



KOSOVO LAW INSTITUTE

LEGALITY OF THE JUDICIAL AND PROSECUTORIAL COUNCIL

Monitoring of Kosovo Judicial and Prosecutorial Councils:
Analysis and recommendations regarding the judicial package of judiciary



April, 2016

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ABOUT KLI

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Content

I. EXECUTIVE SUMMARY.....	5
II. METODOLOGY	8
III. IMPLEMENTATION OF JUDICIARY LAWS BY KJC AND KPC AND IMPLEMENTATION OF INTERNATIONAL STANDARDS	9
a) The independence of judiciary	12
b) Failure of KJC and KPC in adopting secondary legislation	13
c) Accountability of judicial and prosecutorial system.....	15
d) Amnesty of alleged violations by judges and prosecutors through laws	18
e) KJC and KPC transparency in relation to public and media.....	20
f) Transfer and promotion of judges and prosecutors.....	21
g) Lack of effective judicial protection for judges and prosecutors	23
IV. KJC AND SUPREME COURT OBLIGATIONS REGARDING THE IMPLEMENTATION OF LAWS COMPLEMENTED FOR KJC AND COURTS	24
V. THE ADOPTION OF SECONDARY LEGISLATION AND POLICIES BY THE KJC	26
a) Regulations	27
b) The participation and discussion of the KJC members during meetings	32
c) The transparency of the kjc on the publication of regulations, strategies, reports and decisions ...	34
VI. KPC OBLIGATIONS RELATED TO THE ENFORCEMENT OF AMENDED LAWS ON KPC AND SP.....	35
VII. ADOPTION OF SECONDARY LEGISLATION AND POLICIES BY KPC	37
a) Regulations	39
b) KPC decisions.....	52
c) Participation and discussion of KPC members during meetings	55
d) KPC transparency in publications of regulations, strategies and decisions	57
VIII. RECOMMENDATIONS	58
a) Recommendations for the Ministry of Justice	58
b) Recommendations for Kosovo Assembly.....	59
c) Recommendation for the Kosovo Judicial Council	59
d) Recommendation for the Kosovo Prosecutorial Council.....	61

ACRONYMS:

ACA	Anti-Corruption Agency
EU	European Union
KLI	Kosovo Law Institute
KPC	Kosovo Law Institute
KJC	Kosovo Judicial Council
BC	Basic Court
BPO	Basic Prosecution Office
SPRK	Special Prosecution of the Republic of Kosovo
AP	Appellate Prosecution Office
ODC	Office of Disciplinary Counsel
MoJ	Ministry of Justice
KBA	Kosovo Bar Association
ECtHR	European Court of Human Rights
ECHR	European Convention on Human Rights
CEPEJ	European Commission for the Efficiency of Justice
AG	Administrative Guidelines
IJPC	Independent Judicial and Prosecutorial Commission
HJPC	High Judicial and Prosecutorial Council

I. EXECUTIVE SUMMARY

Kosovo Assembly during May 2015 approved the amendment of the package of justice laws, in order to harmonize the legal provisions related to the appointment process, re-appointment, transfer, disciplinary proceedings and dismissal of judges and prosecutor. Harmonization of the legal provisions was also requirement for Kosovo with regard to the visa liberalization process and agreement for stabilization and association between Kosovo and European Union.

Even though, Kosovo achieved to fulfill such requirement through the approval of the package of justice laws, Kosovo Judicial Council and Kosovo Prosecutorial Council deviated from such path in practice during the approval of the internal sub legal acts and policies, applying different practices and standards. Kosovo Law Institute findings confirmed that there is lack of cooperation and communication between both Councils during the process of the drafting and approving the internal legislation in line with the obligations derived from the package of justice laws.

Both Councils are facing with the lack of the human and professional capacities in the process of planning, drafting and approval of the secondary legislation. Councils still are lacking in establishing efficient mechanism to monitor judicial and prosecutorial system in implementation of the policies, primary and secondary legislation approved by Councils.

Finally the judicial system in Republic of Kosovo in constitutional and legal aspect might be considered independent by two other branches. During February 2016, the Kosovo Assembly voted the constitutional amendments with regard to the election of the majority of the KJC members by judiciary.

Such recommendation was addressed continuously by KLI and other international organizations, in order to ensure the independency of the judicial system. Such important steps taken towards the independence of the judicial system shall be followed by the political willingness through the approval of the requested budget by the judicial and prosecutorial councils in order to ensure the efficient judiciary in Kosovo.

