elected by the Assembly of Kosovo. This violates the standards of the European Charter on the Statute for Judges and Council of Europe Recommendation CM/Rec 2010(12), which recommends that no less than half should be judges chosen by their peers. (See the text box above.)

The EU Commission's Report on Kosovo stated that the Constitution should be modified so as "to ensure that a majority of KJC members are elected by their peers, in line with Venice Commission recommendations." As a result of the EU Commission's Report, the President of the Assembly has submitted constitutional amendments to the Assembly that will require that another two members be elected from the judiciary. These possible constitutional, legal, and practical changes affecting the membership of the KJC and its selection could be among the most significant forthcoming reforms, not only for the KJC, but also for the independence of the judiciary.

The 2015 LOKJC Amendment introduced a number of new regulatory provisions, including restrictions that relate to the KJC members, namely:

- The KJC is required to adopt special regulations to implement provisions to ensure KJC membership reflects the multi-ethnic nature of the Republic of Kosovo and the principles of gender equality.
- While serving as a KJC member, the member cannot be promoted and cannot be appointed as President of his/her Court.
- Members of the KJC are entitled to compensation for work as approved by the KJC.
- Court Presidents and the President of the Kosovo Bar Association cannot be members of the KJC.
- The KJC member from the Kosovo Bar Association cannot perform as a lawyer while being a member of the KJC. His/her salary is paid by the Bar Chamber.

Several factors have limited the KJC's ability to take on an active leadership role. Despite the fact that the KJC was initially formed in 2006, it is still a relatively new institution, and one that has operated in a rapidly changing environment. The composition of the KJC changed with the adoption of the status agreement and the new Constitution, and for an extended period of time, due to the process of reappointment of all judges, was unable to fully function. A new LOC was adopted which substantially reorganized the court structure as of 2013, and which demanded substantial effort on the part of the KJC, the KJC Secretariat, and courts for implementation. The KJC as an institution, and its individual members, have not had the luxury of time to become fully acclimated to their leadership role, or to develop a scheme for distributing responsibility for management and accountability systematically.

### 3.2.2 Secretariat

The KJC is supported by a Secretariat that includes a Director's Office and nine departments, presented in Table I below. A public information office is attached to the KJC Secretariat's Director's Office. The Secretariat is responsible for:

<b>KJC Secretariat Leadership</b> Director: Mr. Albert Avdiu (since 2011)
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- Assisting the KJC in developing and implementing policies and regulations related to the management, budget, and administration of the courts, and providing support services to them.
- Collecting and reporting statistical data regarding the caseload of the courts.

- Providing logistical and technical support for the appointment, evaluation, and discipline of judges.

The majority of the staff have been focused on managing court support services.

**Table I.** Overview of KJC Secretariat Departments

Department	Staff	Function
<b>Director's Office</b>	12	
<b>General Administration</b>	16	Manages human resource functions
<b>Budget and Finance</b>	13	Prepares budget requests under the direction of the Budget and Finance Committee, monitors budget implementation, accounting for expenditures
<b>Logistics</b>	20	Responsible for maintenance, movement and allocation of supplies and materials and maintenance of court facilities
<b>IT</b>	7	Maintains information systems software and equipment
<b>Procurement</b>	5	Responsible for procurements for all supplies and materials required for operations of the KJC and the courts
<b>Legal</b>	10	Provides secretariat and legal drafting services to the KJC and its committees, the KJC Chair, and the KJC Secretariat Director, and conducts research.
<b>Statistics</b>	6	Develops statistical reports, and collects, publishes and maintains statistics regarding the case processing activities of the courts
<b>Internal Auditing</b>	5	Conducts internal audits of financial activities of the courts and financial and procurement activities of the KJC Secretariat
<b>Appointments</b>	6	Conducts judicial recruitment as needed. Conducts research as required on behalf the KJC, the KJC Chair, and the KJC Secretariat Director as requested on various topics of interest to the judiciary

Two independent offices are attached to the KJC: the ODC, which investigates and prosecutes disciplinary complaints against judges, and the CPRU, which conducts performance audits of court processes, procedures, and practices.

### 3.2.2.1 Office of Disciplinary Counsel

The ODC is established by the LOKJC as an independent body serving both the KJC and the KPC, with responsibility to investigate cases of misconduct and make recommendations to the KJC Disciplinary Committee for disciplinary action. The KJC Secretariat is responsible for administering the budget of the ODC, but the KJC has no authority to develop or approve the ODC budget, nor to reallocate any budgeted funds of the ODC. The ODC Director is appointed jointly by the KJC and the KPC, and is responsible to both for “the efficient and effective administration of the ODC,” and must abide by regulations adopted by both.

The independence of the administration of the ODC and its budget is intended to ensure its overall independence in investigating allegations of misconduct. The ODC's productivity has declined in recent years. Until recently, there has been little intervention to assess the quality or efficiency of the ODC's work processes. At the end of 2015, amendments to the LOKJC put in place a time limitation on disciplinary proceedings, which will have the immediate effect of dismissal of

172 pending investigations. The KJC Disciplinary Committee Chair has indicated her intention, with the concurrence of the KJC, to request that the ODC director provide information regarding the status of investigations and the reasons for delays in processing.

### **3.2.2.2 Court Performance Review Unit**

Like the ODC, the CPRU is established by the LOKJC as an independent body. The CPRU is charged with conducting audits of the performance of courts. The Director is appointed by and reports to the KJC, and it has a separate budget within the consolidated judicial budget. The LOKJC provides that the KJC has the authority to develop and adopt regulations relating to the work of the CPRU, but to date no regulations have been adopted.

The CPRU develops and executes annual court audit plans. While the LOKJC suggests that its work be taken under the direction of the KJC and its Committee for Court Administration, the Court Administration Committee has not provided direct supervision and has not convened in recent years to develop plans for implementing recommendations contained in the CPRU audit reports. CPRU reports are provided to the KJC and in some cases to courts. While the audits and the resulting reports appear to be of high quality, there is little or no follow-through to ensure that recommendations are addressed. An inventory of 38 audits conducted by the CPRU since 2006 is included as Annex 4 for reference.

### **3.2.3 Functions**

The KJC is defined as a “fully independent institution,” which performs its functions with the purpose of ensuring “an independent, fair, apolitical, accessible, professional and impartial judicial system,” that also reflects the multiethnic nature of Kosovo and applies internationally recognized principles of human rights and gender equality. The 2010 LOKJC regulates the organization and functions of the KJC. Specifically, the law sets forth procedures for (1) the recruitment, appointment, reappointment, transfer, discipline, evaluation, promotion, and training of judges; (2) the management and administration of the courts; (3) the development and oversight of the judicial budget; and (4) the establishment of new courts and branches.

The 2010 LOKJC provides an exhaustive list of the functions of the KJC. Some twenty-seven functions are listed under Article 4 on the KJC’s responsibilities. They range from ensuring independence and impartiality of the judicial system or recruiting and proposing candidates for appointment and reappointment of judges, to promulgating regulations on disciplinary procedure for judges, to providing and publishing statistical data on the judicial system. The 2015 LOKJC Amendment modifies some of the functions of the KJC. The Amendment deletes sub-paragraph 1.25 of Article 4 of the 2010 LOKJC, which required the KJC to report “to the Kosovo Assembly, the President, and the public on the work of the Council and the judiciary in general.” The removal of that provision was deemed necessary to ensure the KJC’s status as a “fully independent institution,” as the previous provision would expose it to reporting to a political body, specifically the Assembly.

The 2015 LOKJC Amendment also expanded the range of responsibilities. New responsibilities include, but are not limited to:

- Adopting a Regulation on determining the terms and procedures for organizing the examination for candidates for judges

- Adopting a Regulation on the Procedure of Selection of the President of Supreme Court and other Presidents of the Courts
- Establishing Court branches in accordance with the LOC
- Managing the central system of criminal evidence
- Deciding on the rules and procedures regarding criminal evidence through the adoption of a Regulation.

Article 108 further requires the KJC to:

- Ensure the independence of the judicial branch
- Provide leadership and oversee management and accountability of the judiciary
- Recommend appointments based on merit and ensuring ethnic and gender equality
- Oversee the performance of judges and recommend disciplinary measures.

The LOKJC provides specific details on the mandate of the KJC. The principal role of the KJC is to provide **leadership** to the judicial branch, establishing policies for the management of the business of the courts, overseeing and monitoring the performance of the judiciary, overseeing and monitoring its use of public resources, coordinating interactions with other branches of government, and ensuring access of the public to judicial services. In addition to its leadership and managerial role, the KJC is charged with key responsibilities regarding the **appointment, performance, and discipline** of individual judges. The KJC's leadership responsibilities, and its role in ensuring merit-based appointments and in overseeing the evaluation and discipline of judges, are both critical to ensuring the independence of the judicial branch and to enforcing accountability.

### 3.2.4 Appointment

The KJC appointment process is governed by the Constitution (Articles 104 and 108), which requires an open recruitment process, based on merit, and representative of gender and ethnic diversity. Articles 16 to 18 of the LOKJC provide for an open recruitment process, outline general procedures for the recruitment process, reiterate principles of gender and ethnic diversity, and identify core criteria for selection of judges. The KJC has not yet approved regulations governing the appointment procedure, but a draft regulation is being prepared for consideration by the KJC. To date appointment procedures have been governed by the law and any specific instructions provided in a decision by the KJC to open a recruitment. Article 108 foresees preference being given to members of communities that are underrepresented in the judiciary. The Constitution leaves the determination of specific criteria to the law.

Most of the changes introduced by Law No. 04/L-115 on the 2010 LOKJC relate to the Comprehensive Settlement Proposal (CSP). The Law deletes references to the CSP, signifying the closure of the internationally supervised independence of Kosovo. The only substantive changes are made to Article 17 of the 2010 LOKJC. The following relevant paragraphs are added:

“1. The Kosovo Judicial Council shall develop a special regulation to outline the process of appointment and reappointment of judges from communities that are underrepresented among judges serving in Kosovo.

“2. Preference given to equally qualified applicants from under-represented communities shall be applicable for as long as the percentage of judges of non-majority communities in Kosovo is under fifteen percent (15 %) and/or for as long as

percentage of judges who are members of the Serbian community in Kosovo is under eight percent (8 %).”

There are four (4) new Regulations that need to be adopted as a result of the 2015 Amendments of the LOC and LOKJC to incorporate amendments related to the qualifications, selection, and performance evaluation of new and sitting judges. Another four (4) Regulations require revisions due to gaps and inconsistencies unrelated to the 2015 amendments of the LOC or LOKJC. These gaps and inconsistencies were identified by the KJC in the course of implementation of these Regulations as well as through feedback from courts and input from external observers. Specifically, the Regulation on the Appointment and Reappointment of Judges is outdated and no longer applicable in light of the changes to the LOC and the LOKJC in the 2012 and 2015 Amendments. The Regulation on the Internal Organization of Courts requires revisions to address archiving and purging of case records. The Regulation on Determining the Work Norm of Judges requires updating to create the right balance between the quantity of cases that a judge ought to resolve and the quality of adjudication.

There are two new regulations that need to be adopted as a result of the 2015 Amendments of the LOC and LOKJC to incorporate amendments related to the inclusiveness of KJC membership and the compensation of KJC members. A special regulation has already been adopted to implement the legal requirement that KJC membership reflect the multiethnic nature of Kosovo’s society and gender equality principles. However, as this Regulation simply reproduces the language of the law, further elaboration of gender equality principles and their implementation for the purpose of selecting KJC members will be necessary.

### **3.2.5 Performance**

The KJC is also responsible for assessing the performance of judges, pursuant to Article 19 of the LOKJC. In 2012, the KJC adopted the Regulation on the Evaluation of the Performance of Judges. The Regulation provides for evaluation of newly appointed judges six months prior to the end of their initial mandate, and every three years thereafter. The initial evaluation is used by the KJC in considering recommendations for reappointment. Subsequent evaluations are reported to the KJC, but no formal action is contemplated in the regulation based on the subsequent evaluations. There is no formal link between the evaluation process and the disciplinary process, although the current regulation specifies “disciplinary decisions” as a source of information for evaluations.

There are two Regulations that need to be amended as a result of the 2015 Amendments of the LOC and LOKJC. The most important, perhaps, is the Regulation on the Evaluation of the Performance of Judges, which is outdated and no longer applicable in light of the LOC 2012 and 2015 Amendments. A revised draft has been prepared by the KJC Secretariat Legal Department, but has not been finalized.

### **3.2.6 Discipline**

The grounds and general procedures for the removal of judges from office are also stipulated in the Constitution. As provided in Article 104, “judges may be removed from office upon conviction of a serious criminal offense or for serious neglect of duties.” Further, “a judge has the right to directly appeal a decision of dismissal to the Kosovo Supreme Court.” Laws and regulations further elaborate the process of discipline and removal.

A fundamental function of the KJC is the promulgation and implementation of rules of professional ethics and disciplinary procedures. Chapter VI of the 2010 LOKJC deals with the Disciplinary Procedures. Although the Law contains a general reference to misconduct, it requires that the KJC issues rules that define misconduct. The Council has drafted a Regulation, which is yet to be discussed and approved (Article 34[3]). The Code of Ethics is also in the process of revision to ensure that it conforms with various Council of Europe recommendations and the Bangalore Principles of Judicial Conduct.

Article 108, paragraph 3 of the Constitution provides that the KJC is responsible for disciplinary proceedings for judges. The LOKJC establishes a Disciplinary Committee as a permanent committee, generally defines misconduct, provides sanctions for misconduct, and articulates general procedures for the disciplinary process. The KJC has adopted a Regulation on the Work of the Disciplinary Committee, further defining the procedures of the Committee in addressing recommendations for discipline from the ODC. The Regulation does not, however, provide additional definition of misconduct.

The LOKJC also establishes the ODC as an independent body serving both the KJC and the KPC, with responsibility to investigate cases of misconduct and make recommendations to the KJC Disciplinary Committee for disciplinary action. The KJC Secretariat is responsible for administering the budget of the ODC, but the KJC has no authority to develop or approve the ODC budget, nor to reallocate any budgeted funds of the ODC. The ODC Director is appointed jointly by the KJC and the KPC, and is responsible to both for “the efficient and effective administration of the ODC,” and must abide by regulations adopted by both.

As illustrated in Table 2, the KJC, through its Disciplinary Committee, has been consistent in addressing complaints received from the ODC, conducting 10-13 hearings annually, and addressing a consistently high proportion of complaints received (ranging from a low clearance rate of 80% in 2012 to a high clearance rate of 145% in 2015). However, the number of complaints filed by the ODC has dropped consistently between 2011 and 2015. In 2011, 63 reports were filed, down to only 11 in 2015. At last count, the ODC had 238 open case files, many dating back several years. It is probable that, due to the 2015 LOKJC Amendment, which provides for time limitations on disciplinary proceedings,<sup>1</sup> up to 172 of those cases will be dismissed as a matter of law.

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<sup>1</sup> The amendment, adopted in December 2015, includes a new paragraph 5 of Article 36 of the LOKJC, “The Proceedings shall not be initiated and implemented in the Commission after the expiry of one (1) year from the notification received in the Office of Disciplinary Counsel for the alleged violation and five (5) years from the date of the alleged violation.”



**Table 2.** Overview of KJC Disciplinary Committee Hearings 2011-2015

YEAR	REPORTS RECEIVED	NUMBER OF HEARINGS	NUMBER AND TYPES OF DECISIONS
2011	63 reports from ODC	12 hearings	<p><b>57 decisions (91% of reports received)</b></p> <ul style="list-style-type: none"> <li>• <b>Conviction/Suspension: 19 (33%),</b> including 17 reprimands, one decrease of salary by 50%, and one reprimand and warning.</li> <li>• <b>Acquittal/Release: 14 (25%)</b></li> <li>• <b>Procedural Dismissal: 23 (40%),</b> including 17 procedures interrupted and four released on the ground that the judge (defendant) is no longer in the justice system; two closed due to death of the defendant.</li> <li>• <b>One decision refusing ODC to suspend a judge</b></li> </ul>
2012	37 reports including 34 from ODC and 3 requests for suspension	13 hearings	<p><b>27 decisions (80% of reports received)</b></p> <ul style="list-style-type: none"> <li>• <b>Conviction/Suspension: 20 (74%),</b> including 12 reprimands, three decrease of salary by 50%, three suspensions (one until disciplinary proceeding finished and two until criminal case finished), and two recommendations to KJC to propose dismissal of the judge.</li> <li>• <b>Acquittal/Release: 7 (26%)</b></li> </ul>
2013	22 reports including 19 from ODC and 3 requests for suspension	11 hearings	<p><b>26 decisions (137% of reports received)</b></p> <ul style="list-style-type: none"> <li>• <b>Conviction/Suspension: 14 (54%),</b> including 10 reprimands, 2 decrease of salary by 50%, and two suspensions (until criminal case finished).</li> <li>• <b>Acquittal/Release: 12 (46%),</b> including 11 releases from responsibility and one decision revoking a suspension and returning the judge to work</li> <li>• <b>One request for additional information back to ODC on a request for suspension</b></li> </ul>
2014	17 reports including 15 from ODC and 2 requests for suspension 6 appeals	10 hearings	<p><b>16 decisions (106% of reports received)</b></p> <ul style="list-style-type: none"> <li>• <b>Conviction/Suspension: 11 (69%),</b> including seven reprimands, three decrease of salary by 50%, and one suspension (until criminal case finished)</li> <li>• <b>Acquittal/Release: three (19%)</b></li> <li>• <b>One decision to delay the final decision until final ODC report</b></li> </ul>
2015	13 reports including 11 from ODC and 2 requests for suspension	11 hearings One extraordinary hearing	<p><b>16 decisions (145% of reports received)</b></p> <ul style="list-style-type: none"> <li>• <b>Conviction/Suspension: 14 (88%),</b> including 8 reprimands, 5 decrease of salary, and one suspension (until criminal case finished).</li> <li>• <b>Acquittal/Release: One (6%)</b></li> <li>• <b>One decision to delay the final decision until a final report from ODC</b></li> </ul>

The Code of Ethics needs relatively substantial interventions, so that its rules are clear, comprehensive and aligned with the Bangalore Principles of Judicial Conduct and Council of Europe rules and recommendations. There is no Regulation on Defining Misconduct in place, and completing and adopting an existing draft is urgent if the KJC is to enforce integrity effectively.

Five (5) Regulations will also require revisions due to gaps and inconsistencies unrelated to the 2015 amendments of the LOC or LOKJC. These Regulations all relate to ethics and integrity. At the time of this Report, a revised Code of Ethics for Judges, aligned with the Bangalore Principles of Judicial Conduct, and a Regulation on Defining Misconduct, are under review by the KJC Normative Committee. In December 2015, judges provided feedback and comments on the drafts in a participatory review process. Once the Code of Ethics for Judges is revised, similar revisions will be necessary to align the Codes of Ethics for Non-Judicial Staff, KJC members, and Lay Judges with the new ethical framework. Once the new Code of Ethics and Regulation on Defining Misconduct are adopted and into force, training will also be required to ensure proper and effective implementation of these instruments.

### **3.2.7 Budgetary Issues**

According to the 2010 LOKJC, the proposed budget for the operational and personnel expenses of the KJC and courts was submitted to the MOF and the Assembly of Kosovo. This requirement changed with the 2015 LOKJC Amendment. The proposed budget will now be submitted only to the Assembly. As stated in Article 9 of the 2015 LOKJC Amendment, “The Council shall prepare its annual budget proposal and forward the said budget proposal to the Assembly of the Republic of Kosovo for adoption.” This change seeks to limit political interference from the executive branch in the process of designing and proposing the budget for the judiciary and judicial institutions as an important step to ensuring judicial independence.

### **3.2.8 Committees**

The KJC has five permanent Committees handling normative issues, budget, finance, and personnel, court administration, discipline, and the evaluation of the performance of judges (Article 9, LOKJC, as amended in 2015). Upon the opening of judicial vacancies, the KJC establishes specific Appointment Committees by decision. In addition, from time to time and as necessary to address specific needs, the KJC establishes temporary committees or working groups with defined mandates.

The Regulation on the Organization and Operation of the KJC, adopted in November 2012, defines the competence of each committee and foresees that the KJC may establish other permanent or temporary committees as it considers necessary (Articles 17-24, Regulation on the Organization and Operation of the KJC). Some Committees, such as the Disciplinary Committee, the Committee on the Evaluation of the Performance of Judges and the Conditional Release Panel are governed by the Regulation. Other Committees’ functions are based on the general principles set in the Regulation; additional regulations are in the process of being drafted.

### **3.2.9 Strategic Priorities and Policy-Making**

The approval of a new strategic plan (KJC Strategic Plan 2014-2019) is a positive development. There is a plan for hiring a staff person in the KJC Secretariat to assist in monitoring the implementation of the Strategic Plan, which indicates the KJC is taking steps toward a more proactive approach to reforms and policy-making. However, there is little evidence to date of the KJC or the Secretariat using the Strategic Plan to guide its policy-making and leadership role. An exception is the decision by the KJC to move towards the decentralization of administrative competencies. Unfortunately, there are significant questions regarding the readiness of the KJC, the Secretariat, and the courts for implementing decentralization. This is particularly disconcerting since decentralization, in order to be successful, will require effective knowledge and skills transfers from the

KJC Secretariat to the courts and the creation of clear standards of performance and standardized procedures for managing court support functions that are being decentralized.