Also with regard to the independence of the prosecutorial system the advanced progress has been achieved. Through the approval of the law on KPC as 1 January 2016, the representative of the executive branch, Minister of Justice, is no longer member of the KPC. Also, Chief State Prosecutor is no longer Chairman of the KPC, while he is serving as a member of KPC.

As a result of the legal provisions of the Law on KJC and Law on KPC, the Kosovo Bar Association (KBA), remained unrepresented in both Councils. Such laws, prohibits lawyers registered at the KBA that in same time to exercise both functions as a Council member and function of the defense lawyer in practice. Practically the KBA is without the representation in both Councils. KPC also is functioning without the representatives from the civil society and law faculties.

KLI findings provided that KPC most of the year 2015, was in illegal composition, which was stated also by the European Commission Progress Report for 2015.

KJC and KPC failed to implement the legal obligations in approving the secondary legislation. Even though the numerous regulations approved by both Councils, still there are many basic regulations which were not approved yet by both Councils, and which is affecting in the proper functioning of the judicial and prosecutorial system in practice.

Most important missing regulations are related to the transparency and accountability of the judicial and prosecutorial system. The representative of both Councils, reiterating that the lack of the legislations is producing the difficulties in practice, which created the real possibility to establish practices in violation of the law or in other, circumstances also the application of the double standards.

Numerous regulations, action plans and decisions approved are in violation with the spirit of the basic legislation and best international standards and practices. In this regard, it is important to mention the Regulation on Appointment of the Chief State Prosecutors, which deviated from the Law on KPC and Law on State Prosecutor, by exchanging competencies of these two independent institutions. Additionally, position of the Chief State Prosecutor was strengthened with the competencies that exclusively KPC competencies. In meantime, the same approach was acted also with regard to the Strategic Plan and Action Plan to increase the Efficiency of the Prosecutorial System in Fighting Corruption and Economic Crimes, including Sequestration and Confiscation of the Assets benefited through criminal offence.

The Action Plan supersedes legal competencies and it is also in violation of the recognized international standards, as such the same shall be reviewed urgently in order that prosecutorial system to exercise its functions in line with the law and to be able to achieve concrete results in fight against corruption.

The Progress Report continuously requested by the judicial and prosecutorial systems to ensure their transparency and accountability. The actual accountability mechanism within judicial and prosecutorial were not efficient and effectiveness. In this regard, KLI findings provide that there is a detachment between KJC and Courts, including the detachment between KPC and Prosecution.

Such detachment is resulting with the lack of the implementation of the mutual obligations between Councils, courts and prosecution offices. Even nowadays, there is no case when any President of the Court of any Chief Prosecutor was demoted for the poor performance, lack of results or of ignoring the implementation of the policies, decisions and other acts approved by Councils.

With regard to the accountability of the Councils, while the KJC approved Regulation of the Disciplinary Liability of the KJC members, KPC did not approved such regulation with regard to the disciplinary liability of the KPC members. In practice the lack of such regulation provided full immunity to some of the KPC members against who during 2014 and 2015, there were public accusations for violation of the code of ethics and damaging the image of the prosecutorial system.

KLI findings provide also that KJC and KPC continuously failed to fulfill their constitutional and legal obligations regarding the supervision and control over courts and prosecution offices. Both councils did not establish efficient mechanism to exercise control over courts and prosecution offices. Court Presidents and Chief Prosecutors didn't fulfill their obligations to report before councils with regard to the management and administration of the courts and prosecution offices in line with applicable legislation. Only in the end of 2015, Court presidents reported before KJC, however the reporting was rather formal than accountable.

While during 2015, there was lack of accountability, there was plenty of impunity and promotion of the potential violation of the code of ethics and professional behavior by judges and prosecutors, through Articles 15 and 16 of the new laws on KJC and KPC. KLI publicly reacted that such impunity provided by law, produced negative consequences for justice system in Kosovo. Through such provisions, the possibility of the Office of the Disciplinary Prosecutor to investigate judges and

prosecutors for violation of the code of ethics and misbehavior was reduced in minimum, which resulted with the statutory of limitation of all ongoing cases that were older than two years. Such approach provided general amnesty for almost large number of judges and prosecutors who were subject of the disciplinary proceedings by ODC.