The Strategic Plan has five pillars that represent the aspirations of the Kosovo judicial community for development of the judiciary. Within each pillar, specific goals are identified and each goal has concrete strategic objectives designed to ensure the goal is achieved. Each strategic objective contains the outline of a general action plan with activities, responsibilities, and indicators. The intention of the drafters was to provide sufficient detail within the Strategic Plan to allow effective outside monitoring of progress. An overview of the key strategic pillars is included in Table 3.

**Table 3.** Overview of KJC Strategic Plan 2014-2019

PILLAR	DETAILED PRIORITIES
<b>Building Trust and Confidence</b>	<ul style="list-style-type: none"> <li>• Strengthened institutional safeguards against outside interference</li> <li>• Strengthened evaluation and disciplinary mechanisms</li> </ul>
<b>Enhancing the Administration of Justice</b>	<ul style="list-style-type: none"> <li>• Upgraded budgeting process</li> <li>• Better human resources management</li> <li>• Adoption of appropriate sub legal acts and policies for an efficient judicial system</li> <li>• Construction of management mechanisms for judicial accountability</li> <li>• Revisions in organizational structure of the Secretariat</li> <li>• Transfer of administrative responsibilities and personnel from the Secretariat to the courts</li> </ul>
<b>Broadening Access to Justice and Service to the Public</b>	<ul style="list-style-type: none"> <li>• Encouragement of minority communities to be part of the judicial system</li> <li>• Public access to reliable and timely court records and data</li> <li>• Public trust and confidence through public outreach</li> <li>• Introduction of measurable performance indicators for the courts</li> <li>• Promotion of competence</li> </ul>
<b>Professionalism and Appropriate Behavior</b>	<ul style="list-style-type: none"> <li>• Expansion of education and training of judges and court staff</li> </ul>
<b>Improving Court Facilities and Technology</b>	<ul style="list-style-type: none"> <li>• New information and technology systems</li> <li>• Enhancement of court facilities</li> <li>• Increased security for judges, court personnel, public and court facilities</li> </ul>

### 3.3 KJC DECENTRALIZATION OF COURT MANAGEMENT

The KJC has determined that management of court support services will become decentralized. Decentralization anticipates that responsibility for execution of key support services such as human resources, budget execution and financial management, procurement, and some logistical services will be decentralized to the Basic Courts. Budget planning will continue to be accomplished at the central level with input from the Basic Court

Presidents and Administrators, under the supervision of the KJC Committee for Budget, Finance, and Personnel. The KJC Secretariat role in most basic services will evolve to one of supporting the

#### **Key Findings**

1. Regulatory framework for decentralization entered into force on January 1, 2016, but the actual transfer of competencies and authority is deferred indefinitely.
2. No actual guidance or training provided to courts to facilitate decentralization.
3. Reorganization of KJC Secretariat planned and proposed structure developed.

development of policy and guidelines for these functions, and of coordination, oversight, technical assistance, and reporting.

### 3.3.1 Impact of Decentralization on the Role of the KJC

The role of the KJC in leading and managing the judicial branch will not be directly affected by the decentralization of the management of support functions to the courts. The KJC will continue to establish policy, and be responsible for oversight of the business of the courts, the performance of courts, judges, and personnel, the appointment and evaluation of judges, and discipline. However, decentralization will highlight and increase the importance of the KJC’s policy-making role. Decentralization of management responsibility will increase the need to establish policy proactively. Specific areas where policy-making will be required include business methods, performance standards and expectations, and accountability of key management personnel for core functions of case management, records management, and service to litigants, as well as for support services such as human resources, procurement and fiscal management.

To date, the KJC and the KJC Secretariat exercise limited oversight of accountability, and provide little guidance regarding performance expectations. Policy-making has been limited to the development of regulations and administrative instructions reactively as needs have arisen, such as the passage of the 2010 LOC that triggered the 2013 restructuring, and to addressing very specific requests for assistance or guidance received from courts, such as requests for approval of development of specific forms.

### 3.3.2 Impact of Decentralization on the KJC Secretariat

While the KJC’s administrative instruction on decentralization (01-2015) is effective as of January 1, 2016, the actual transfer of these competencies have not taken full effect, although a number of staff have already been transferred to the courts from the KJC Secretariat, or have retired. Training of court personnel on applicable laws, procedures, regulations, and administrative instructions governing transferred competencies began in January 2016, and is expected to continue over the next several months. Transition of the competencies is in flux. There is no clear date for actual transfer of all responsibilities. The Director of the Secretariat reports that responsibilities will be transferred over the next several months as training is completed, with the goal of completing the transition by June 2016. However, discussion with court staff indicate that budget and procurement staff are not clear on what their responsibilities are, and are unfamiliar with the procedures that they are to use for those tasks. Table 4 below provides an overview of the status of decentralization at the time of this Report.

**Table 4.** Status of Decentralized Competencies

Competencies	Status of Decentralization
<b>Budget and Finances</b>	The KJC continues to manage budget and finances in full.
<b>Procurement and Logistics</b>	Procurement for operational supplies has not become operational in the courts, but no new procurements have been initiated by the KJC Secretariat.
<b>Human Resources Management</b>	Courts have begun to manage the recruitment and hiring process.

In anticipation of decentralization, the KJC Secretariat has created a proposed new organizational structure. The proposed structure is based on internal brainstorming with KJC Secretariat staff, and

is intended to anticipate the changing role of the Secretariat from primary service provider to one of supporting the development and implementation of policy, providing management assistance and oversight, and coordinating support services and evaluation. The reorganization also contemplates a continuing and expanded role in secretariat services to the KJC and its committees to support KJC policy-making.

The new structure anticipates a more streamlined structure with two principal departments: the General Administrative Services Department and the Legal Issues and Policy Development Department. Department heads will report directly to the Director of the KJC Secretariat. Table 5 provides an overview of the current structure, with nine departments, and the proposed new structure.

**Table 5. KJC Secretariat Current and Proposed Organizational Structure**

<b>Current Structure and Staffing (100 FTE*)</b>	<b>Proposed Structure and Staffing (78 FTE)</b>
<i>Office of the Director (12 FTE)</i>	<i>Office of the Director (15 FTE)</i>
	Director
	Public Information Office (2 FTE)
	Translation and KJC Support Services (6 FTE)
	EU Integration (1 FTE)
<i>Procurement Office (5 FTE)</i>	Procurement (2 FTE)
	Certification (2 FTE)
	Administrative Support (2 FTE)
	<i>General Administrative Services (35 FTE)</i>
<i>Human Resources Department (16 FTE)</i>	Human Resources Office (8 FTE)
<i>Budget and Finance Department (13 FTE)</i>	Budget and Finance Office (6 FTE)
<i>Joint Services (Logistics) Department (20 FTE)</i>	Joint Services Office (8 FTE)
<i>IT Department (7 FTE)</i>	IT Office (8 FTE)
<i>Internal Audit (5 FTE)</i>	Internal Audit (4 FTE)
	<i>Legal Issues and Policy Development Services (28 FTE)</i>
<i>Legal Issues, Analysis and Research Depart. (10 FTE)</i>	Legal Issues, Analysis and Research Office (13 FTE)
<i>Statistics Office (6 FTE)</i>	Statistics Office (3 FTE)
	Criminal Records Office (3 FTE)
<i>Judicial Evaluation and Verification Office (6 FTE)</i>	Judicial Evaluation and Verification Office (7 FTE)

Note:

\* Full time employee.

The proposed organizational scheme has been adopted by the KJC but is in a state of transition and not fully implemented. Implementation of the proposed organization is awaiting approval of revised job descriptions and classification by the MOF and Ministry of Public Administration (MPA). The new structure includes a total of 78 full time employee positions, a reduction from 100 positions. These 22 staff have either taken retirement or have been reassigned to the Pristina Basic Court or

the Supreme Court to assist with support functions being transferred, as part of a downsizing in recognition of the transition of court support services to the courts.

### 3.4 RECOMMENDATIONS

The KJC and its Committees and Secretariat must make a significant shift from reactive to proactive issue management to transform into a fully functioning policy-making, oversight, and performance management institution. The recommendations below articulate some of the key steps that must be taken to address regulatory and operational gaps and deficiencies.

1. The KJC needs to be more aggressive in asserting itself as a policy-making and performance management entity. This requires, at a minimum:
  - Establishing standards for performance, such as specific time standards for case processing, to complement and eventually replace the existing quantitative “norm”<sup>2</sup>.
  - Developing guidelines, standards, and regulation for administrative procedures, such as case flow management models, standardized forms, and records retention standards.
  - Directing research on new methods and technology to improve the quality and efficiency of justice.
2. A more detailed action plan, building on the outline contained in the Strategic Plan, should be developed to achieve each of the goals. The KJC intends to open a new position with its Secretariat to monitor achievements of the goals and to create a protocol for reporting. In addition, the KJC will need to assign responsibility for elements of the detailed action plan, and ensure that its Committees adopt work plans and objectives consistent with the strategic plan.
3. To ensure transparency and to maximize participation in the policy-making process, procedures should be adopted to ensure input from the courts, other interested institutions, lawyers, and the public. This might include, for example, a requirement that policies being considered for adoption be published for comment, except in matters that must be treated confidentially by law.
4. The KJC Regulation on Discipline should be amended to:
  - Incorporate more specific definitions of misconduct, with particular attention to distinguishing performance deficiency from misconduct.
  - Provide for alternative disposition of complaints determined to be performance deficiencies, such as referral to the Performance Committee and/or requiring or recommending remedial training.
  - Provide for the ODC to refer cases involving performance deficiency directly to the Performance Committee for review, and provide procedures for the Performance Committee to conduct interim evaluations when appropriate.

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<sup>2</sup> The “norm” is a quantitative measure of the productivity of judges on a monthly or annual basis. The norm sets the number of cases a judge is expected to dispose in a month. While intended as an orientation, it has by and large become the ceiling of the activity of judges on a monthly basis.

5. The Budget, Finances, and Personnel Committee should work with the KJC Secretariat to develop:
  - A proactive budget development process, where the Committee establishes budget goals driven by the Strategic Plan and experience from prior years as a precedent to the development of a proposed budget by the KJC. The process should continue to include active involvement by Court Presidents and Administrators.
  - A systematic process for assessing budget expenditures, which includes providing direction to Court Presidents and Administrators on the management of court budgets and identifying priorities for the annual budget adjustment process.
  - A process for review of internal audit reports, to evaluate the need for strengthening fiscal and procurement policies and guidelines for courts, and to ensure follow-up corrective action as needed by individual courts.
6. The KJC Secretariat should improve methods for interactive communication with Court Presidents and staff to ensure that court needs are heard and anticipated, and to ensure that Court Presidents and Administrators understand the policies and performance expectations articulated by the KJC.
7. There is an immediate need to develop a clear plan for transition of responsibilities from the Secretariat to courts to avoid confusion and to ensure against potential gaps in procurement and budget/fiscal management.
8. Decentralization increases the urgency to become proactive and strategic. This will require:
  - More robust procedures for policy development, aligned with the KJC Strategic Plan.
  - A process for prioritizing the business coming before the KJC.
  - Clear mandates for Committees, including work plans driven by strategic goals.
  - Delegation of authority for routine policy development and policy implementation to KJC Committees and the KJC Secretariat where appropriate to ensure efficient operations.

# PART 4: OBJECTIVE 2: ENHANCE THE ACCOUNTABILITY AND PROFESSIONALISM OF JUSTICE SYSTEM INSTITUTIONS AND ACTORS

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## 4.1 STATUS OF COURTS

The 2013 court restructuring process was driven by a desire to increase citizen access to courts, streamline court administration, and simplify jurisdiction. Prior to the restructuring, first instance jurisdiction was distributed across three levels of courts with the Supreme Court holding first instance jurisdiction for administrative cases, District Courts and a special Commercial Court over serious crimes, certain types of civil disputes related to personal status and family matters, and commercial disputes and enforcement cases, and Municipal Courts adjudicating the remaining case types, including civil cases and less complex criminal cases. As of January 1, 2013, all first instance cases are adjudicated in Basic Courts with a unified Court of Appeals holding second instance jurisdiction over the entire territory and the Supreme Court retaining third instance jurisdiction. See Annex 5 for a summary of jurisdictional transfers.

The restructuring process also resulted in the designation of a single Court President in each Basic Court with general authority over the operations of all branches under the Basic Court. The Court Presidents were vested with authority to manage and adjust internal resources to meet changing demands, including temporary reassignment of judges to different departments, courts, or even individual cases to reduce backlog and ensure a more expeditious system of justice.

The 2010 LOC modifies the court system by integrating the Minor Offence Courts, the Municipal Courts and District Courts into the Basic Courts. There is one Court of Appeals with jurisdiction for the entire territory of Kosovo and a Supreme Court, both with their headquarters in Pristina. The Supreme Court includes the Appeals Panel of the Kosovo Property Agency and the Special Chamber of the Supreme Court on privatization-related matters. The 2015 LOC Amendment created three new branches in Fushe Kosovo, Junik, and Shtime. Although established by law these branches are not yet operational, but planned for 2016. Active planning is under way to establish the branch in Fushe Kosovo.

Finally, the 2015 LOC Amendment adds an entirely new legal provision through its Article 14, clarifying the status of the administrative staff. It reads: “The status of the administrative staff shall be subject of the civil service principles and shall be regulated by a separate law.”<sup>3</sup>

## 4.2 COURT COMPOSITION

The second and final amendment introduced by Law No. 04/L-115 concerns the ethnic composition of the Court of Appeals. To ensure participation of minority communities, this Law requires that “fifteen percent (15 %) of the total seats on the Court of Appeals, but in no case fewer than ten (10) seats, shall be guaranteed to judges from communities that are not in the majority in Kosovo.”

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<sup>3</sup> This would be the Law on Judicial Administration. No draft law has been produced yet.



### 4.3 SUBSTANTIVE JURISDICTION

The 2012 LOC Amendment revises the 2010 LOC with regard to substantive jurisdiction in two ways:

1. The competence of the Court of Appeals is modified. According to the 2010 LOC, the Court of Appeals is to decide in “third instance, upon the appeal that is permitted by Law and for the conflict of jurisdiction between basic courts.” This provision of Article 18, sub-para. 1.2 is deleted. The second part of that provision “[f]or the conflict of jurisdiction between basic courts” was a simple repetition, as there already was a separate paragraph (Art. 18, para. 1.3; reading “conflicts of jurisdiction between Basic Courts.”).
2. A new competence has been added to the Supreme Court, which is to decide “in the third instance for the claims allowed by law.” There is basically a reallocation of competence from the Court of Appeals to the Supreme Court. It would seem appropriate that the highest court acts as a third instance court.

### 4.4 APPOINTMENT OF JUDGES

The 2015 LOC Amendment reworded the original Article 26 of the 2010 Law on Courts, “Qualifications of Judges,” as “Conditions for Appointment of Judges,” and the original Article 27 “Additional Qualifications of Judges of the Court of Appeals and the Supreme Court until January 1, 2020,” as “Requirements for judges”. Besides the change made in the title, Article 27 also contains the following new paragraphs relating to training:

- 1. Following the appointment by the President of Kosovo, these judges, except the ones that have experience as judges, shall undergo initial training which will be organized by the Kosovo Judicial Institute. The initial training shall last twelve (12) months in accordance with respective legislation in force.*
- 2. During the initial training period, judges will not be assigned to cases.*
- 3. Appointed Judges will be evaluated following the results of the initial training in accordance with the relevant provisions of this law. The period of initial training shall be extended for those judges who fail to complete the initial training, as provided by the Kosovo Judicial Council.*

The last provision suggests that the KJC would need to decide on the extension of the period of initial training for those appointed judges who fail to complete the initial training. The LOC also requires the adoption by the KJC of another special regulation, which should “determine the appointment procedures, conditions, rights and obligations for translators, interpreters and judicial experts, and the amount of remuneration for their work.”

### 4.5 TRANSPARENCY

The 2015 LOC Amendment supplements the 2010 LOC with regard to the publication of judgments. A new paragraph is thus added to Article 6. It reads: “Courts shall 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 [KJC], and by ensuring the protection of personal data.” The same timeframe and indeed the more detailed elaboration and

implementation of this provision is done through the drafting and adoption by the KJC of an Instruction on Anonymization and Publication of Final Judgments.

Article 6 of the 2015 LOC Amendment further deletes paragraph 2 of Article 19 of the original 2010 LOC, which reads: “Decisions of the Court of Appeals are public documents. The [KJC] shall ensure the publication of decisions of the Court of Appeals. Such decisions, at a minimum, shall be published on the website of the Kosovo Judicial Council, but otherwise subject to regulations of the [KJC].” This deletion would seem only natural in light of the new provision added under Article 6 (see above), requiring that all courts publish their judgments on their websites.

## 4.6 FINANCE AND BUDGETING

Budget development, disbursement, and management is subject to a multiagency process involving the MOF, the Assembly, and the KJC. The implementation of the laws, rules, regulations, and administrative instructions at the central level is governed by the MOF with final approval from the Assembly. Following the adoption of the budget, the KJC and its Secretariat become the primary managers of the judiciary’s budget.

Transparency and accountability are fundamental principles for judicial systems and should be applied to budget and finance processes, expenditures and revenues. Currently the system makes no discernible effort to report on or make publicly available any details as to how it spends the funds allocated to it, the level of external investment by donor agencies, or how well or appropriately it is collecting legally mandated fees and taxes. This could easily become part of an annual report to cover more than basic caseload data and is an area where the judiciary could show that it is a good steward of the public funds that sustain it and which, if done correctly, could greatly enhance public trust and confidence.

### Key Findings:

1. No impact of the 2013 restructuring on the role or responsibilities of courts for budget management.
2. Opportunities to define subprograms within the budget were missed resulting in a lack of disaggregation between courts and KJC Secretariat prior to 2015.
3. Annual budget of the judiciary increased by 5% between 2012 and 2016. Over the same period, personnel costs grew from 59% to 73% of the total budget.
4. There is no transparent financial reporting. Expenditures and revenues are not disclosed in annual reporting.
5. Changes in allocations to budget subprograms for the Secretariat and the courts do not reflect known projects and initiatives, such as the 2016 decentralization, and appear to be counter to planned activities.

### 4.6.1 Budget Levels

Overall, the budget of the Kosovo judiciary has increased by 5% between 2012 and 2016, from 19,464,842 Euros to 20,465,768 Euros. A year-by-year analysis, illustrated in Chart 1, shows a gradual increase between 2012 and 2014 followed by a sharp decline in 2015 before rising again in 2016. By 2016, the budget level had not returned to the level allocated in 2014. When excluding capital expenditures, the overall budget allocation records a sharper increase of 9% between 2012 and 2016. While the overall budget recorded a decrease in non-capital as well as capital expenditures in 2015, that decrease affected capital expenditure totals more significantly. Capital expenditures are primarily made up of high-cost, one-time investments in new facilities, facility renovations, and vehicle and IT equipment purchases.