Transparency and accountability in the judicial and prosecutorial system still is lacking. There is lack of willingness of the KJC and KPC to approve Regulations with regard to the qualification and classification of documents and regulation on communication with public and media. Eventhough, judicial system appointed large number of the spokespersons all over the courts,, however they are not in position to exercise their functions in line with the law in absence of the above mentioned regulations.

KLI has found that there are no uniform standards and practices applied based on the principle of competition and merit based during the process of transfer or promotion of judges and prosecutors.

Transfers have so far been carried out mainly on the basis of individual applications submitted by judges or prosecutors. The lack of rules and procedures has resulted in the practice of non-compliance with the provisions of the Law on KJC and KPC, regarding the appointment and promotion of judges and prosecutors, with the lack of accountability and political interference as well the application of selective justice and double standards concerning the transfer and promotion of judges and prosecutors. This issue is highlighted in the Progress Report for 2015, which expressed concerns about contested appointments and unclear mandates the KJC, KPC and Office of the Chief State Prosecutor.

Very important topic that was not addressed by the package of justice laws by Kosovo Assembly is related to the judicial protection for judges and prosecutors, who are subject of the Council decisions, and potentially their rights are violated by such decisions. Such issue was raised also by Progress Report, which was referring to the appointment process of the Chief State Prosecutor, where it was requested that during the amendment of the package of justice law “ to be presented necessary legal remedies against the decisions of the KJC and KPC to avoid that the only possibility against such decisions to be Constitutional Court.

However, even though such concern was raised by European Commission through Progress Report, the Ministry of Justice presented such tool at the draft laws submitted to the Kosovo Assembly; however the assembly members did not support such proposal.

Finally, the important aspect is also the debate among the KJC and KPC members at the Councils meetings. KLI during the monitoring process of the KJC and KPC meetings, found that there is lack of professional and reasonable debate during the policy and decision making process.

II. METODOLOGY

KLI in order to draft a comprehensive and analytical report, in relation to the implementation of the package of justice laws, has used mixed research methodology. In focus of monitoring process were public meetings and activities of the Kosovo Judicial Council and Kosovo Prosecutorial Council. Also, KLI monitored all courts and prosecution offices Kosovo wide, focused specifically treatment of corruption cases. However, KLI monitors were also focused on the monitoring process of the implementation of the legal obligations by the key stakeholders in judicial and prosecutorial system, including the supporting staff.

The monitoring process was focused in daily basis with regard to the performance of the courts and prosecution offices in implementation of the laws, policies and action plans approved by KJC and KPC.

The findings by the monitoring process are gathered at the KLI central office in Pristina, where the legal experts of the Institute, analyze such data and information, develop the legal and practical research from the data's received from the field.

Such research methodology provides practical possibility to identify problems, analyze in all matters which are in the interest of the rule of law. After the identification and analyzing of the findings and the problematic issues which are in violation of the law, international practices and standards, KLI conducts interviews with all key stakeholders, starting from those who are competent in policy making process, decision making process, those who are competent to implement the legislation and policies.

Interviews are conducted based on the indicators which are as a result of the monitoring process, findings, evaluation and assessment made by legal experts at KLI, which served to conclude the practical problems in implementation of the primary and secondary legislation in practice. Conducted interviews are codified in that manner that issues raised and information received were included into report.

Also, to be more accurate in identifying problems and making recommendations for solutions to problems in the implementation of the law and the proper functioning of the KJC and KPC , the Institute has analyzed the legal basis and documents relevant local and international which were related to the independence and functioning of the Judicial and Prosecutorial Councils.

III. IMPLEMENTATION OF JUDICIARY LAWS BY KJC AND KPC AND IMPLEMENTATION OF INTERNATIONAL STANDARDS

On May 28, 2015, Kosovo Assembly has adopted the judicial package on judiciary¹, respectively the amendment and supplemented Law on Kosovo Judicial Council (LKJC), the Law on Kosovo Prosecutorial Council (LKPC) and the Law on State Prosecutor (LPS). All of these laws were preliminarily adopted in 2010, and had entry into force on January 1, 2011 and 2013 respectively.

By the entry into force of the Laws on KJC and KPC on January 1, 2011, the Judicial and Prosecutorial Councils of Kosovo, operate as two separate institutions, independent from each other and from the executive and legislative authorities, in exercising their functions and responsibilities. Exceptionally, the Article 5 of the Law on KPC has foreseen as a member of the Council the Minister of Justice ex officio, among nine (9) members. However, by amending and supplementing the Law on KPC, the number of members has increased to 13 members, and from January 1, 2016 the Minister of Justice is not foreseen to be one of the Council's members. One of other changes regarding members of the Council is also that from January 1, 2016 the Chief State Prosecutor, will not be Chairperson of the Council ex-officio, but he will serve as a member.