**Chart I. Budget Allocation 2012-2016**

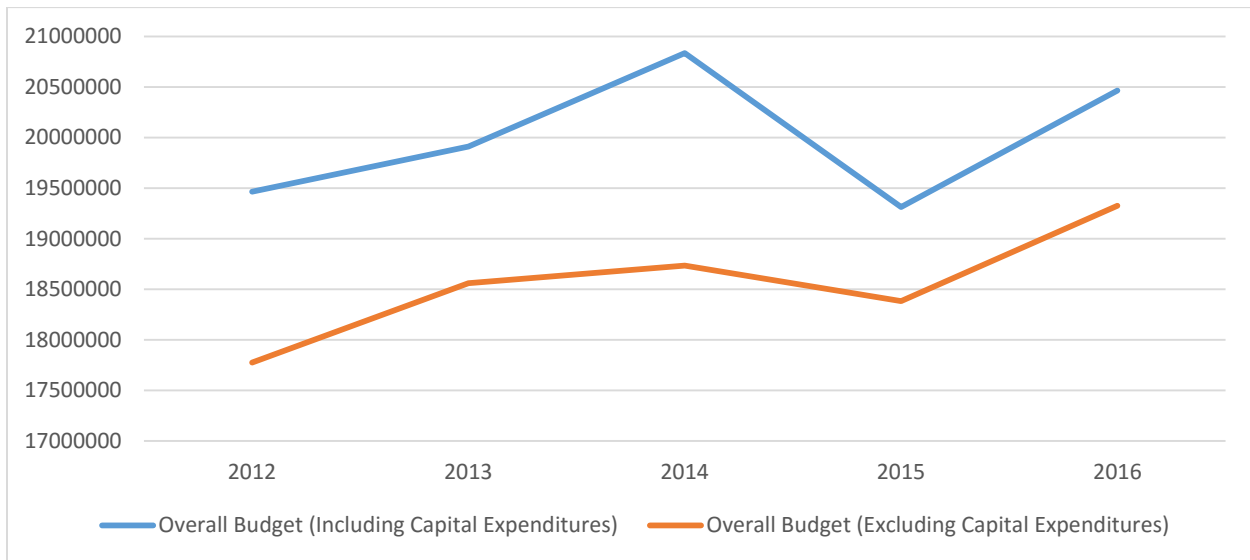
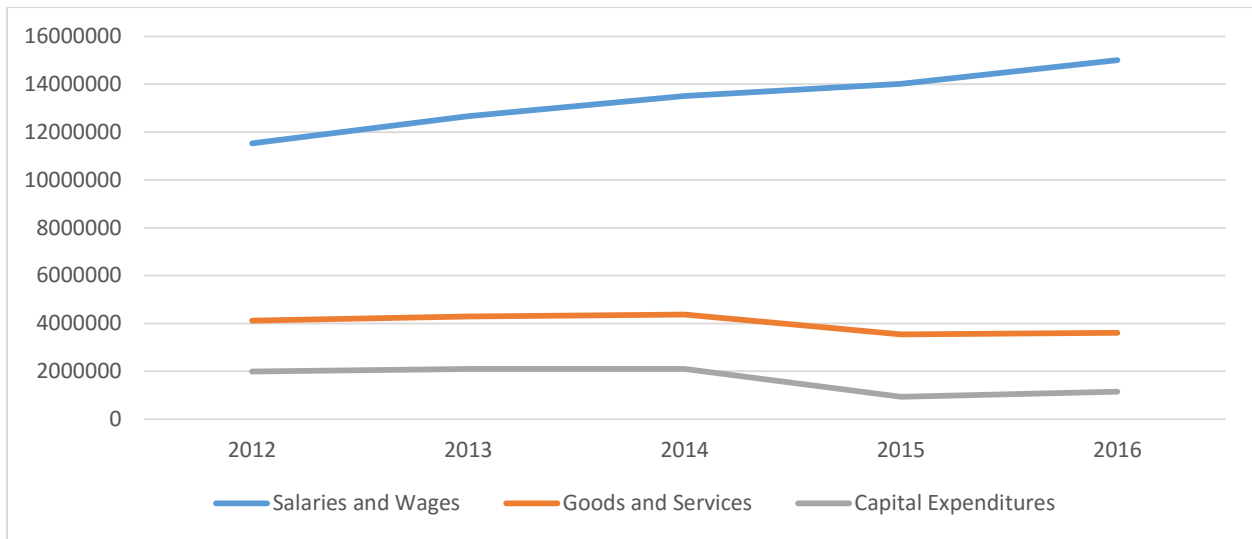


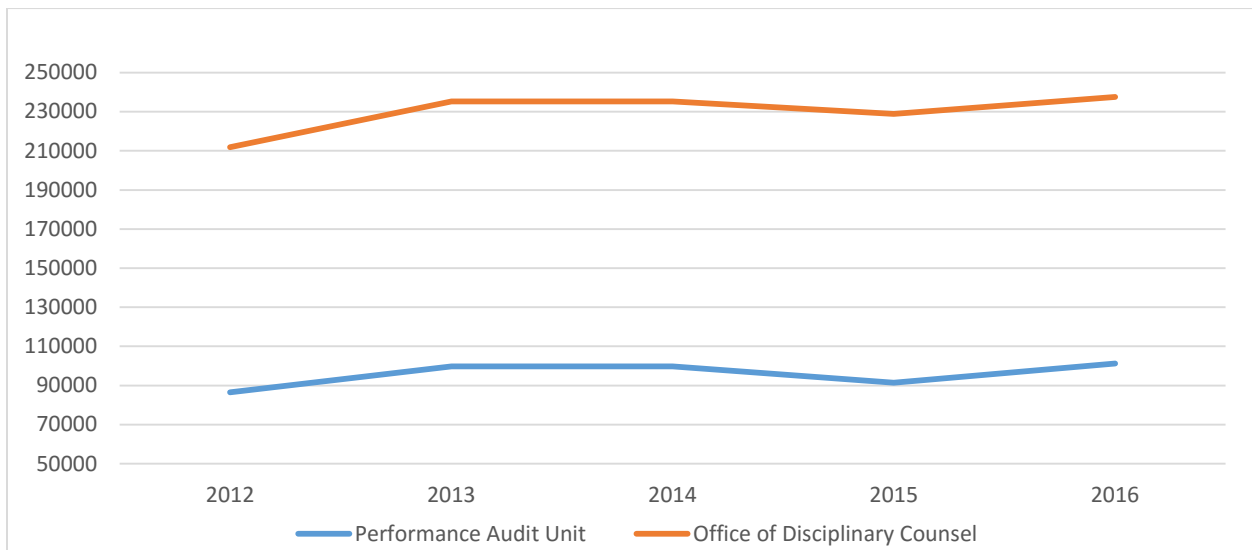
Chart 2 compares salaries and wages, goods and services, and capital expenditures in real terms between 2012 and 2016. Personnel costs, identified as salaries and wages, grew from 59% to 73% of the overall The Kosovo court budget has increased in real terms by 30%. The rise can be attributed to both a growth in the number of employees on payroll (see section 4.2 below for an analysis of personnel variations over time) and a steady increase in the average salary. Between 2012 and 2016, the number of employees recorded in the Kosovo court budget grew by 12% from 1,929 to 2,159 and the average salary grew by 16% from 5,973 Euros to 6,953 Euros. All other budget categories have declined in both real terms and as a percentage of the overall budget between 2012 and 2016. Between 2012 and 2014, or the years immediately before and after restructuring, however, the allocations for “goods and services” and for “capital expenditures” remained constant, suggesting that the 2013 restructuring did not significantly impact these expenditure categories despite the shift in jurisdiction of courts. A sharp drop in these two categories is recorded in 2015, stabilizing in 2016. Determining the extent to which the 2015 decrease is a delayed impact of the 2013 restructuring or related to other factors, including the 2015 move of the Supreme Court, Court of Appeals, and Pristina Basic Court to a single location, the Palace of Justice, requires a level of detail that is not provided in the available budget documents.

**Chart 2. Expenditures in Real Term 2012-2016**



Two units within the KJC had their autonomy strengthened by an individualized line item in the Kosovo judicial budget: the CPRU or “performance audit unit” which evaluates the performance of processes and practices in courts and the ODC which investigates and prosecutes disciplinary complaints against judges. Chart 3 presents the evolution of budget allocations in real terms for these two units between 2012 and 2016. Data shows a decrease in budget allocations between 2013 and 2015, followed by an increase in 2016 without an accompanying explanatory note as to why this occurred.

**Chart 3. Spending on Performance and Discipline 2012-2016**



#### 4.6.2 Financial Planning

Effective court leaders, the KJC, key members of the Secretariat, Court Presidents, and Court Administrators, must be able to articulate a shared long-term vision grounded in the purpose and

responsibilities of courts that takes into consideration internal and external trends. All of these parties must be “rowing the boat in the same direction” to achieve success. That vision is then tied to financial planning via multi-year budget planning processes. Allocations of financial resources and acquisition of funding must be clearly and consistently seen to support the underlying vision with a process for reallocation when circumstances require. Currently, the judiciary is lacking a shared vision and common strategic goals overall and the problem is no better when framed against the processes for budget and finance. There is no common understanding of how sound financial management influences public trust and confidence and no process by which the budget is open and transparent. Poor financial management tied to a lack of vision and strategic goals has led to a lack of funding for critical needs, overspending, and an inability to perform services.

**Question: Based on your own experience, have the intended changes [of the 2013 restructuring of the courts] been achieved and if not, why not?**

I am fully convinced that the restructuring has been successful, but the beginning was very difficult. Because it was intended to change the entire organization and the administrative basis, it has been an extremely stressful situation for us, with additional duties, but without financial support. New positions are created, but without financial support and not proper budget.

– **Court Administrator, Ferizaj Basic Court**

#### 4.6.3 Financial Management Skills

To-date, job specific training for administrative staff working in the financial areas of the courts is ad-hoc and seems to be conducted at the discretion of each court, or as the result of donor intervention. There is a distinct lack of training organized by the KJC Secretariat and absolutely no system of continuing education for budget and financial staff. Likewise, Court Presidents and Supervisory Judges have had no opportunity to be trained as managers of financial processes such as preparing a budget, budget data analysis, how to select and manage budget and finance staff, assessment of outcomes, reallocation decision making and preparing budget requests, to name only a few of the competency areas for well-trained budget managers.

### 4.7 HUMAN RESOURCES

A complex set of laws, rules, regulations, and administrative instructions governs the management of human resources within the Kosovo courts. The management of human resources is primarily overseen by the MPA with funding for staff coming via the central government’s budgeting process, which is overseen by the MOF. The implementation of all the laws, rules, regulations, and administrative instructions is subsequently governed by the KJC and its Secretariat. The intricacies of this multiagency relationship limits the autonomy of the judiciary and the individual courts in planning, implementing, and managing the fundamental aspects of a well-performing human resources system.

#### **Key Findings**

1. 38% increase in judgeships and 17% increase in non-judicial staff levels in first and second instance courts between 2012 and 2015/16. The bulk of the increase is recorded in first instance courts.
2. No administrative efficiencies in the existing human resources system as relates to succession planning, filling of vacancies, prioritization of unfilled management positions, and court-KJC communications on recruitment.
3. Continued lack of proactive planning for attrition and recruitment.

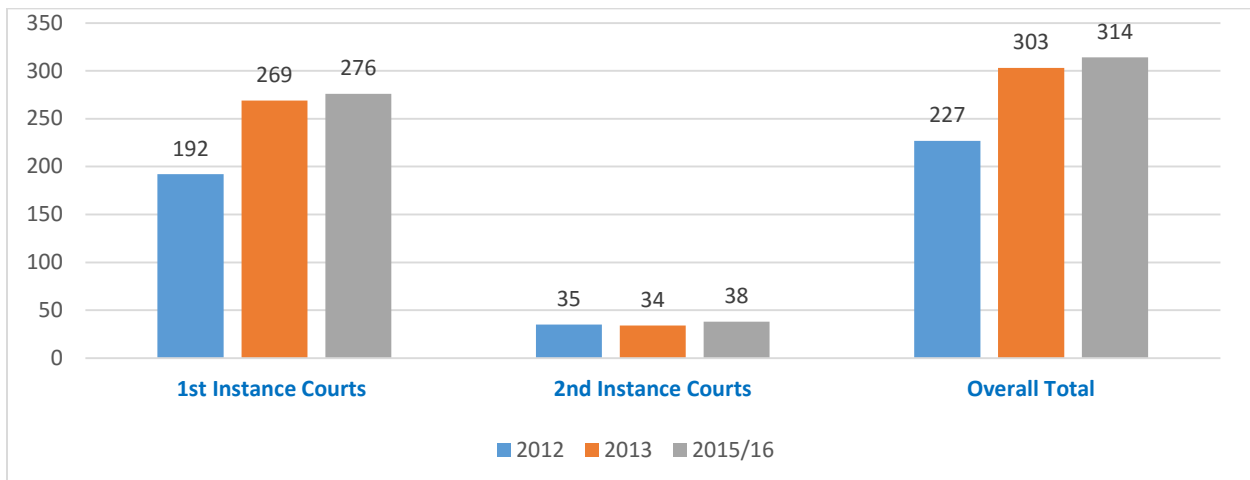
There is little to no training available to court managers and supervisors on how to conduct performance appraisals, and coaching and/or counseling for poor performance is non-existent. No

system of on-boarding, expectation setting or feedback is in place leaving managers ill equipped to actively address either poor or excellent performance. Multiple courts reported having completed the required appraisals only to have them returned with a requirement to redistribute the staff across the grading spectrum. It appears this can be attributed to both a lack of training and/or understanding as well as a poorly designed and implemented appraisal process.

#### 4.7.1 Judge and Staff Levels

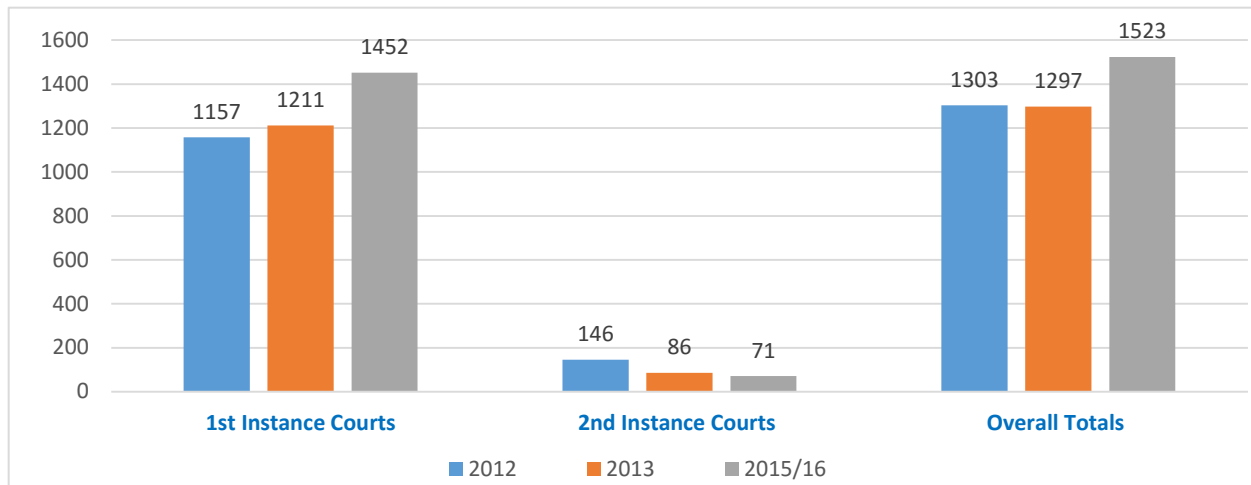
Judge and staff levels in Kosovo courts before and after restructuring are analyzed using the total number of judges and staff in first and second instance courts at three key points: 2012 and 2013, immediately before and after restructuring, and in 2015/2016, two years after completion of the restructuring. Chart 4 provides an overview of variations in the number of judgeships before and after the 2013 restructuring. Immediately before and after restructuring, the overall number of judgeships increased by a third, from 227 in 2012 to 303 in 2013 with the increase entirely in first instance courts. By 2015/2016, the overall number of judgeships had increased to 314, a 38% increase from the pre-restructuring totals. In first instance courts, the number of judges has increased by 40%. By contrast, in second instance courts, the number of judgeships initially decreased in the immediate aftermath of restructuring, before increasing by a more modest 8.5% by 2015/2016.

**Chart 4. Total Judges in Courts**



In first instance courts, the number of administrative staff has steadily increased since 2012 with the total staff for 2015/2016 reported as 25% more than in 2012. By contrast, at the second instance level, the total number of administrative staff has steadily decreased with an overall decrease of 41% between 2012 and 2015/2016. This data suggests that, in second instance courts, the restructuring enabled the consolidation of positions previously distributed across five courts and that staffing level efficiencies have been maintained beyond the immediate aftermath of the restructuring. The same efficiencies were not recorded in first instance where the restructuring did not affect the geographic distribution of courts.

**Chart 5. Total Administrative Staff in Courts**



However, a review of caseload and backlog (see Part 4.8 herein) reveals that clearance rates in first instance courts remain under the threshold of 100% at which point backlog starts being effectively addressed and that overall judicial efficiency has decreased. Effectively the courts at this level appear to be doing less with more administrative staff despite no additional competencies having been assigned. In second instance, where staff has been reduced and the number of judges has remained fairly consistent, dispositions and efficiency have each increased as outlined in Table 6 of this report. It is unclear if increases can be fully attributed to the restructuring or if they are the result of a combination of factors, including variations in the filing of new cases.

The courts report feeling excluded from hiring and selection and often view it as an adversarial process in which the KJC Secretariat appoints unqualified candidates who have more allegiance to the KJC Secretariat than to the court in which they are assigned. This area often becomes the focal point for finger pointing between courts and the KJC Secretariat with neither party willing to take mutual responsibility for making the process more effective and efficient. Open and competitive selection is often subverted, and process transparency is routinely sacrificed.

#### **4.7.2 Anticipated Wave of Retirements**

Courts anticipate upwards of 30% of the overall total of staff and judges combined will reach mandatory retirement over the next 3 to 5 years and yet there is no active planning to anticipate this significant loss of human capital and institutional knowledge nor any plan for streamlined, timely and well planned recruitment and selection processes.

### **4.8 COURT PROCESSES AND PROCEDURES**

The 2013 restructuring did not contemplate nor implement any changes to the underlying manner in which cases proceed through the courts from filing to disposition. Currently, judges are expected to complete a norm that typically ranges between 25 and 30 cases per month depending on case type. Judges in key leadership roles have stated that meeting the current norms is nearly impossible due to the lack of administrative support that requires them to draft all their own decisions, judgments, and notices, limiting the time they can dedicate to hearings and trials. Application of administrative support has the potential to shift the current thinking and to increase dispositions well above the current norms.

The listing of all process and procedures that are either not followed or that are not written in a manner that creates or supports efficiency is extensive across all case types. The following is an illustrative, non-exhaustive list of such procedures and practices:

- Case assignments continue to be regulated in a manner that creates an unnecessary delay of upwards of 30 days following case filing.
- The timing of the initial case review remains unregulated and discretionary in all cases not designated as “urgent” by law.
- Time standards for judges are not implemented. No time standards are in place for administrative staff.
- Performance standards for administrative staff are neither adopted nor implemented and cases are often left to languish in a resolved (final decision or judgment completed) but not completed status<sup>4</sup>. This results in delays to the initiation of service for final decisions and judgments, delays to the initiation of appeal periods, and unnecessary increase in time to full case completion. Routinely, appeal filings are left unprocessed or partially processed at the first instance for lengthy periods of time, also creating unnecessary delay.
- Judicial norms were updated in 2012 based on a 2011 review. The update did not take into account the planned 2013 restructuring. Norms have not been reviewed since the 2013 restructuring to update to the new court structure or reflect changes in workload or case filing trends. The norms remain too low to effect even a 100% clearance rate when a higher than 100% rate is absolutely required to address both backlog and current case filings.<sup>5</sup>
- Postponements of hearings are not discouraged and parties and their representatives have no incentive to prepare for and attend scheduled hearings in a timely manner. Likewise the courts often continue hearings as a result of poor scheduling on their own part allowing trainings or events outside the court to take precedent over scheduled hearings.
- Service of documents remains a highly manual and laborious process with a relatively high rate of unsuccessful service attempts, causing extended delays.
- There is no active system of case review or event tracking in place, cases are not assigned a next review or action dates and as such routinely get lost in the mix of disorganized and ill-filed stacks of cases within judges offices.
- Fast-track or easy cases, i.e., those cases that could be resolved quickly with little use of court time and resources, are not addressed appropriately and are instead used as an easy means by which to reach a norm.
- Judges hold cases over after final resolution from month to month so as to have a surplus of cases to submit for their monthly norms, which delays access to justice and needlessly increases time to disposition.

**Question: Does your court use clearance rates as a measurement of successful case management? How does the current system of norms impact court efficiency?**

Norms are being used, it's an oriented norm. It is not reasonable at all. It's a high one taking into consideration our condition though we are doing way much more than the norm. We should take into consideration the weight of the case and not the number of cases. – **Supervisory Judge, Prizren Basic Court, Suhareka Branch**

It is very important, this helps the efficiency. The norm is 27 civil cases. If you give 27 decisions, the quality will be poor or impossible. It's more important and would be much better to evaluate the case weight than number of cases. – **Supervisory Judge, Mitrovica Basic Court, Skenderaj Branch**

<sup>4</sup> Cases that have been adjudicated and final orders issued are considered resolved but not completed. A series of administrative tasks must be initiated and completed before a case can be considered complete.

<sup>5</sup> Statements regarding judicial norms should not be construed as supporting the continuation of this model for judicial performance standards or measurements.



#### **4.8.1 Electronic Records**

Case inventories conducted at the time of the transfer of case files led to the development of an electronic case registry (ECR), with USAID EROL's assistance, commonly known as "the database." The database was an electronic version of the manual registry books. The initial version of the database contained no data controls and instead relied on free form text for all data entry thus rendering reporting difficult, time consuming and unreliable. The USAID EROL program re-engineered this database to include data controls and more robust reporting. Available reporting now includes workload summary, age of pending cases, time to disposition, missing case numbers, and duplicate case numbers with the option to add even more standardized reports. The ECR system was turned over to the KJC Secretariat for administration and all courts were provided initial training on the use of the new program and all courts staff have user profiles defined by their roles and responsibilities. Six-months after the close of the EROL program and the transfer of the system to the KJC Secretariat the courts report needing additional training and the system requires improvements related to language issues and translation of system labels and field descriptors. The database was not a planned or intended outcome of the restructuring but continues to be an underutilized tool that could, if maintained and used correctly, allow for process efficiencies and statistical reporting efficiencies.

Two key initiatives that might have been considered either as part of or immediately following the 2013 restructuring include:

#### **4.8.2 Archived Records**

The current system of records archiving is governed by a set of laws that has not been reviewed or updated since prior to the 2013 restructuring. Like many other issues, archiving is subject to a complex network of laws involving multiple state and municipal agencies; it also must be addressed at individual case category levels and requires active policy making on the part of the KJC. As a result, records that should be transferred to the court's archive accumulate in the registries, limiting space available for the current and active case files. This, along with mistrust of administrative staff and a lack of confidence in their knowledge, skills, and abilities, is the reason judges continue to maintain their entire caseload in chambers rather than only maintaining those files on which they are actively working.

#### **4.8.3 Central Records Management**

The courts were, for the most part, all equipped with remodeled and refurbished central records management offices, more commonly known as "registries". The concept of a central records management office was introduced by the USAID JSP Program and continued under the USAID EROL Program. With one exception, the Court of Appeals, all 26 active courts and branches have the physical conditions for central records management, but continue to operate under a decentralized records management system wherein active case files are stored not in the central records office but instead in individual judges' office. This creates many layers of process inefficiencies, diverts registry tasks and responsibilities to the judge and legal secretaries, and results in poor records management with case files routinely going missing, at least temporarily. It prevents a robust system of checks and balances and narrows the pool of court staff who might be used to monitor case progression.

## 4.9 COURT EFFICIENCY

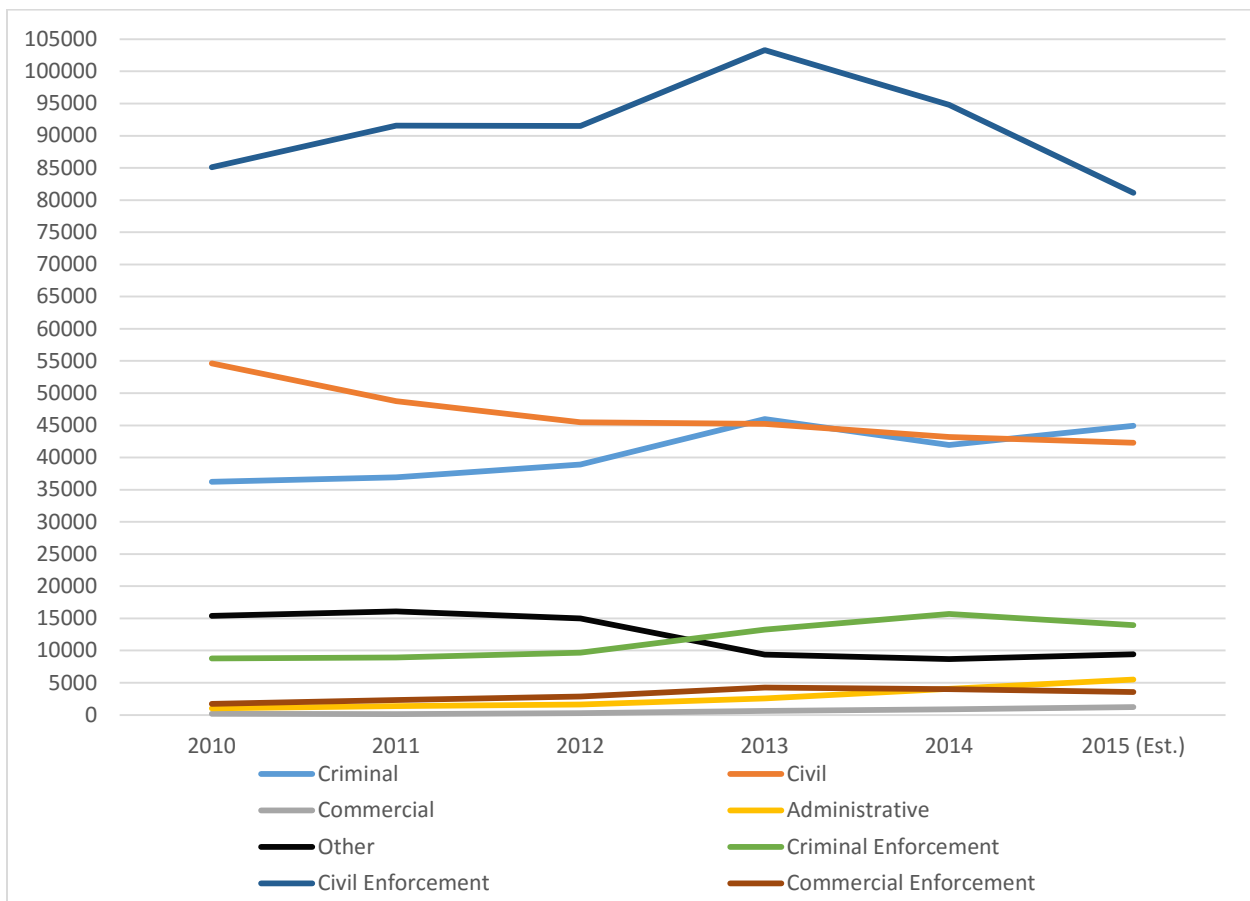
### 4.9.1 First Instance Caseload Before and After Restructuring

The restructuring of 2013 consolidated first instance jurisdiction at the Basic Court level. The Basic Court assumed the jurisdiction of the previous Municipal Court and inherited cases previously adjudicated at the District Court (serious crimes and certain types of civil cases), Commercial Court (disputes, bankruptcy, enforcement), and Supreme Court (administrative disputes) levels. The Commercial Court was disbanded. Pristina Basic Court properly centralized jurisdiction for first instance commercial disputes and administrative disputes. As seen in Chart 6, we have looked at the year of restructuring (2013) and two years prior (2011, 2012) and after (2014, 2015) to evaluate the impact of restructuring. Where necessary, we identify other variations in case processing that are not attributed to restructuring, such as the transfer of civil enforcement to private bailiffs in 2014. Data for 2015 is a projection extrapolated from the first nine months of judicial activity, January-September 2015.

#### Key Findings

1. Efficiency of judges has decreased by over 50% since restructuring despite doubling the number of judges.
2. Clearance rate for all types of first instance cases has declined over the 2011-2015 period, especially in commercial cases.

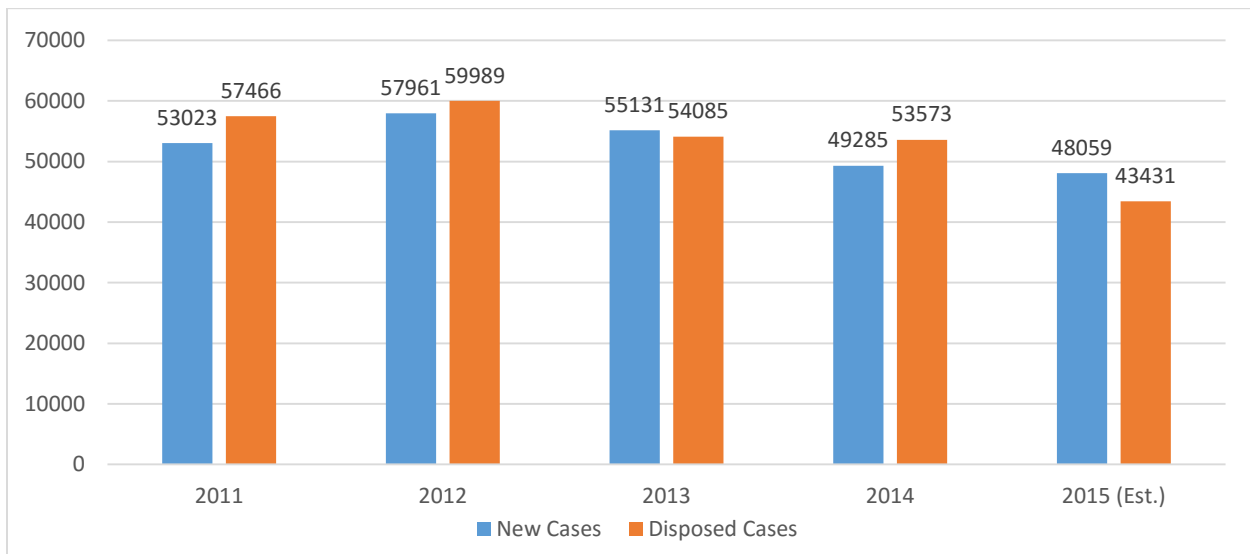
**Chart 6.** First Instance Pending Cases: Variation at Year End 2010-2015



#### 4.9.1.1 Case Intake and Disposition Variations (Excluding Minor Offenses and Enforcement)

Case intake and disposition levels were at their peak in 2011 and 2012, but have deteriorated since. Case disposition is decreasing at a faster pace (-34%) than case intake (-12%), resulting in growing backlog as courts are not keeping up with new filings. Chart 7 presents case intake (new cases) and disposition annually.

**Chart 7. First Instance Case Intake and Disposition**



Case intake variations, documented in Table 6, show significant increases in commercial and administrative disputes with new filings going up significantly in 2013 for commercial cases and 2014 for administrative cases. Despite fewer new filings in 2015, commercial cases went up by 35% between 2011 and 2015 and administrative cases by 31%. Criminal cases, which represent almost half of all new cases filed annually, excluding minor offenses and enforcement, went up by 6% over the same period. Criminal cases, which include both regular crimes and serious crimes, went up by 26% between 2011 and 2013 before decreasing by 16% between 2013 and 2015. A similar pattern is documented in civil cases, which represent about a third of all new cases filed annually, excluding minor offenses and enforcement. These cases went down by 4% between 2011 and 2015 with an initial increase of 13% between 2011 and 2015 followed by a decrease of 15% between 2013 and 2015.

**Table 6. Case Intake, Excluding Enforcement and Minor Offenses, between 2011 and 2015**

Cases	2011	2012	2013	2014	2015 Est.	2011-2015 Variation
All disputes	53023	57961	55131	49285	48059	-10%
Criminal	20198	23623	25510	19790	21492	+6%
Civil	14377	15289	16284	16044	13776	-4%
Commercial	381	620	766	687	588	+35%
Administrative	1550	1637	1720	2568	2239	+31%

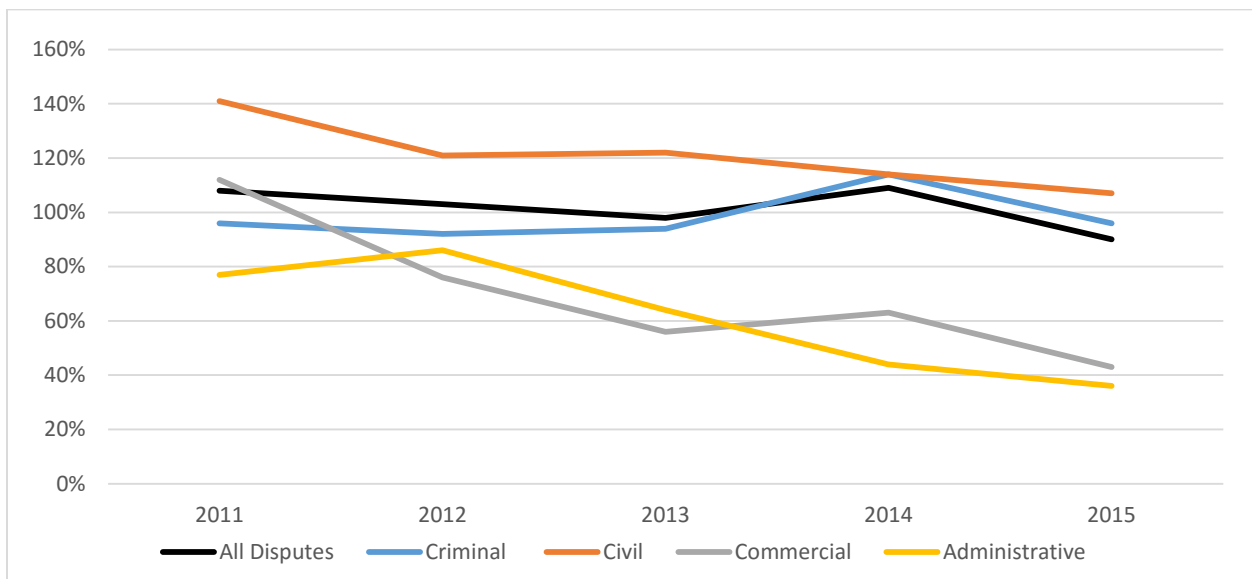
Case disposition variations, documented in Table 7, indicate a continuous decrease in efficiency since 2012. Case disposition increased in 2012, prior to restructuring, and has decreased ever since. The least affected case category has been criminal cases, which decreased by 5% over the period. For commercial disputes, disposition levels went down by 67%, for administrative cases by 50% and for civil cases by 38%.

**Table 7.** Case Disposition, Excluding Enforcement and Minor Offenses, between 2011 and 2015

Cases	2011	2012	2013	2014	2015 Est.	2011-2015 Variation
All disputes	57466	59989	54085	53573	43431	-32%
Criminal	19465	21681	21356	22596	18520	-5%
Civil	20234	18576	19913	18221	14683	-38%
Commercial	426	470	431	435	255	-67%
Administrative	1194	1405	1107	1130	796	-50%

Clearance rates have also decreased over the period, leading to a growing backlog, especially in two case types transferred to Basic Courts: administrative disputes (transferred from the Supreme Court) and commercial disputes (transferred from the District-level specialized Commercial Court). Chart 8 presents the evolution of clearance rates, both overall and individually for criminal cases and civil, commercial, and administrative disputes.

**Chart 8.** Evolution of First Instance Clearance Rates 2011-2015



#### 4.9.1.2 Levels of Intake and Efficiency per Judge (Excluding Minor Offenses and Enforcement)

The number of judges assigned to first instance cases, excluding judges specifically assigned to minor offenses more than doubled between 2011 and 2015.<sup>6</sup> Despite this increase, efficiency levels for first instance cases, excluding enforcement and minor offenses, measured by the number of disposed cases per judge have halved (-53%). Over the same period, the number of new cases per judge decreased by 44%. This data, presented in Table 8, indicates that, following restructuring and the addition of new judges, judges' efficiency has been roughly halved over the five year period ending in 2015. Since restructuring in 2013, judges' efficiency has decreased by 18%.<sup>7</sup>

##### **The Efficiency Deficit**

First instance efficiency level have halved between 2011 and 2015, decreasing from an average 456 cases to an average 217 cases disposed per judge annually. The decrease occurs while the number of judges has increased and new case filings have decreased, mitigating its impact on overall pending caseload. The problem is nonetheless concerning for the ability of Basic Courts to adjudicate cases effectively in the future.

**Table 8.** Judge's Efficiency, Excluding Enforcement and Minor Offenses, between 2011 and 2015

Variable	2011	2012	2013	2014	2015	2011-2015 Variation
Number of Judges	126	138	204	200	200	+59%
New cases per judge	421	420	270	246	240	
Variation of intake		0%	-36%	-9%	-2%	-43%
Disposed cases per judge	456	435	265	268	217	
Variation of efficiency		-5%	-39%	+1%	-19%	-52%

#### 4.9.1.3 Minor Offenses and Enforcement

Between 2010 and 2012, enforcement (civil, criminal, and commercial) and minor offenses caseload represented approximately two-thirds of the cases pending before Basic Courts with minor offenses representing more than half. By the end of 2013, after court restructuring, this percentage rises above 77%, in large part due to a sharp increase in volume of pending minor offense cases from one-third to half of the total pending caseload. In 2014 and 2015, the percentage of these cases remains stable at 76%. Projections estimating pending caseload at the end of 2015 suggests that minor offenses will rise to 51%, with civil enforcement cases down to 20% of all pending cases. This indicates that the bulk of activity in first instance remains related to the adjudication of minor offenses (more than 80% of which are traffic violations) and enforcement of judgments and obligations (more than 80% of which are civil enforcement cases, primarily collection on utility bills) rather than adjudication of criminal and civil matters.

<sup>6</sup> For 2011 and 2012, the number of judges assigned to first instance cases was estimated by adding the total number of Municipal Court judges plus the total number of Commercial Court judges plus the number of District Court judges corresponding to the proportion of first instance cases received each year in the District Courts.

<sup>7</sup> This does not include the 41 new judges appointed in May 2015 who will only be counted from January 2016. Accordingly, the efficiency levels for 2015 may be slightly lower than presented in Table 8..

## 4.9.2 Second Instance Caseload Before and After Restructuring

Variations in pending cases at the end of the year point to mixed results in adjudicating cases and responding to growing demands from litigants, especially in civil and administrative appeals. Civil appeals grew from 56% of pending appellate caseload at the end of 2010 to a staggering 87% of estimated pending appellate caseload at the end of 2015. Over the same period, the number of pending civil cases almost tripled, while the number of pending criminal appeals halved. Administrative appeals are also a source of concern, especially given the rapid growth of first instance administrative case activity. Like civil appeals, pending administrative appeals estimated at the end of 2015 have tripled compared to the end of 2010. In these two case categories, backlog is rapidly growing.

### **Civil Appeals: Efficiency or Quality Problem?**

Civil appeals surged under all caseload indicators between 2011 and 2015.

- Civil cases up from 56% to 87% of total pending appellate caseload.
- Pending cases at the end of the year more than doubled from 3,620 to 8,443 (estimate).
- Case intake increased by 39%.
- Clearance rate decreased from 80% to 67%.

Apart from issues in appellate case processing, this data raises the question of whether this situation may reflect a worsening of first instance civil adjudication and decisions.

### 4.9.2.1 Levels of Intake and Efficiency per Judge

The number of judges assigned to second instance cases, excluding minor offenses, increased by a third between 2011 and 2015.<sup>8</sup> Despite this increase, efficiency levels for second instance cases, as measured by the number of disposed cases per judge, increased more moderately by 17% over the same period. Of note is the fact that efficiency increased in 2013, the year of the restructuring, before decreasing in 2014 and increasing again in 2015. Over the same period, the number of new cases per judge decreased, then also increased, but more slowly than efficiency (11%). The efficiency level is presented in Table 9.

**Table 9.** Judge's Efficiency between 2011 and 2015

Variable	2011	2012	2013	2014	2015	2011-2015 Variation
Number of Judges	25	31	33	33	33	+32%
New cases per judge	251	234	249	290	278	
Variation of intake		-6%	+6%	+16%	-4%	+11%
Disposed cases per judge	227	250	262	253	265	
Variation of efficiency		10%	+5%	-3%	+5%	+17%

## 4.10 CASE BACKLOGS

The Kosovo judiciary defines case backlog as those cases pending for 24 months or more. In 2010, the KJC adopted its first National Backlog Reduction Strategy based on recommendations made by a working group of judges and staff chaired by the Supreme Court President. The Strategy was implemented between January 1, 2011 and December 31, 2012 under close monitoring by the KJC's

<sup>8</sup> For 2011 and 2012, the number of judges assigned to second instance cases was estimated by calculating the number of District Court judges corresponding to the proportion of second instance cases received each year in the District Courts.

CPRU and resulted in clearance of 60% of the target backlog. In 2013, a second National Backlog Reduction Strategy was adopted by the KJC and its implementation started on January 1, 2014. Implementation is under the supervision of Basic Court Presidents with regular progress reports submitted to the KJC Statistics Department. The analysis below is based on the most recent available reports, which cover the period of January 1, 2014 to June 30, 2015. Backlog reduction levels are recorded at 20% for enforcement cases and 47% for non-enforcement cases.

#### 4.10.1 Backlog in Basic Courts

The seven Basic Court seats represent more than two-thirds of the total pending backlog (68%). When excluding enforcement cases, this proportion increases to 73%, including 39% in Pristina Basic Court proper and 19% in Mitrovica Basic Court proper. Consequently, more than half of the non-enforcement case backlog is located in the Pristina and Mitrovica Basic Court seats.

##### **Key Findings**

1. 46% of pending enforcement cases are backlogged.
2. 22% of criminal, civil, administrative, commercial, and miscellaneous cases excluding minor offenses and enforcement are backlogged.
3. Backlog reduction rates for the period January 1, 2014 to June 30, 2015 are 20% for enforcement backlog and 47% for non-enforcement backlog.
4. The seven Basic Court seats account for more than two-thirds of case backlog. For non-enforcement backlog, 39% is located in Pristina Basic Court seat and 19% in Mitrovica Basic Court seat.
5. After enforcement cases, the largest volume of backlogged cases are civil disputes.

#### 4.10.2 Analysis of Serious Crimes Caseload

Serious crimes departments are established in each Basic Court at the seat of the court. The Serious Crimes Department took over first instance criminal jurisdiction previously held by the District Courts. Official statistics show that District Courts had 3,413 cases pending at the end of 2012. By comparison, at the end of September 2015, Basic Courts had 3,887 cases pending, a 14% increase in 33 months.<sup>9</sup> Including Mitrovica Basic Courts, the number of pending cases at the end of September 2015 increases to 5,776. Most cases (71%) are pending in Pristina and Mitrovica Basic Courts.

##### **Key Findings**

1. 5,776 cases pending at the end of September 2015, representing 6% of all first instance pending cases, excluding enforcement and minor offenses. Caseload increased by 14% since restructuring.
2. Clearance rate of 89% in 2015.
3. Almost three-fourth (71%) of all cases pending in Pristina and Mitrovica. These two courts have the lowest clearance rates (64% and 58%).
4. 75% of cases disposed resulted in conviction and only 2% passed statute of limitations.
5. Illegal weapons possession is the most common type of case, representing 25% of pending cases and 32% of new cases.

An analysis of the clearance rate and conviction rate for these eight most common serious crimes case types is included in Table 10 below. The data shows high clearance rates for cases of illegal weapons possession, narcotics possession, counterfeit money, and, to the extent that it is higher than the overall clearance rate for serious crimes, robbery. In these case types, no backlog is building. By contrast, an extremely low clearance rate of 46% is recorded for misuse of voting rights, meaning that two cases are filed for each case disposed. Conviction rates are generally on par with the overall conviction rate for serious crimes, except for counterfeit money where it lies at only 24%, three times lower than the overall conviction rate, and illegal weapons possession and

<sup>9</sup> Data prorated to exclude Mitrovica Basic Court for comparability. Mitrovica District Court was not included in the 2012 official statistics.

weapons use which are much higher due to the flagrancy element typically at the origin of prosecution of these offenses.