The Law on KJC has foreseen that KJC is fully independent in carrying out its functions in order to ensure an independent, fair, accessible, professional and impartial system of justice, which reflects the multi-ethnic nature of Kosovo, implements the Constitution as well as internationally recognized principles of human rights and gender equality. This law also regulates the organization and functions of the Kosovo Judicial Council (KJC) including recruitment procedures, proposal for appointment and dismissal of judges, reappointment, transfer, discipline, evaluation, promotion and training of judges and lay judges; management and administration of the courts, development and monitor of the judiciary's budget; and establishment of new courts and branches.

The Law on KPC, has foreseen that the Council is an fully independent institution in exercising its functions, in order to have an independent, professional, and impartial prosecutorial council, which reflects the multi-ethnic nature of the Republic of Kosovo and internationally recognized principles on gender equality.

As two independent institutions, KJC and KPC are competent and responsible in management and overall administration of the judicial and prosecutorial systems in Kosovo, which have exercised these competences since January 2011. Exceptionally, these two councils did not have jurisdiction and control over international judges and prosecutors of EULEX, who exercised their powers and responsibilities in accordance with Law No. 03/L-053 on Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo; Law Nr. 03 / L-052 on Special Prosecution of the Republic of Kosovo; Law No. 04/L-033 on Special Chamber of the Supreme Court of Kosovo on Privatization Agency Related Matters; etc.

Amendment and supplement of the laws related to the judicial package, was required also by the Progress Report of the European Commission on Kosovo for 2014, which among other things stated that the laws mentioned above should be harmonized in order to address discrepancies in matters such

¹ In this Judiciary means the institutions of the justice system in the spirit of Chapter VI of Constitution of the Republic of Kosovo 2008.

as dismissal, appointment, transfer, disciplinary system and proceedings for the review of decisions taken by councils.²

The progress report has also foreseen that there is need for further measures in order to ensure the functioning and accountability of the judiciary. In order to ensure full implementation of laws on judicial and prosecutorial councils, both councils must still adopt several parts of implementation legislation. The critic presented in the progress report of the European Commission, was stated also in the Conclusions from the Sectorial Committee on Justice, Freedom and Security regarding the Stabilization and Association process between Kosovo and the European Union, held in Brussels³ on 27-29 January 2015 and in the fifth (5) plenary meeting on the process of dialogue for Stabilization and Association between EU and Kosovo, held in Pristina on July 2015⁴, regarding the non-fulfillment of a series obligations by Judicial and Prosecutorial Councils related to the functioning of judicial and prosecutorial systems.

Amendment of aforementioned laws, has foreseen the undertaking of concrete actions by both councils for the implementation of the legal obligations, regarding substantial changes in terms of the recruitment process of judges and prosecutors, new composition of Kosovo Prosecutorial Council in accordance with the constitution and law , transfer of the Secretariat of the Office of Chief State Prosecutor to Prosecutorial Council, establishment of new permanent committees within Prosecutorial Council etc.

Amendment of these laws and harmonization of legal provisions, was related to the requirements set out by the European Union to fulfill the criteria for Visa Liberalization and the dialogue process for Stabilization and Association between Kosovo and EU.

Also despite the supplementation of judiciary laws, their implementation in practice has started to be noticed its first negative effects. Article 15 of the Law on KJC, complements Article 36 of the Basic Law, by foreseeing that the disciplinary proceedings shall not be initiated and implemented in the Committee after the expiry of one (1) year from the notification received in the Office of Disciplinary Counsel for the alleged violation and two (2) years from the date of the alleged violation.

While, the Article 16 of the Law on KPC, complements Article 25 of the basic law, by foreseeing that the disciplinary proceeding against prosecutors shall not be initiated and implemented in the Disciplinary Committee of KPC, following the expiration of one (1) year deadline from the notification received at the Office of Disciplinary Prosecutor on alleged violation and two (2) years from the date of alleged violation.

² Progress Report of the European Commission on Kosovo, for 2014, page 13 (See the link http://ec.europa.eu/enlargement/pdf/key_documents/2014/20141008-kosovo-progress-report_en.pdf.) (Last accessed on April 10, 2016).