**Table 10.** Most Common Case Types, Disposition & Conviction

Case Type	New Cases	Disposed Cases	Clearance Rate	Cases Disposed with Conviction	Conviction Rate
<b>Illegal Weapons Possession</b>	513	521	102%	452	87%
<b>Narcotics Possession</b>	85	140	165%	93	66%
<b>Homicide</b>	58	47	81%	34	72%
<b>Weapons Use</b>	152	123	81%	118	96%
<b>Counterfeit Money</b>	31	50	161%	12	24%
<b>Misuse of Voting Rights</b>	130	60	46%	47	78%
<b>Robbery</b>	49	45	92%	34	76%
<b>Aggravated Homicide</b>	55	40	73%	29	73%
<b>TOTAL</b>	1604	1423	89%	1072	75%

#### 4.10.3 Analysis of Criminal (General Crimes) Caseload

Each Basic Court and each branch within a Basic Court has a criminal division established within its General Department. The Criminal Division of the General Department took over first instance criminal jurisdiction previously held by the Municipal Courts. Official statistics show that Municipal Courts had 35,476 cases pending at the end of 2012. By comparison, at the end of September 2015, Basic Courts had 38,367 cases pending, an 8% increase in 33 months.<sup>10</sup> More than half of the cases (52%) are pending in the two Basic Courts established within the former Pristina District and their branches: Pristina Basic Court (40%) and Ferizaj Basic Court (13%). Pristina Basic Court alone (branches excluded) represents 29% of all pending criminal caseload at the end of September 2015.

##### Key Findings

- 38,367 cases pending at the end of September 2015, representing 38% of all first instance pending cases, excluding enforcement and minor offenses. Caseload increased by 8% since restructuring.
- 40% of all cases pending in Pristina, 73% of which is at the Basic Court seat.
- Clearance rate of 86% in 2015. Pristina has the lowest clearance rate of all Basic Courts (71%) with the Basic Court seat showing a clearance rate of only 52%.
- 74% of cases disposed resulted in a conviction and 11% passed statute of limitations.
- Endangerment of public safety (reckless driving) is the most common type of case, representing 16% of pending cases and 20% of new cases.
- Various types of thefts, including wood theft and theft of utility service represent one third (35%) of all pending cases.

An analysis of the clearance and conviction rates for these nine most common serious crimes case types is included in Table 11 below. The data shows high clearance rates for cases theft, wood theft,

<sup>10</sup> Data prorated to exclude Mitrovica Basic Court for comparability. Mitrovica District Court was not included in the 2012 official statistics.



serious theft, and damage of official stamp, and, to the extent that it is higher than the overall clearance rate for regular crimes, light bodily harm and threat. In these case types, no backlog is building. By contrast, an extremely low clearance rate of 31% is recorded for theft of utility services, meaning that three cases are filed for each case disposed. Conviction rates also vary greatly across case types. High conviction rates are recorded for damage of official stamp, endangerment of public safety, and theft of utility services. In cases of wood theft (59%) and threat (57%) conviction rates are much lower than the average across case types (74%), in part due to high levels of disposition based on statute of limitations.

**Table II. Most Common Case Types, Disposition & Conviction**

Case Type	New Cases	Disposed Cases	Clearance Rate	Cases Disposed with Conviction	Conviction Rate
Endangerment of public safety	2831	2437	86%	2109	87%
Theft	754	1350	179%	918	68%
Wood theft	960	1337	139%	790	59%
Light bodily harm	1514	1468	97%	1147	78%
Theft of utility service	2349	724	31%	597	82%
Serious theft	396	490	124%	326	67%
Threat	645	630	98%	360	57%
Illegal connection to utilities	689	454	66%	353	78%
Damage of official stamp	474	693	146%	616	89%
<b>TOTAL</b>	<b>14515</b>	<b>12467</b>	<b>86%</b>	<b>9240</b>	<b>74%</b>

#### 4.10.4 Analysis of Civil Caseload

Each Basic Court and each branch within a Basic Court has a civil division established within its General Department. The Civil Division of the General Department took over first instance civil jurisdiction previously held by the Municipal Courts. First instance civil jurisdiction in family contests, previously held by the District

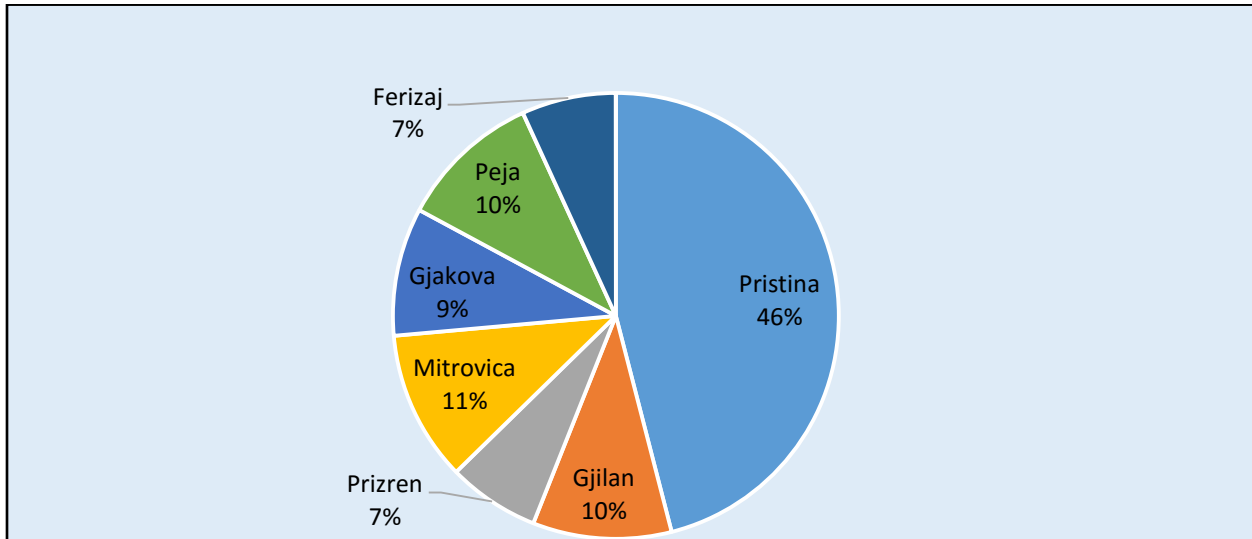
##### Key Findings

1. 42,486 cases pending at the end of September 2015, representing 42% of all first instance pending cases, excluding enforcement and minor offenses. Caseload decreased by 7% since restructuring.
2. 46% of all cases pending in Pristina, 75% of which is at the Basic Court seat.
3. Clearance rate of 106% in 2015, indicating that most courts are able to keep up with case intake and are clearing backlog. The lowest clearance rates were recorded in Gracanica (Pristina), Novo Brdo (Gjilan), Malishevo and Rahovec (Gjakova), and Deçan (Peja)
4. 46% of cases were disposed on procedural grounds. For cases disposed on the basis of a full hearing, 83% resulted in acceptance of the complaint.
5. More than half of the civil caseload relates to damage compensation and confirmation of property ownership.

Courts, was also transferred to the Basic Court. Official statistics show that Municipal Courts had

44,869 cases pending at the end of 2012 and District Courts 613. By comparison, at the end of September 2015, Basic Courts had 42,486 cases pending, a 7% decrease in 33 months.<sup>11</sup> Pristina Basic Court represents 46% of all pending civil cases, with the seat (branches excluded) representing 34% of all pending civil caseload at the end of September 2015. Chart 9 presents civil case distribution across Basic Courts at the end of September 2015.

**Chart 9.** Distribution of Pending Civil Cases by Court on 9/30/2015



## 4.11 COURTS READINESS FOR THE 2016 DECENTRALIZATION

Data collected during the stocktaking indicates that **the courts are uniformly unprepared and ill equipped** to assume either functional responsibility or management authority for any of the decentralized competencies. This is not a reflection of the courts willingness or capacity to assume the competencies, but is instead a reflection of a poorly planned and, thus far, a poorly executed decentralization process.

### **Key Findings:**

1. Courts are not prepared nor equipped to assume transferred competencies.
2. Adequate communication and planning are not in place for any of the three competencies.
3. Risk assessment and management are not active elements of the process.

Much like the 2013 restructuring of the organization of the courts, the 2016 decentralization will impact how the courts and the KJC Secretariat do business. As such, there is a need for well-informed policy making at the forefront. In order to address adequately the intricacies of each competency, policy-making should be conducted in three separate and distinct tracks. Thus far, the only “policy documents” that can be associated with the decentralization are two Administrative Instructions that come nowhere near to being adequate so as to form the required foundation for a well-informed, well-planned and well-executed decentralization process. Table 12 below analyzes the status of development and implementation of the key elements for a successful decentralization process for all three competencies.

<sup>11</sup> Data prorated to exclude Mitrovica Basic Court for comparability. Mitrovica District Court was not included in the 2012 official statistics.

**Table 12. Key Elements for Successful Decentralization**

KEY ELEMENTS	STATUS AND NEED
<b>POLICY</b>	Policies unique to each competency should be drafted, reviewed by stakeholders, and subsequently adopted and published. Policy is the “what” of process change: what is changing, when it is changing, and who is responsible. <u>There are no such policies developed as a foundation for the decentralization.</u> Without sound foundational policies the decentralization is vulnerable to varied and disparate interpretations of not only what is changing, but also why and how. This will in turn lead to non-standardized processes and a lack of cohesive and systemic application of good practice subsequently increasing risk and liability.
<b>PROCEDURE</b>	New policy begets the need for new or updated procedures for all of the unique functional tasks associated with each of the competencies. This can be voluminous given the broad range of competencies subject to decentralization and the even deeper range of subject-matter addressed by each competency. Procedure is the detailed “how” of process change: how are new tasks to be completed and who will complete them and when? <u>Strong procedures come in the form of well-written and well-documented manuals; none exist for the competencies being decentralized.</u>
<b>IMPLEMENTATION PLANNING</b>	The KJC Secretariat has proposed fundamental business process changes across nine courts (Supreme Court, Court of Appeals and seven Basic Courts) and for the most part there is little to no implementation planning for how they will successfully train and deploy the needed resources to effect sustainable change. <u>According to the Director of the KJC Secretariat, three courts will implement decentralization first: the Supreme Court, the Pristina Basic Court, and the Ferizaj Basic Court. There is no known plan for the remainder of the courts.</u> The lack of documented implementation plans exacerbated by the lack of proactive communication between the KJC Secretariat and the courts increases the risks that the decentralization will stall and/or be subject to avoidable confusion and misinformation.
<b>RESOURCE ASSESSMENT AND PLANNING</b>	<u>Courts do not currently have adequate staffing, either in number or capacity, to assume responsibility for the designated competencies.</u> The KJC Secretariat conducted a basic assessment of positions that would be reallocated from the Secretariat to courts and those transfers have already taken place, a few courts have designated current staff to assume new responsibilities and some positions will be subject to a recruitment process for external candidates. These processes appear to have been ad-hoc, disjointed, and are not founded on the required knowledge, skills, and abilities for new job classifications in the courts nor are they based on the sound policy and procedures highlighted above as also missing. Courts note that some staff designated to assume procurement tasks and responsibilities do not have the required certification to do so and seemingly there is no plan in place to rectify this. Other courts indicate that people have been transferred in to the court without a clear understanding of when they will be trained or begin performing their new duties.

KEY ELEMENTS	STATUS AND NEED
<b>TRAINING</b>	<p><u>No training, specific to decentralization, has occurred for any of the courts, no needs assessment completed, no training plans drafted, and no manuals have been developed.</u> Training, for both key staff and managers, is critical. The competencies moving to the courts are highly technical and require a level of expertise that is not currently found in any of the courts. Likewise, the management and supervision of those assigned to the functional tasks will require training for managers and supervisors in order to expand their skill sets to include these new areas. Without solid training, the courts and, more importantly, the staff assigned new tasks will be placed at high risk for failure. The lack of core competency training will also open the door to errors and omissions that might otherwise be avoided.</p>
<b>MONITORING AND EVALUATION (M&amp;E)</b>	<p><u>No M&amp;E plan has been developed in relationship to decentralization and it is unclear how, or even if, the process will be monitored.</u> Any business process change done correctly requires that an M&amp;E system be in place prior to implementation of change in order to address problems and issues as they arise. A good M&amp;E plan would provide the courts and the KJC Secretariat with the following:</p> <ul style="list-style-type: none"> <li>• A consolidated source of information regarding progress;</li> <li>• Ability to allow courts to learn from each other’s experiences, building on expertise and knowledge as the decentralization spreads to more courts;</li> <li>• Reports that could contribute to transparency and accountability, and which allow for lessons learned to be shared more easily;</li> <li>• Documentation of experiences and needed changes to policy and/or practice; and</li> <li>• Development and retention of institutional memory.</li> </ul> <p>Without such activities established in some formalized manner problems can go not only unresolved but also unnoticed, allowing staff to become disgruntled and processes subject to avoidable errors and omissions.</p>

There is little evidence that any level of risk assessment or management has been conducted for any or all of the competencies. The KJC Secretariat was advised by past USAID projects and by its EU advisors to implement decentralization for the Human Resources competency first, limiting the scope to a more manageable set of criteria. This advice was ignored and all three competencies are being implemented simultaneously, although the transfer of human resources management responsibility is farther along than those of budget and finances or procurement of logistics.

#### 4.12 RECOMMENDATIONS

Missed opportunities of the past should be revisited in an effort to make targeted operational and administrative process efficiencies. Priority recommendations to enhance the accountability and professionalism of the judiciary include:

- I. Establish an effective process for communication between the KJC, the KJC Secretariat, and the courts to ensure adequate understanding by the KJC and KJC Secretariat regarding the needs of the courts, to enable meaningful participation by courts in the policy-making process, and to ensure that judges and court personnel have timely and complete information regarding KJC policy, regulations, and performance expectations. This should include establishing regular meetings between the KJC, its Secretariat and court leadership; roundtables on current topical issues, such as decentralization; and improving the use of technology for distribution of information, such as establishing the KJC website for distribution of information and receipt of comments on policy issues.

2. Operationalize the KJC Communications Strategy through establishment of a KJC-Court executive working group. The working group can establish and execute public outreach programs to increase public awareness of court operations and structure, ensure better understanding of individual rights and procedures for exercising those rights, and encourage public input on court procedures and operations.
3. Develop clear terms of reference for all KJC Committees, and procedures for their operation. For each committee, develop an action plan for priority issues to be considered. Procedures will include, where appropriate, procedures for receiving court and public input for policies and/regulations under consideration.
4. Provide training and mentoring for KJC Secretariat legal and policy staff on the best practices for conducting policy and legal research, drafting regulations and other policy documents, and preparing policy briefing materials. This will include specific training on legal drafting for the Legal Office, followed by mentoring, specific training for the Legal Office and other policy on core principles of caseload management, the development of templates for policy briefing memoranda and mentoring on preparation of policy briefing materials.
5. Implement a backlog reduction plan for selected courts that will include supporting the completion of an inventory of all pending cases and updating the ECR. Backlog cases should be categorized so that those cases can be either fast-tracked for early disposition when appropriate, or returned to an active case management track.
6. Analyze case management business processes to identify opportunities for improving cases processing. Develop templates based on lessons learned from backlog reduction efforts, the analysis of business processes, and findings of other USAID projects and international programs.
7. In collaboration with the KJC Court Administration Committee, develop an action plan for implementation of the KJC National Backlog Reduction Strategy, which will include criteria for the development and implementation of case management improvement/backlog reduction strategies in each court and the development of a monitoring process to track implementation of case management improvements.
8. Create objective measures for judicial workload. Estimating the need for judges based on objective measures of caseload is will aid the success of reducing delay and for efficient case management.
9. The KJC and Court Presidents should consider the temporary and permanent transfer of judges to address short term and permanent fluctuations in new caseload, and to address backlogs.
10. As courts become current in the use of the ECR, the KJC Secretariat should generate reports on key court performance indicators to track case management and performance of courts and judges. The reports may be used by the KJC Court Performance Review Unit, President Judges, and the KJC Court Administration Committee, to monitor performance in case management. Key indicators should include case clearance ratios, average age of pending cases, average age of disposed cases, and rate of appellate reversal.

11. A policy methodology for publishing court workload and performance data should be developed for implementation by the KJC and the courts. The policy will include criteria for access to workload and performance data.
12. The KJC should develop procedural manuals to assist local court staff in guiding their work on the decentralized authorities of procurement, budgeting, human resources, and logistics. Local experts, in collaboration with KJC Secretariat staff, should provide training on these decentralized authorities.
13. A plan for the revision of the current judicial budget development process should be created to ensure the budgeting process is needs based and guided by the Kosovo Judiciary Strategic Plan. Training should be provided to the KJC Secretariat and local staff to assist them in developing budget requests based on individual courts' needs.

# PART 5: OBJECTIVE 3: SUPPORT THE FUNCTIONS AND INTEGRATION OF THE JUDICIAL STRUCTURES IN THE NORTH

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## 5.1 INTRODUCTION

Since 1999, northern Kosovo has been subject to two distinct legal systems. The first was established by the United Nations Mission in Kosovo (UNMIK) throughout Kosovo following the passage of United Nations Security Council Resolution 1244. Following the Unilateral Declaration of Independence by Kosovo in 2008 and the transfer of powers from UNMIK to the European Rule of Law Mission (EULEX), the legal system in Kosovo is now the responsibility of the Government of Kosovo, with certain competencies retained by EULEX.

Practically, the legal system of Kosovo has not been implemented in the north, which retains a parallel judiciary operating within the Serbian legal system. These parallel courts function according to the 2008 Serbian LOC, although they have not been fully operational. In June 2013, decisions by the Chief State Prosecutor of Serbia and the High Judicial Council of Serbia ordered prosecutors and courts in the parallel system to cease working on most new cases. Also in 2013, the Government of Serbia modified its LOC to provide that the court system in Kosovo would be subject to a forthcoming “special law” on Kosovo. This special law is expected to facilitate the removal of the jurisdiction of the parallel courts from Serbia so that they may be integrated within the Kosovo legal system.

## 5.2 THE BRUSSELS AGREEMENT, JUSTICE SECTOR AGREEMENT, AND INTEGRATION PROCESS

In April 2013, delegations from Kosovo and Serbia reached the First Agreement of Principles Governing the Normalization of Relations between Serbia and Kosovo (the “Brussels Agreement”), a framework for negotiations between the Governments of Kosovo and Serbia for normalization of relations. The agreement was negotiated in Brussels under the auspices of the European Union and provides for the integration of Serb-majority municipalities in the north, including judicial authorities, into the Kosovo legal system. Article 10 of the Brussels Agreement states that the judicial authorities in the north will be integrated and will operate within Kosovo’s legal framework. This includes formation of a panel of the Kosovo Appellate Court that will be composed of a majority of Kosovo Serbian judges. The panel will sit permanently in northern Mitrovica. Following the Brussels Agreement, the parties also agreed to an implementation plan that included ambitious timelines, which have not been met.

In February 2015, delegations from Kosovo and Serbia reached a Justice Sector Agreement (JSA). The JSA consists of 15 articles and a table providing for the formation of courts and prosecution offices in the north, including their locations, the appointment of judges and prosecutors, and the allocation of cases. The JSA provides for one basic court for the Mitrovica Region with two locations: one each in North and South Mitrovica. The facility in North Mitrovica will house the

branch of the Kosovo Appellate Court as defined in the Brussels Agreement. The Mitrovica Basic Court will have four branches located in Zubin Potok, Leposavic, Skenderaj, and Vucitrn. The JSA provides for the number of Kosovo Serb and Albanian judges and staff in the Appellate Court panel and the Basic Court and its branches. The division of staff per court is as provided in the chart below:

**Table 13.** Division of Staff Per Court

<b>Premises</b>	<b>Kosovo Albanian Judges</b>	<b>Kosovo Serb Judges</b>
Basic Court Mitrovica North	<b>10</b>	<b>14</b>
Basic Court Serious Crime	4	4
Basic Court General Criminal Department	4	5
Mitrovica Basic Court South	<b>14</b>	<b>11</b>
Leposavic Branch		<b>2</b>
Zubin Potok Branch		<b>2</b>
Division of Court of Appeals	2	5
Total	<b>24</b>	<b>29</b>

### 5.3 PERSONNEL

The KJC began implementation of the JSA in March 2015, when it published 48 judicial vacancies for the entire territory of Kosovo. Of these, 29 judicial positions were for the Basic Court and the Appellate Court panel in Mitrovica. The vacancy announcement was based upon the Brussels Agreement and the JSA. Following interviews in June and July, 34 judicial candidates for judge positions in the Basic Court, Appellate Court Panel, and Supreme Court were selected<sup>12</sup> and are pending appointment. Fourteen judicial positions are still vacant and are to be filled by the KJC. The judges have all been working in the Serbian legal system in the north for years. While they are experienced, they do not have an adequate foundation in the legal framework of Kosovo. In conjunction with the KJI, the German Society for International Cooperation (GIZ) and the US Resident Legal Advisors have developed training for these candidates. The training programs, however, are not based upon a needs assessment with identified judges in the north. Further hindering the capacity of the candidates to fulfill their future mandates is the fact that translations of the laws of Kosovo from Albanian into Serbian are of poor quality and require official amendments.

As of this writing, the KJC has not issued vacancy announcements for the judicial support staff positions agreed upon in the JSA. This is due to a lack of agreement between Serbia and Kosovo regarding the nature of the required employment contracts, qualification requirements, and location of the administrators.

Neither the Brussels Agreement nor the JSA established specific qualification criteria related to appointment of judges who will staff the integrated courts. The LOC provides those criteria. According to that law, candidates must pass the bar exam of Kosovo and have at least three years

<sup>12</sup> Selected judges are judges that have applied and were selected by the KJC to fill judicial positions in Kosovo Courts, meaning the Basic Court of Mitrovica and the division of the Appellate Court in Mitrovica.



of legal-related work experience. These requirements have made it difficult for graduates of the University of North Mitrovica (UNM) to staff future vacancies in the judicial workforce, since diplomas from the University were not recognized by Kosovo and the graduates were, therefore, not allowed to sit for the Kosovo bar examination. To address this, in December 2015, the Government of Kosovo approved a Regulation on the Certification of Diplomas from the UNM. The Regulation establishes a case-by-case process for recognition of diplomas for graduates of the UNM who wish to apply for employment in public institutions, obtain professional licenses, and participate in professional examinations. The Regulation stipulates close cooperation with CSOs to support the process by facilitating communication and exchange, validation and confirmation of data with UNM. Graduates of UNM who successfully complete this process will presumably now be able to sit for the Kosovo bar examination, qualify as professional associates, and staff future judicial vacancies in the north. The Commission for Verification of Diplomas has been established and will have its first meeting at the beginning of March 2016. However, there are currently no provisions for reciprocity between Serbia and Kosovo regarding recognition of bar examination results.

## **5.4 CASE ASSIGNMENT AND ALLOCATION**

The Brussels Agreement and the JSA do not clearly articulate the jurisdiction of the Mitrovica Appellate Court panel. The Brussels Agreement provides that the panel must address cases from Kosovo Serb majority municipalities. But neither the Brussels Agreement nor the JSA elaborates how a Serb majority municipality is to be defined for these purposes. There is further uncertainty regarding the subject matter jurisdiction of the Appellate panel, since neither the Brussels Agreement nor the JSA articulate whether the panel will have a Commercial or Administrative Department.

Due to security concerns, many files for cases in the courts in the north that were functioning up to 2008 were left in the courthouses and have been inactive, with the exception of second instance case files retrieved by EROL in 2012, and cases assigned to EULEX judges. There is no accurate inventory of cases that were pending when court activity ceased in 2008.

As noted above, the Basic Court of Mitrovica has moved to the branch court facility located in Vučitrn/Vushtrri. Upon integration, cases which are currently located there will likely need to be relocated to Leposavič and Zubin Potok, or to appropriate departments of the court facility in North Mitrovica. Likewise, there are likely to be a number of cases in the Leposavič and Zubin Potok branches that will have to be relocated to one of the departments of the Basic Court in Mitrovica.

## **5.5 FACILITIES**

The courthouse in Mitrovica has been utilized for EULEX operations in the region, but was never used as a Kosovo court. It appears to have sustained water damage and will require some minor updating to prepare it for full court operations following integration.

The facility in Zubin Potok has not been used as a court since 2008. It is located on one floor of a privately owned building. The court facility was purchased by the KJC. The remaining floors in the building are either empty and subject to being rented, or used for provision of social services.

The Leposavič facility is located in a building owned by the Serbian Ministry of Justice. Three judges from the parallel court work there, hearing civil and minor offense cases. It will require updating to prepare it for full court operations.

## 5.6 ACCESS TO COURTS

Parallel courts in the north are operating, including in Leposavič and Zubin Potok. They accept only a limited number of cases, however, such as family, inheritance, property and employment cases. Criminal cases are filed with EULEX judges in North Mitrovica or with the Basic Court of Mitrovica seated in Vushtrri. Citizens from the north appear to be reluctant to travel to the court in Vushtrri, due to limited freedom of movement and security concerns. The two ethnically Serbian judges assigned to the Mitrovica Basic Court in Vushtrri no longer report to work there, citing transportation problems.

Concerns regarding security and limited freedom of movement thus significantly hamper physical access to courts and therefore access to justice. Language is another barrier hampering access to justice. Kosovo's Constitution, laws and regulations guarantee the right of all minority groups to proceedings conducted in their own language, and to have access to translation services. While legally the courts are required to provide translation services, in practice the quality of translation is inadequate, making it difficult for parties to have a full understanding of the proceedings. The GOK must ensure safe and equal access to courts for all minority groups and to provide quality translation of court proceedings in which minority populations are involved.

## 5.7 PUBLIC OPINION

In 2014, with funding from the National Endowment for Democracy (NED), the National Democratic Institute engaged in public opinion polling throughout Kosovo on the subject of the Brussels Agreement. It found that citizens in the north are pessimistic about the direction in which Kosovo is heading and are particularly concerned about policing and the rule of law. Kosovar Serbs in the north are extremely pessimistic that they will benefit from the implementation of the Brussels Agreement and are concerned about the loss of jobs that may result. The polling found that only 10 per cent of Kosovar Serbs in the north have actually read the Brussels Agreement. According to the polling, most Kosovar Serbs believe that more dialogue with citizens about the Brussels Agreement is needed.

In 2015, the Advocacy Center for Democratic Culture (ACDC), a CSO active in the area, also received support from NED to assess the level and quality of knowledge and the attitude of citizens about the Brussels Agreement. This study focused on citizens of Leposavic, North Mitrovica, Zubin Potok, and Zvecan. It found that only 12 percent of respondents had read the Brussels Agreement. Most did not believe the Brussels Agreement had improved their daily lives, did not know where the Basic Court or prosecutors' offices would be established, and did not know that they could bring suit against the government in court. Respondents did not understand the structure or jurisdiction of the courts in Kosovo's legal framework, or which court they might approach to seek relief in different matters.

## 5.8 RECOMMENDATIONS

1. The KJC must develop a roadmap to address issues related to changes in the law and accompanying regulations that will be required for integration, including the jurisdiction of the Appellate Court panel in Mitrovica and its departments. This should include identification of official amendments required for the translation of laws from Albanian into Serbian.

2. As part of the roadmap, the KJC must identify a process for collecting and transferring existing case files to the newly created courts in the north, taking into account jurisdiction of the different courts and the locations of their constituent panels. This will likely require an inventory by case type, documentation of the inventory process to ensure transparency, analysis to determine which cases should be archived or dismissed and which should be reassigned for decisions on the merits, and a process for transfer of cases to individual judges.
3. The KJC should forecast the budgetary impact of the resumption of court operations and request allocation of funds for startup and maintenance of these new courts.
4. The KJC must issue job vacancies and a recruitment plan for non-judicial staff once final agreement is reached between Serbia and Kosovo regarding contract provisions and locations.
5. Graduates of UNM should be encouraged to apply for certificates that would allow them to sit for the Kosovo bar examination. Training to prepare them for the bar examination and to serve in the legal workforce will help ensure a supply of future judges. KJC should enable these graduates to serve as praktikants/interns in Kosovo courts.
6. A training needs assessment should be conducted to determine the training needs of selected judges in the north who have not practiced in the Kosovo legal system. Additional training should be developed based on the assessment, including orientation packages for selected judges.
7. Due to poor translation of laws from Albanian into Serbian language, key laws should be reviewed and officially amended by the MOJ.
8. The KJC should prepare a facility needs assessment, including a survey of previous court locations, their capacities, needed repairs and upgrades, and provision of utility services, and evaluate potential alternative facilities if necessary. An office and court supplies needs assessment for each facility should be part of this undertaking, including an equipment and technology assessment to identify needs for computers, peripheral equipment, furniture, photocopy machines, and vehicles.
9. Public outreach is needed to promote the potential benefits of the Brussels Agreement and the JSA. This should include the benefits of access to justice and a campaign to acquaint citizens in the north with the right to legal remedies and judicial protection of rights.
10. The KJC must ensure access to courts, including quality translations of proceedings from Albanian to Serbian and vice versa.

## PART 6: ROLE OF CIVIL SOCIETY IN JUSTICE SECTOR REFORMS

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### 6.1 INTRODUCTION

There are over 7,000 registered NGOs in Kosovo, but only approximately 700 of them are classified as active or partially active. Most focus on a single issue and those focusing on rule of law are limited. They are able to operate freely but the relationship with the government is strained. The GOK adopted its first Strategy for Cooperation with Civil Society (2013- 2017), identifying strategic goals and activities. However, its implementation is slow and intermittent. A number of CSOs are involved in monitoring as watchdogs of judicial and government entities, including monitoring of cases in the courtroom. However, this has proven to be difficult since some judges still conduct hearings in their private offices and many courtrooms are too small to accommodate the public. Some CSOs have been involved in drafting legislation and/or providing comments during the legislative development process. The development and progress of civil society stalled during the political crisis of 2014. The situation is starting to improve with some progress on an Action Plan regarding government cooperation with CSOs. These changes include creating councils to monitor the implementation of the Action Plan, and CSO input to revise the original Action Plan.

CSOs are still largely dependent on support from international donors, resulting in a public perception that CSOs pursue the agenda of their donors, instead of the interests of the public. While public perception is better for humanitarian organizations, it remains suspect when dealing with topical issues. Recently, CSO priorities have begun to shift, offering more focus on rule of law, human rights, and public policy. One notable deficit is the lack of CSOs that conduct investigative journalism, perhaps out of fear of retaliation. While the law allows for freedom of assembly, CSOs seldom organize protests. NGO capacity is stronger in Pristina than in the regions, particularly the North where few organizations exist. Those that do exist require support to strengthen their financial, management, evaluation and programmatic systems.

### 6.2 ACCESS TO JUSTICE

In 2008, the USAID's JSP conducted a court user survey that served for the model courts to provide a baseline on accessibility and satisfaction. This survey found that court user's perceptions were more positive than those found in general public polls. Upgraded facilities, new courts, and the restructuring process have resulted in more open and user friendly courts. Registry offices were moved to the ground floor providing better accessibility, but this is not the situation in all courts and ramps are still needed to improve disabled access. A public awareness campaign by EROL from 2011-2015 educated the public about these justice sector reforms.

Based on the JSSP interviews for this report, all basic courts and some branches have improved access to justice for citizens by simplifying jurisdiction and structure. It was particularly noted that the change of jurisdiction in family/divorce cases and detention cases has enabled citizens to have access to more effective and efficient justice services.

Each year, the United Nations Development Programme (UNDP) and USAID have conducted public pulse surveys of the general public to gather feedback on the justice sector. The satisfaction

level with the courts has ranged from 16.7(April 2013) to 37.5 (April 2014). Court satisfaction levels are the lowest of all Kosovo institutions. The satisfaction level with the court has decreased by approximately six percentage points since November 2014 (November 2014, 22.8% - April 2015, 17.2%).<sup>13</sup> An opinion poll was conducted by Justice and the People Campaign in 2011 to measure the perceptions, attitudes, and experiences of citizens to gauge their knowledge and confidence in the justice system. This poll indicated that few citizens have direct experience with the justice system, but there is an overall lack of confidence in the system. This would seem to indicate that perception might not mirror reality, especially given recent reforms. Research completed by the Kosovo Law Institute (KLI) addressed access to justice from the perspective of accountability and citizen confidence. Based on their report, this lack of confidence results from a low level of transparency and accountability.

On June 14 and 15, 2011, the Kosovar Institute for Policy Research and Development, the University of Essex, the Kosovo Center for Political Courage and the University of Pristina Law Faculty, organized a conference on “Access to Justice” with professors, representatives of governmental and judicial institutions, policy-makers, civil society representatives, advocates, academics and students, representatives of organizations, human rights specialists, and legal practitioners. This conference provided a forum to discuss the challenges and opportunities of access to justice in Kosovo. The conference focused on the relationship between citizens and the justice system, and explored the roles of different institutions of the justice sector, the role of civil society, and the role of different international organizations in the justice sector.<sup>14</sup>

### 6.3 SPECIFIC NGOs AND ACTIVITIES

The **Advocacy Training and Resource Center (ATRC)** is an active CSO in Kosovo, promoting capacity building and networks on a variety of issues. ATRC provides grants, funding, trainings, and workshops to support CSOs in Kosovo. They are working to build capacity so that NGOs can function independently and represent the views of the citizens. ATRC has supported local organizations in performing court monitoring activities aimed at increasing transparency and fairness among justice sector institutions in Kosovo. Since February 2013, ATRC has implemented an access to justice project entitled “Increasing Citizens’ Awareness and Participation in the Justice System,” as part of the USAID Forward initiative. The project is working to increase citizens’ access to courts, strengthening public awareness, and building public confidence. ATRC is empowering citizens to participate in debates and promoting justice sector reforms to enhance transparency, combat corruption, and ensure equal access to justice through fair, transparent and effective administration of justice in Kosovo.

ATRC performed these activities utilizing grants that focused in two areas: court monitoring projects and outreach activities. Grantees funded through this project were expected to:

- Increase citizen awareness and participation in the justice system
- Increase the overall number of community members engaged in court monitoring initiatives
- Use the information gathered through court monitoring to recommend improvements and/or advocate change

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<sup>13</sup> UNDP and USAID Public Pulse report, IX, April 2015. The Public Pulse Brief document provides a concise overview of key indicators and results of the Public Pulse Poll.

<sup>14</sup> For more information on this conference and its recommendations go to [http://www.cpc-ks.org/repository/docs/Access\\_to\\_Justice\\_in\\_Kosovo\\_297656.pdf](http://www.cpc-ks.org/repository/docs/Access_to_Justice_in_Kosovo_297656.pdf)

- Increase knowledge in local communities about their local courts
- Increase the number of community members engaged in combating corruption and increasing transparency and fairness among justice sector institutions in Kosovo
- Address gender sensitive issues and non-majority issues in court monitoring activities and public awareness initiatives

The findings and recommendations of these local organizations on court monitoring were published in a report in 2014.<sup>15</sup>

**Balkan Investigative Reporting Network (BIRN)** monitors public services in Kosovo, including the judiciary. BIRN teams have conducted court monitoring for over nine years, carrying out systematic assessment of the performance of courts and producing annual in-depth analytical reports with detailed recommendations. The Monitoring program aims to enhance independence, transparency and accountability of the judiciary in Kosovo. The program is carried out by 14 highly skilled and professional monitors. The BIRN Annual Court Monitoring Report for 2015 was published March 2016.<sup>16</sup>

**Advocacy Center for Democratic Culture (ACDC)** is a local CSO based in North Mitrovica. It was established in December 2011. ACDC's main goal is to improve the engagement of a multiethnic population in the Mitrovica region and raise civic awareness about democratic culture and the rule of law. It seeks to enhance social activism and education in these areas. ACDC plans and conducts its activities based upon the priorities of the population in the Mitrovica region. ACDC cooperates with other civil society organizations in the implementation of its projects and actions. In addition, ACDC establishes close cooperation with local governments and local institutions.

The **Union of Serbian Jurists** is located in Gracanica and was founded to support the provision of legal aid, advise the Serbian Orthodox Church, and support Serbian members of the Assembly. It is located in Gracanica and consists of approximately 50 members. It has conducted training for students preparing for the bar examination, sponsored student study visits to justice sector institutions, produced a guide on protocol for members of the Assembly, and reviewed the accuracy of Serbian translations of laws.

The NGO **AKTIV** is a North Mitrovica based organization, which is working to facilitate meaningful involvement of the Kosovo Serb community in the construction of a participatory, peaceful, and prosperous future for the region. AKTIV is engaged in developing and implementing diverse projects geared to empowering individuals and/or local CSOs to participate in their community. AKTIV focuses on transparency, mainstreaming gender, and supporting the rights of vulnerable groups. Activities are planned and implemented in consultation with board members, beneficiaries and employees, as well as with CSOs to ensure that local needs are met and projects have a lasting impact.

**Levizja Çohu** works to denounce organized crime and corruption, increase citizen demand for accountability, and promote institutional integrity. The organization was founded in September 2005 and has managed within a relatively short period to become a leading organization in the CSO fight against corruption and crime.

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<sup>15</sup> ARTC-USAID, "Increase Citizens' Awareness and Participation in the Justice System" Project: Finding and Recommendations of Local Organizations from the Court Monitoring Activities, 2014

<sup>16</sup> See: [http://birn.eu.com/en/file/show/BIRN\\_annual%20report%202015\\_eng.pdf](http://birn.eu.com/en/file/show/BIRN_annual%20report%202015_eng.pdf)

**Movement FOL** is an NGO established in 2009 that works to combat corruption while fostering transparent and accountable government. FOL is committed to expanding, defending and strengthening freedom of expression and citizen participation in the political and decision-making process. Its programs focus on promoting anti-corruption policies, transparency and accountability, and reforming the anti-corruption legal framework. Through research, advocacy campaigns, and networking, FOL increases public pressure on decision-makers to reduce public waste and abuse of power. The founders of the organization were Petrit Zogaj, Mexhide Demolli-Nimani and Ramadan Ilazi.

The **Kosovo Law Institute** is a public policy, not-for-profit organization and think-tank specializing in the legal sector. It was founded in February 2009. The mission of KLI is to strengthen the rule of law in Kosovo and to improve the access to justice for all citizens. KLI is managed by an Assembly, an Advisory Board, and an Executive Director. KLI conducts independent research and studies and communicates the findings to policy makers, government officials, international diplomats, civil society activists, and academics. The KLI staff has experience in various capacities in the justice sector in Kosovo, including policy research and analysis, journalistic reporting, awareness raising and advocacy activities. They work closely with Kosovo authorities to ensure judicial independence and impartiality, and to increase public confidence in the justice system.

**AVONET** monitors the work of the Municipal Assembly and their committees, conducts research, and advocacy campaigns. They work with returning Serbs in the Ferizaj Municipality. AVONET has led several projects devoted to engaging citizen participation and integrating Serbian minorities.

The NGO **Elita** implemented the “Your Municipality – Influence and Rights” project in the Vitia Municipal Assembly, resulting in changes to Municipal Regulations for the election of Village Councils. Elita also convinced the Vitia Municipality to establish a Non-Obligatory Municipal Committee focused on improving relations between the Vitia Municipality and Village Councils, including civil society representatives.

**New Millennium**, a Pristina-based NGO, implemented the project “Citizen’s Decision Making,” to reduce the number of signatures required to submit valid petitions. The municipal statute had previously required 10,000 signatures of eligible voters and no petitions were under consideration by the Prishtina Municipal Assembly. As a result of New Millennium’s advocacy, the following changes were made to the statute:

1. Categorization of petitions into two different levels: municipal level, and village/neighborhood level.
2. Decrease in the number of signatures needed for a petition to be valid, from 10,000 to 3,000, and 500 for neighborhoods/villages, or in cases where there are fewer than 500 inhabitants, 50%+1 of citizens living in that area.

The NGO **Romani Baxt**, based in Prizren, implemented the Increasing Active Participation of the Roma Community in Decision-Making project to mobilize inhabitants of two Roma neighborhoods in Prizren and Gjakova to advocate for better living conditions. Activities included a debate between the Roma community of the Aliriza Selmani and officials from the Prizren Municipal Assembly, which resulted in the construction of a sewage system and paving of the Aliriza Selmani road. The local Roma community was empowered by Romani Baxt to prioritize their requests and present them to the Prizren Municipality.

## 6.4 RECOMMENDATIONS

A vibrant civil society is critical to a well-functioning justice system. CSOs bridge the gap between courts and the public and provide mechanisms for accountability. CSOs are integral to improving public awareness, building trust in institutions, and ensuring transparency. JSSP will work with CSOs, the media, the KJC Public Information Office, and courts to conduct awareness and advocacy campaigns that will ensure a well-informed public. These activities will create a “demand” for rule of law and ensure that the “supply” of services meets the needs of the public. Some of the recommendations include:

1. Support the KJC to strengthen its cooperation with CSOs through the implementation of its communication strategy. This should include developing a civil society forum to foster interaction between the KJC and CSOs.
2. Develop linkages between CSOs working in the justice sector, such as the KLI, BIRN, and ACDC, to enhance their watchdog role over rule of law reforms, including the dissemination of ethical and misconduct standards for the judiciary.
3. Support collaboration between CSOs and the KJC to conduct “court user surveys” based on actual experience with the courts.
4. In the North, work with CSOs to promote implementation of the JSA, including regular public forums and roundtables to inform the public about justice sector reforms and opening opportunities for law students.
5. Support CSOs such as the Union of Serbian Jurists to review the accuracy of official translations of the law and submit proposed revisions to the Assembly.



# ANNEX I – STOCKTAKING ASSESSMENT QUESTIONNAIRE

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## **Section One: 2013 Court Restructuring**

- 1) In your own words briefly tell us your understanding of the purpose of the re-organization of the courts that took effect in January 2013. What was changed and why was it changed?
- 2) Based on your own experience, have the intended changes been achieved and if not why not?
- 3) Consider the changes in jurisdiction outlined in the reorganization of the courts, have the jurisdictional changes made your court/region more or less effective and why? Has this change made your court/region more or less efficient and how so?
- 4) Has the reorganization had any impact, positive or negative, on jurisdictional disputes between courts? Please describe the impacts – i.e. increase or decrease?
- 5) Do you believe that the citizens of your region are now better and more easily served as a result of the reorganization? Is there an increase or ease in access to justice? Please explain why or why not.
- 6) Did the reorganization result in any change to the manner in which cases are resolved? If yes, which types of cases were affected, what were the changes and did they impact efficiency and effectiveness?

## **HUMAN RESOURCES**

- 7) Did the re-organization change the way you address or manage Human Resources Management? By this we mean the manner in which employees in your court/region are recruited, selected, hired, evaluated, disciplined, transferred, promoted, demoted and/or terminated.
- 8) Did the reorganization result in the creation of new job classifications within your court/region? If yes, what were those classifications and has their creation provided a benefit to the court or region?
- 9) Since the time of the reorganization do you feel that the judges assigned to your court/region are well allocated, meaning are the judges allocated where most needed and well utilized in all areas?
- 10) Since the time of the re-organization have you been able to successfully recruit and fill all positions allocated to your court/region? This includes both judges and administrative staff. If no, why not?

## **BUDGET AND FINANCE**

11) As a result of the re-organization, but prior to the decentralization plan, did your duties, responsibilities or tasks related to budget and finance change in any way? If yes, in what way? Did those changes result in efficiencies?

Be certain this question is answered exclusive of the planned decentralization.

12) In your role do you have access to information that documents and/or demonstrates the courts use of its full budget over the course of each month, quarter and year? If yes, can you speak about any cost benefits that are directly related to the re-organization of the courts?

## **LOGISTICS AND PROCUREMENT**

13) As a result of the re-organization, but prior to the decentralization plan, did your duties, responsibilities or tasks related to logistics and procurement change in any way? If yes, in what way? Did those changes result in efficiencies?

Be certain this question is answered exclusive of the planned decentralization.

## **TRAINING**

14) As a result of the re-organization, did you receive any training specific to new duties or tasks your role was assigned? Please answer both generally and specifically in the areas of: Management and Leadership, Supervision, Ethics and/or Change Management

15) If yes to the above, was the training sufficient? If not, what other training do you think you need to be effective, efficient and successful in your work as leaders of the court/region?

## **STATISTICS**

16) What was the effect of re-organization as regarding the backlog in your court/region? Please be as much specific as possible in which category did this effect took place (Civil, criminal, serious crimes, juvenile etc.)

## **INFORMATION TECHNOLOGY**

17) With regard to the allocation, training and use of technology do you feel your court/region has:

A) All the required hardware and software programs to perform effectively and to maximize the available technological resources?

B) All the required training for judges and staff to be efficient and accurate?

## **PUBLIC RELATIONS**

18) From the time of the re-organization to today have you received direction, support or training to ensure that your court/region is compliant with and proactively engaged in outreach and public awareness activities? By this we mean requirements related to media relations, open court days, citizen complaints, high profile case reporting etc. If yes, please define the direction, support

or training received and its impact on the court and regions effectiveness. If not, please tell us what your court/region needs to be compliant and/or proactive.

19) As a result of the re-organization were you provided with any direction, support or training related to Performance Management? By this we mean how the court/region monitors and evaluates its own workload, performance, effectiveness and efficiency.

If yes, please define the direction, support or training received and its impact on the court and regions effectiveness. If not, please tell us what your court/region needs to better manage, measure and evaluate its own performance.

20) Since the time of the reorganization has your court been well supported by the KJC and the KJCS? If not, why not and how would you suggest improvements be addressed?

21) How will you describe current communication between your court/region and KJCS? If not, which are your suggestions? How is input from your court/region sought? Are there defined mechanisms and protocols in place for how the KJCS communicates with your court/region and vice versa? Is the manner in which communication takes place effective and does it take advantage of all available resources?

22) How would you describe communication of your court with branches?

23) Do you have knowledge about the Assembly of Judges and Leading Judges? Did you receive any invitation Article 26 on the Law on KJC? Do you think is necessary?

24) As court president, did you establish Administrative Commission, which should involve leader judges of you regions?

## **Section Two: Backlog**

25) With regard to backlog of cases can you provide a general overview of the situation in your region and highlight for us the areas that are of particular concern to you?

26) As a manager and leader what do you do to address backlog reduction with your judges and administrative staff? How do you monitor progress in the courts of your region?

27) What responsibilities or specific tasks have you delegated to your supervisory judges with regard to the management and monitoring of backlog in the branch courts? How do you hold your supervisory judges accountable for the successful completion of those tasks and/or responsibilities?

28) What role do your Court Administrator and Assistant Administrators play in addressing the backlog?

29) Some courts have a backlog in three different areas: with the judges to resolve cases, in the registry to complete cases after resolution and in the registry/archive to properly store, retain and purge case files. Can you tell us what the situation is for all three of these areas in the courts of your region?

30) What is your position regarding the need for support to judges in the form of legal officers

and/or Professional Associates? What impacts do you think such support would have on the reduction of backlog?

31) Do you and your courts use case resolution rates, the number of new cases filed versus the number of resolved/completed cases, as a measurement of successful case management? How does the current system of norms impact the courts efficiency?

32) If the courts of your region were able to eliminate the current backlog, do you believe you have a sufficient number of judges to address the workload? Why or why not?

33) Is your court using the electronic case registry, the database, to enter case information? If yes, by whom is it being used?

### **Section Three: 2016 Decentralization**

34) What is the purpose of decentralization?

35) How much are you aware of the changes foreseen with decentralization

36) Are the competencies transferred?

37) Do you feel prepared, have you been trained in this field, as a judge and staff?

38) Have you hired new staff; have you changed positions based on the decentralization plan?

39) Has the new staff been trained?

40) Are there manuals drafted and disseminated for the new positions?

41) Do you have monitoring mechanisms?

42) Do you think decentralization will have a positive impact?

43) Is your court using the electronic case registry, the database, to enter case information? If yes, by whom is it being used?

44) Are you aware that the database can be used to generate statistical reports at the regional, court, department and individual judge level? If yes, are you and your staff using the database to generate these reports?

45) What kind of training do you and your courts need to either begin or enhance the use of the database?

## ANNEX 2 – LIST OF INTERVIEWS

### Interviews with Courts

Name	Title / Position	Years in Current Position	Date of Interview
Vaton Durguti	Court President – Gjakova	3 years – since 2013	18 Jan 2016
Ymer Hoxha	Court President – Prizren	12 years – since 2004	18 Jan 2016
Zydi Haziri	Court President – Gjilan	5 years – since 2011	18 Jan 2016
Ali Kutllovci	Acting Court President – Mitrovica	> 1 year – since Sept 2015	18 Jan 2016
Sali Topalli	Head of Registry – Ferizaj	5 years – since 2011	19 Jan 2016
Sejdi Sadiku	Court Administrator – Ferizaj	6 years – since 2010	19 Jan 2016
Bashkim Hyseni	Court President – Ferizaj	6 years- since 2010	19 Jan 2016
Astrit Dibra	Assistant Administrator- Skenderaj	3 years- since 2013	19 Jan 2016
Hajrullah Aruqi	Acting Supervisory Judge – Skenderaj	> 1 year – since Sept 2015	19 Jan 2016
Sabrije Hoxhaj	Head of Registry – Skenderaj	3 years – since 2013	19 Jan 2016
Agron Zylfiu	Court Administrator – Prizren	16 years – since 1999	20 Jan 2016
Shpresa Kryeziu	Head of Registry – Prizren	13 years – since 2003	20 Jan 2016
Nuredin Abazi	Supervisory Judge – Suhareka	6 years – since 2010	20 Jan 2016
Halil Zeqiri	Assistant Administrator – Suhareka	2 years – since 2014	20 Jan 2016
Idriz Tolaj	Head of Registry - Decan	15 years – since 2001	22 Jan 2016
Xhevdet Ahmeti	Professional Associate – Decan	2 years – since 2014	22 Jan 2016
Safete Tolaj	Supervisory Judge – Decan	5 years – since 2010	22 Jan 2016
Muhamet Hasani	Court Administrator – Peja	13 years – Since 2003	22 Jan 2016
Avdirrahman Gashi	Supervisory Judge – Lipjan	13 years – since 2003	26 Jan 2016
Gazmend Bahtiri	Supervisory Judge – Podujevo	3 years – since 2013	26 Jan 2016
Rrustem Islami	Head of Registry – Podujevo	3 years – since 2013	26 Jan 2016
Rudin Elezi	Court Administrator – Gjakova	9 years – since 2007	27 Jan 2016
Hektor Vula	Head of Registry – Gjakova	4 years – since 2012	27 Jan 2016
Lulzim Paqarizi	Supervisory Judge – Malisheva	16 years – since 2000	27 Jan 2016
Lumnije Surdulli	Administrator – Mitrovica	7 years – since 2009	28 Jan 2016
Ismet Berisha	Head of Registry – Mitrovica	3 years – since 2013	28 Jan 2016
Hamdi Ibrahim	Court President – Pristina	4 years – since 2012	29 Jan 2016
Melena Djeric	Supervisory Judge – Gracanica		
Boban Zivic	Assistant Administrator - Gracanica		

### Interviews with KJC

Name	Title / Position	Years in Current Position	Date of Interview
Hon. Enver Peci	Chair, KJC	Since 2010	20 Jan 2016
Albert Avdiu	Director, KJC Secretariat	4+ years - since 2011	19 Jan 2016
Bedri Duraku	Legal Advisor, Legal Department	Unknown	13 Jan 2016
Besim Mustafa	Legal Advisor, Legal Department	10 years – since 2006	25 Jan 2016
Ilaz Popaj	Acting Coordinator, Budget & Finances Unit	2 years, since 2014	25 Jan 2016
Vahid Limani	Director, Administration & Personnel Unit	Unknown	25 Jan 2016

Servete Hoti	Legal Advisor, Legal Department	8 years – since 2009	25 Jan 2016
Ganimete Juniku	Legal Advisor, Legal Department	8 years - since 2009	25 Jan 2016
Astrit Hoti	Director, Legal Department	Unknown	26 Jan 2016
Ardian Rexha	Senior Legal Researcher, Legal Department	2 years – since 2014	26 Jan 2016
Ajshe Zejnullahu	Legal Advisor, Legal Department	4 2012 – since 2012	26 Jan 2016

## ANNEX 3 – LIST OF RELEVANT LAWS AND REGULATIONS

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### **Laws:**

1. Law No. 03/L-199 on Courts
2. Law No. 04/L-171 on Amending and Supplementing the Law No. 03/L-199 on Courts (December 2012)
3. Law No. 05/L-032 on Amending and Supplementing the Law No. 03/L-199 on Courts (June 2015)
4. Law No. 04/L-115 on Amending and Supplementing the Laws Related to the Ending of International Supervision of Independence
5. Law No. 03/L-223 on the Kosovo Judicial Council
6. Law No. 05/L-033 on Amending and Supplementing the Law No. 03/L-223 on the Kosovo Judicial Council

### **Regulations (by year of adoption):**

#### 2012

1. Regulation on the Evaluation of Judges' Performance
2. Regulation on the Organization and Activity of Kosovo Judicial Council
3. Regulation on Determining the Working Norm of Judges

#### 2013

1. Regulation on the Work of Disciplinary Commission
2. Regulation on the Internal Organization of Courts
3. Regulation on Changing the Regulation on Internal Organization of Courts

#### 2014

1. Regulation on Disciplinary Procedure for Members of Kosovo Judicial Council
2. Regulation on the Office of Communications Coordination of the Kosovo Judicial Council
3. Regulation on Public Information Officials in Courts
4. Regulation on Promotion Procedure of Judges

#### 2015

1. Regulation 01-2015 on Supplementing the Regulation on Internal Organization of Courts
2. Regulation 02-2015 on Election of Kosovo Judicial Council Members from the Judiciary
3. Regulation 03/2015 on Organization and Systematization of Working Places in the Supreme Court
4. Regulation 04/2015 on Organization and Systematization of Working Places in the Court of Appeals
5. Regulation 05/2015 on Organization and Systematization of Working Places in the Basic Court of Prishtina

6. Regulation 06/2015 on Organization and Systematization of Working Places in the Basic Court of Gjilan
7. Regulation 07/2015 on Organization and Systematization of Working Places in the Basic Court of Gjakova
8. Regulation 08/2015 on Organization and Systematization of Working Places in the Basic Court of Ferizaj
9. Regulation 09/2015 on Organization and Systematization of Working Places in the Basic Court of Mitrovica
10. Regulation 10/2015 on Organization and Systematization of Working Places in the Basic Court of Prizren
11. Regulation 11/2015 on Organization and Systematization of Working Places in the Basic Court of Peja
12. Regulation 12-2015 on the Activity, Internal Organization and Systematization of Working Places in the KJC Secretariat
13. Regulation 13-2015 on Internal Organization and Systematization of Working Places in the Performance Review Unit
14. Regulation 14-2015 on the Determination of Rules and Procedures for the Organization of Exam for Candidate Judges
15. Regulation 15-2015 on the Appointment of Judicial Experts
16. Regulation 16-2015 on the Appointment of Judicial Interpreters and Translators
17. Regulation on the Keeping of Evidence for Convicted Persons

## 2016

1. Regulation on Anonymization and Publication of Final Judgments

### **Administrative Instructions:**

1. Administrative Instruction 01/2015 on Implementing the KJC Decision on Delegation of Powers for Matters related to Personnel, Budget and Finances, Procurement and Logistics
2. Administrative Instruction 02/2015 on the Interim (Transitory) Period of Transferring Powers to Courts
3. Administrative Instruction 03/2015 on Determining the Per Diem Expenses
4. Administrative Instruction 04/2015 on Implementing the Compensation Procedure for Convicted or Arrested Persons without a Reason



## ANNEX 4 – JUDICIAL PERFORMANCE AUDITS 2006-2015

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The KJC Court Performance Review Unit has completed 38 audits of judicial performance since its establishment in 2006. Report numbers and topics are listed below.

### **2006**

1. Report 01/06, Identification and evaluation of issues in the criminal procedure system that cause the passing of the statute of limitation for criminal cases
2. Report 02/06, Practice of courts for verifying signatures and certifying contracts for immovable property sale (Note: responsibility now moved to notaries)
3. Report 03/06, Process of issuance, drafting, and delivery of judgments to the parties in criminal procedures within legal delays
4. Report 04/06, Process of issuance, drafting, and delivery of judgments to the parties in civil procedures within legal delays
5. Report 05/06, Judicial practice of receipt registration, and distribution of documents in municipal courts
6. Report 06/06, Process of receipt, custody, and destination of assets in criminal evidence “corpora delicti” (chain of custody)

### **2007**

7. Report 01/07, Judicial practice of registration and ordering of documents of the case from creation to archiving
8. Report 02/07, Process of nomination, maintenance of register, assignment, and payment of judicial experts in civil cases
9. Report 03/07, Process of visit to the scene by the Public Prosecutor
10. Report 04/07, Review of whether courts are implementing rules related to the posting of the hearing schedule on the court board
11. Report 05/07, Process of training of judges and prosecutors
12. Report 06/07, Assignment of cases to civil and criminal judges

13. Report 07/07, Ways in which space is used in courts and prosecution offices
14. Report 08/07, Cooperation between courts and correctional service for pretrial detention and conversion of fines into imprisonment

## **2008**

15. Report 01/08, Process of appointment of ex officio legal representative
16. Report 02/08, Case process at the prosecution from initiation to the submission of the indictment to the court
17. Report 03/08, Enforcement of prison sentences
18. Report 04/08, Process of cooperation of the courts with the police for the enforcement of prison sentences
19. Report 05/08, Process of sentencing and execution of alternative sentences
20. Report 06/08, Review of whether courts are implementing rules related to the processing of legal remedies against judicial decisions in the contested (civil) procedure
21. Report 07/08, Process of enforcement of judicial decisions for the return of employees to the work place

## **2009**

22. Report 01/09, Process of appointment of judicial experts during the investigation phase and their payment in criminal cases
23. Report 02/09, Process of pretrial detention for juveniles
24. Report 03/09, Process of management of judicial registers
25. Report 04/09, Process of international judicial assistance in criminal cases (Note: for example, when the defendant is outside of Kosovo...)
26. Report 05/09, Process of distribution of the Official Gazette to courts and public prosecution offices

## **2011**

27. Report 01/11, Review of cases closed by suspension or expiration of statute of limitation at the municipal court of Pristina

## **2012**

28. Report 01/12, Review of cases closed by expiration of the statute of limitation in

criminal matters in which the damaged party is KEK (electricity company)

### **2013**

29. Report 01/13, Judicial process of review of requests and appeals of workers with 20% benefit in privatization of assets and for payments unpaid to workers of former enterprises privatized by the Kosovo Privatization Agency
30. Report 02/13, Minor offenses cases for non-declaration of assets to the Anti-Corruption Agency

### **2014**

31. Report 01/14, Functional review of the Regulation on the Internal Organization of the Judiciary as relates to the resystematization of judicial staff
32. Report 02/14, Review of time between entry into force of criminal judgement and beginning of the enforcement process
33. Report 03/14, Accuracy of statistical reports
34. Report 04/14, Archiving in model courts

### **2015**

35. Report 01/15, Process of random assignment of cases to judges
36. Report 02/15, Process of movement of cases between courts
37. Report 03/15, Review of criminal cases confirmed, modified, or annulled by the Court of Appeals, in comparative numerical basis
38. Report 04/15, Process of issuance of certificates of non-investigation to citizens

## ANNEX 5 – COURT STRUCTURE BEFORE AND AFTER RESTRUCTURING

**Court Jurisdiction, Before Restructuring**

	<b>Municipal Courts/Minor Offence Courts/Commercial Court</b>	<b>District Courts/High Minor Offence Court</b>	<b>Supreme Court</b>
<b>1<sup>st</sup> Instance</b>	Civil Cases Criminal Cases Enforcement Cases Commercial Cases	Civil (Family) Cases Criminal (Serious Crimes) Cases	Administrative Disputes
<b>2<sup>nd</sup> Instance</b>		Civil Appeals Criminal Appeals	Civil Appeals Criminal Appeals Commercial Appeals
<b>3<sup>rd</sup> Instance</b>			Extraordinary Remedies  Civil Appeals Criminal Appeals
<b>Notary and Other Services</b>	Notary Services Civil Enforcement Criminal Enforcement Minor Offenses Enforcement	Certification of Foreign Judgments Criminal Enforcement	

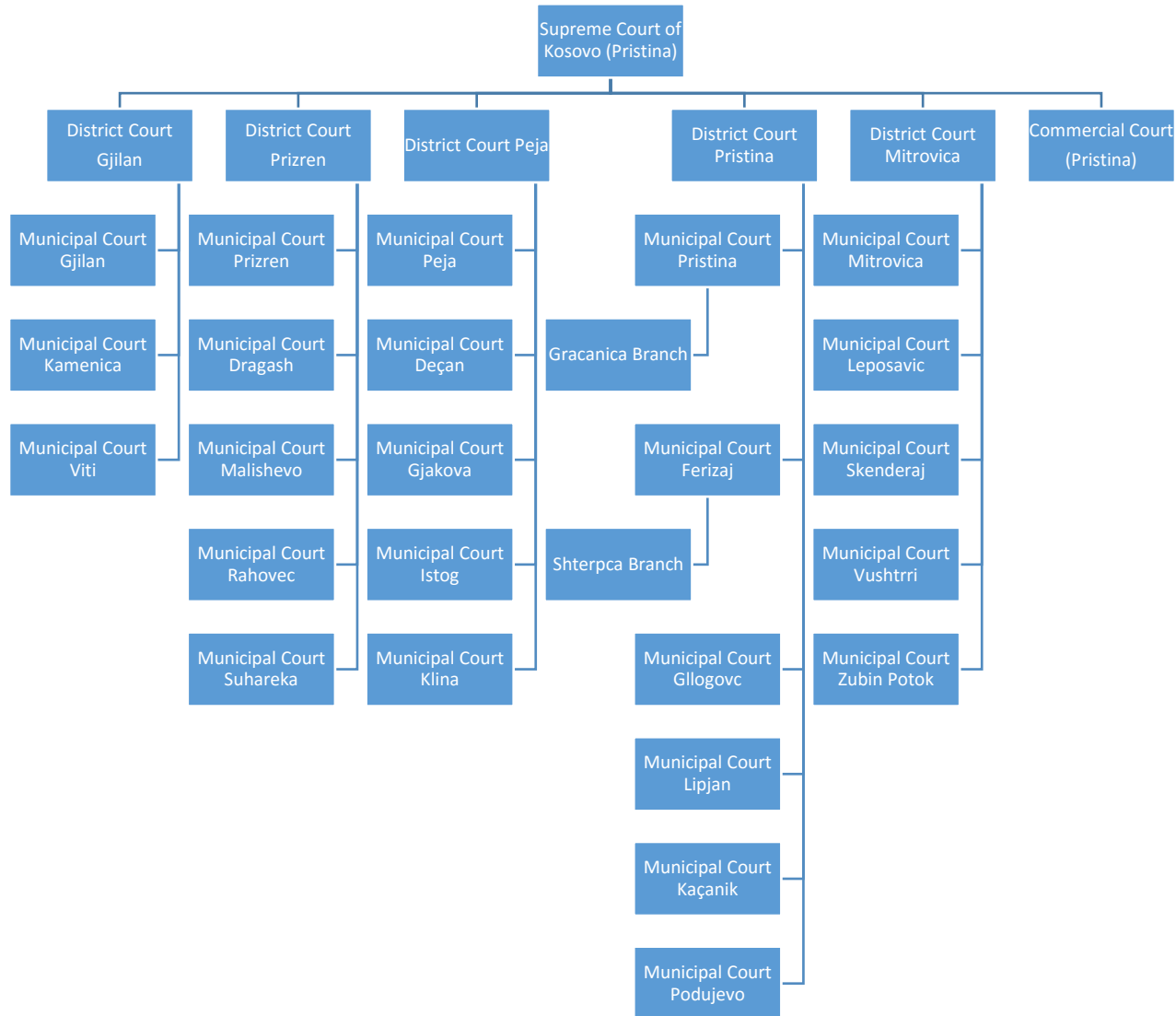
**Court Jurisdiction, After Restructuring**

	<b>Basic Courts</b>	<b>Court of Appeals</b>	<b>Supreme Court</b>
<b>1<sup>st</sup> Instance</b>	Commercial Court (Pristina Only) Administrative Cases (Pristina Only) Major Criminal (Basic Court Seats) General Cases Dept: Civil, Criminal, Family, and Minor Offenses		
<b>2<sup>nd</sup> Instance</b>		Commercial Appeals Administrative Appeals Criminal Appeals Civil Appeals	
<b>3<sup>rd</sup> Instance</b>			Discretionary Jurisdiction
<b>Notary and Other Services</b>	Various non-contested civil enforcement  Criminal Enforcement		

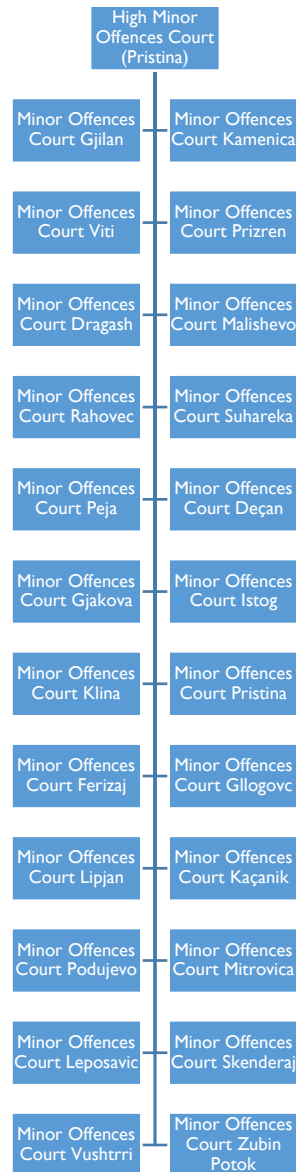
\*Civil enforcement is now with private bailiffs.

\*\*Notary Services are now with notaries.

### Geographic Court Structure (Regular Courts), Before Restructuring

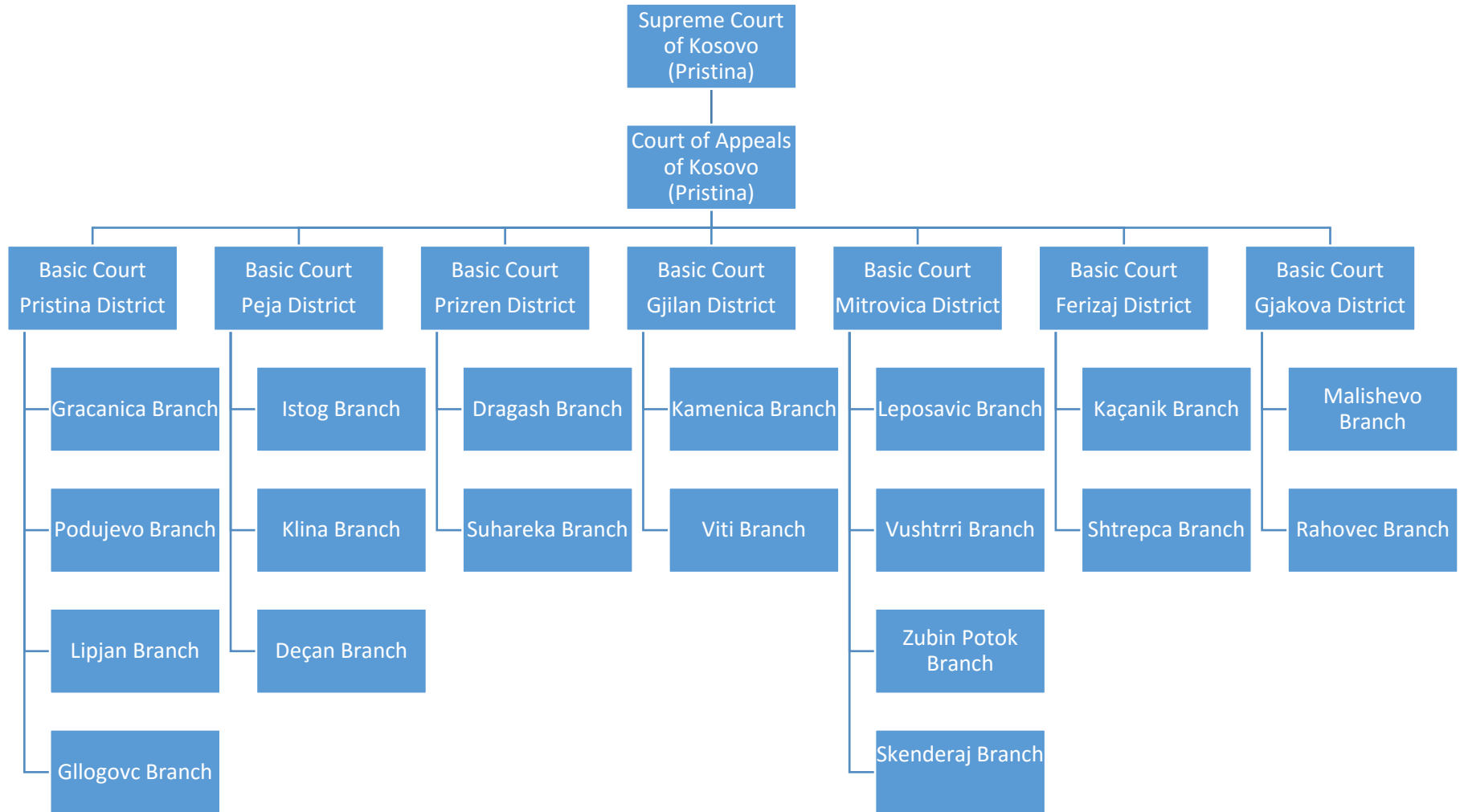


### Geographic Court Structure (Minor Offences Courts) Before Restructuring



## **Geographical Structure of the Kosovo Courts After Restructuring**





## ANNEX 6 – SUMMARY OF JURISDICTIONAL TRANSFERS DURING THE 2013 RESTRUCTURING

Case Categories Before Court Restructuring	Case Categories After Court Restructuring (2013)		
	Supreme Court	Court of Appeals	Basic Court
<b>SUPREME COURT</b>			
1-Criminal Appeals		√	
2-Proposal Regarding Extension of Detention and Appeal		√	
3-Criminal Appeals for Juvenile Cases		√	
4-Criminal Appeal in Third Instance	√		
5-Request for Protection of Legality	√		
6-Request for Lenient Sentence	√		
7-Civil Appeals		√	
8-Civil Revision	√		
9-Civil Request for Extraordinary Review	√		
10-Civil Request for Protection of Legality	√		
11-Civil Request for Repetition of Proceedings	√		
12-Various Civil	√		
13-Appeals on Economic Crimes		√	
14-Commercial Appeals		√	
15-Commercial Revision	√		
16-Commercial Request for Protection of Legality	√		
17-Various Commercial		√	
18-Administrative First Instance			√
19-Administrative Appeals		√	
20-Administrative Request for Repetition of Procedure	√		
21-Administrative Request for Extraordinary Review	√		
<b>HIGH MINOR OFFENSES COURT</b>			
1-Minor Offenses Appeals		√	
2-Minor Offenses Protection of Legality	√		
<b>COMMERCIAL COURT (DISTRICT-LEVEL)</b>			

Case Categories Before Court Restructuring	Case Categories After Court Restructuring (2013)		
	Supreme Court	Court of Appeals	Basic Court
1-Economic Crimes			√
2-Commercial Disputes			√
3-Liquidation			√
4-Bankruptcy			√
5-Commercial Enforcement			√

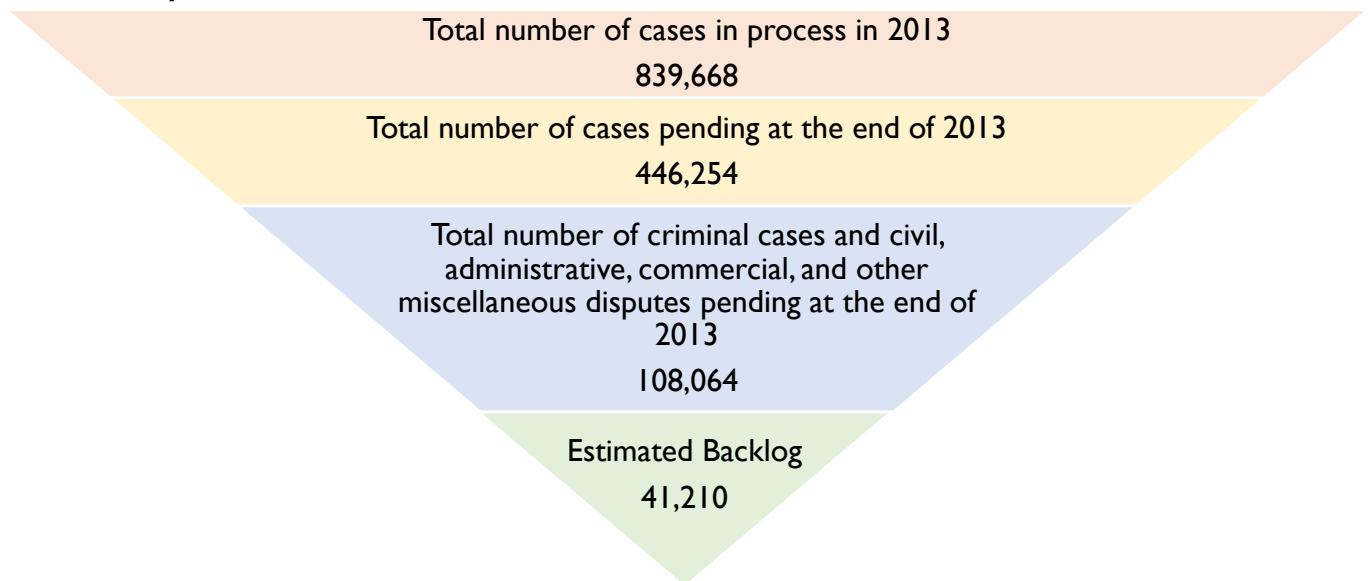
Case Categories Before Court Restructuring	Case Categories After Court Restructuring (2013)		
	Supreme Court	Court of Appeals	Basic Court
<b>DISTRICT COURTS</b>			
1-Investigations			√
2-Appeals on Investigations			√
3-Preliminary Proceedings			√
4-Appeals against Decision on Detention Order		√	
5-Confirmation of Indictment			√
6-Criminal First Instance			√
7-Criminal for Juveniles in Preliminary Proceedings			√
8-Criminal Juvenile Cases			√
9-Criminal Appeals		√	
10-Civil First Instance			√
11-Civil Appeals		√	
12-Other Appeals		√	
<b>MUNICIPAL COURTS</b>			
1-Investigations			√
2-Appeals on Investigations			√
3-Preliminary Proceedings			√
4-Appeals against Decision on Detention Order			√
5-Confirmation of Indictment			√
6-Criminal First Instance			√
7-Criminal for Juveniles in Preliminary Proceedings			√
8-Criminal Juvenile Cases			√
9-Civil First Instance			√

Case Categories Before Court Restructuring	Case Categories After Court Restructuring (2013)		
	Supreme Court	Court of Appeals	Basic Court
10-Inheritance			√
11-Civil Non-Contested			√
12-Civil Enforcement on the Basis of Authentic Document			√
12-Civil Enforcement on the Basis of Judgment			√
13-Criminal Enforcement			√
14-Other Cases			√
<b>MINOR OFFENSES COURTS</b>			
1-Minor Offenses Cases in First Instance			√
2-Enforcement of Minor Offenses Decisions (unreported)			√

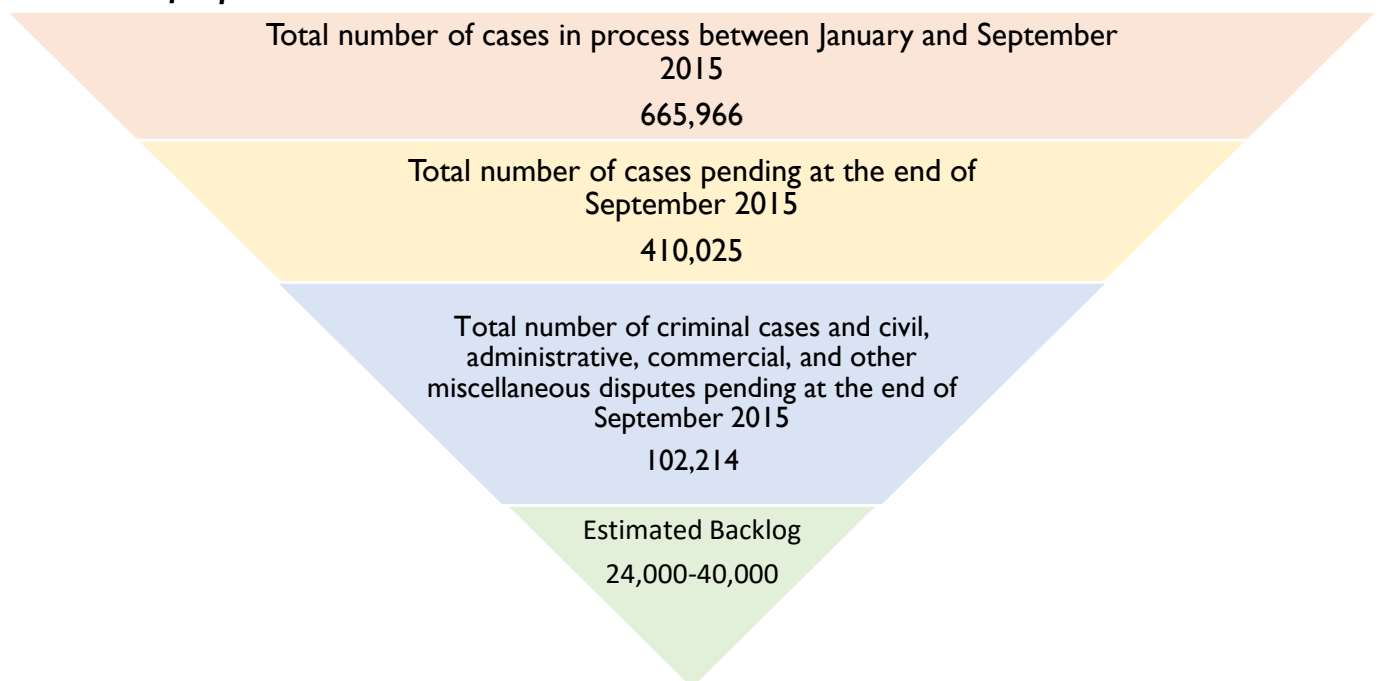
## ANNEX 7 – FIRST INSTANCE CASELOAD: THE MEANING BEHIND THE NUMBERS

### Part I: Actual Numbers

#### At the end of December 2013



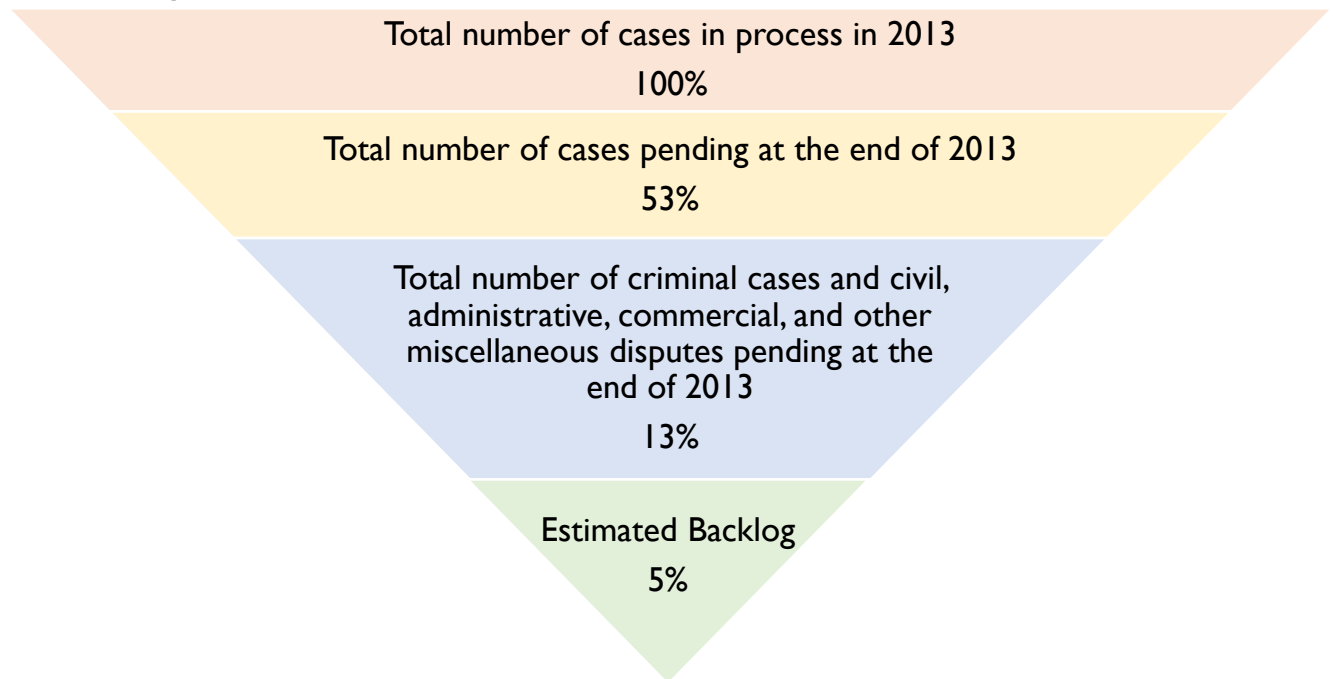
#### At the end of September 2015<sup>17</sup>



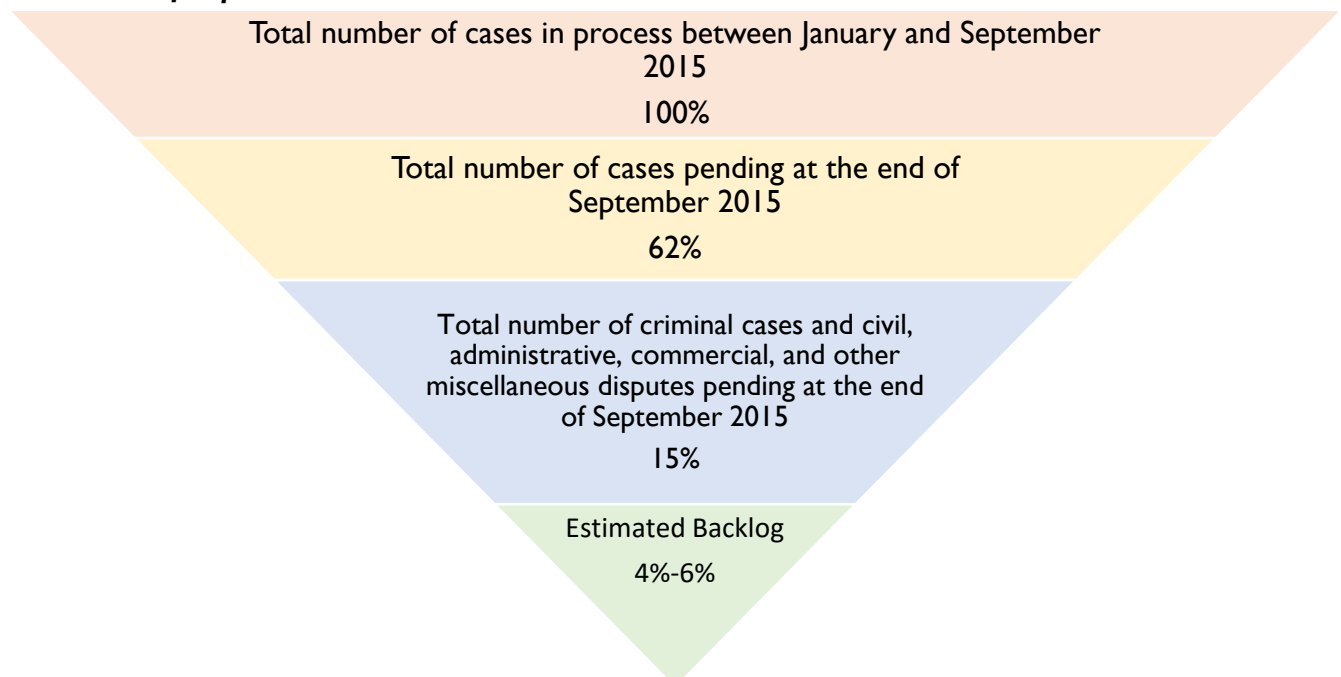
<sup>17</sup> Backlog projections based on proportions of backlog to pending caseload for criminal cases and civil, administrative, commercial, and other miscellaneous disputes on 1/1/2014 and 6/30/2015.

## Part 2: Numbers as percentage of total number of cases in process during the period

### At the end of December 2013



### At the end of September 2015<sup>18</sup>



<sup>18</sup> Backlog projections based on proportions of backlog to pending caseload for criminal cases and civil, administrative, commercial, and other miscellaneous disputes on 1/1/2014 and 6/30/2015.