³ Conclusions from the Sectorial Committee on Justice, Freedom and Security, regarding Stabilization and Association process between Kosovo and EU, held on January 27-29, 2015 in Brussels. (See the link http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2015/20150303_final_sapd_jls_follow-up_actions.pdf) (Last accessed on March 30, 2016).

⁴Conclusions from the Sectorial Committee on Justice, Freedom and Security, regarding Stabilization and Association process between Kosovo and EU, held on July 8, 2015 in Pristina. (See the link http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2015/20150727_5th_sapd_plenary_meeting_conclusions_final.pdf) (Last accessed on March 30, 2016).

Foreseen deadlines in these articles in both laws, by limiting the investigation to alleged violations by judges and prosecutors in just one year, from the notification received on ODC, will have a direct impact on the quality of the work of the Office of Disciplinary Counsel, by considering the large number of received and treated cases in this office. This will hamper the functioning of ODC and will disable it to exercise its mandate under the law, in an independent, impartial and professional manner.

These provisions and also the absence of sufficient human resources at ODC, compared to the large number of complaints filed against judges and prosecutors, in practice could lead to selective justice or perception that ODC applies selective justice against specific judges or prosecutors.

Limiting the investigation period to one year, should be reviewed and extended in two years at least, by foreseeing also the increase of human resources in ODC with additional positions of qualified personnel, with experience and expertise in handling these cases.

Laws on KJC and KPC do not foresee transitional provisions regarding cases that are currently in process in ODC. Given that, currently ODC is handling hundreds of cases that have been received years ago, and for which were not presented reports to KJC and KPC committees, will be amnestied. Based on these provisions, at all cases where notices were filed to ODC regarding alleged violations by judges and prosecutors, if after one year ODC has not presented report to disciplinary committees, those cases will not be treated by these committees of two Councils

With the entry into force of the package of judiciary laws in 2011, including Law on KJC, Law on KPC, Law on Courts⁵ and Law on State Prosecutor in 2013⁶, KJC and KPC had undertaken a series of activities and concrete actions for the implementation of these laws, including the transition on the new organizational structure of courts and prosecution offices on January 1, 2013.

Transition on the new organizational structure of courts and prosecution offices, and the fulfillment of a series of obligations arising from the laws adopted in 2010, regarding the package of judiciary laws was also reflected in Kosovo Progress Reports, for 2013 and 2014. Among others, in the Progress Report for 2013 was stated: *“In January, a new court system was introduced and a new criminal code and criminal procedure code entered into force. The Supreme Court issued a formal opinion to rectify ambiguities concerning the retroactive application of transitional provisions regarding the admission of pre-trial evidence in cases that started before the new procedure code entered into force. Focus now needs to be on implementation of the legislation”*.⁷

While Kosovo’s Progress Report for 2014, confirmed that *“Kosovo’s judicial structures adapted well to the 2013 structural reform”*, the findings in this report also confirm the failures and areas in which both Councils should have undertaken actions regarding the implementation of legislation and fulfillment of obligations arising from the package of judiciary laws.⁸

⁵ Law on Courts has entered into force on January 1, 2011 for Article 29, 35, 36, 38 and 40, while other Articles have started to be implemented on January 1, 2013 (Article 43 of Law on Courts).

⁶ Law on State Prosecutor, Article 21, 28 and 29 has entered into force on January 1, 2011, while the other rest of the law entered into force on January 1, 2013 (Article 33 of Law on State Prosecutor).

⁷ Kosovo Progress Report for 2013, page 10. (see link: [http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_\(alb\)_2\).pdf](http://www.mei-ks.net/repository/docs/1FINAL-ALB_MIE-Kosovo_Progress_Report_2013_(alb)_2).pdf)). (last accessed on March 25, 2016).

⁸Ibid 4.

a) The independence of judiciary

Definitely judicial power in the Republic of Kosovo in constitutional and legal terms can be considered independent from two other powers. This is because at the end of February 2016⁹, Kosovo's Assembly voted for the constitutional changes regarding the majority of KJC members elected by the judiciary itself. This recommendation was repeatedly addressed by KLI¹⁰ and international organizations, in order to ensure the independence of the judiciary system. Implementation of this recommendation was requested explicitly by the Progress Report since 2014, "majority of Kosovo Judicial Council members are elected by their peers, in line with Venice Commission recommendations. "The same request of European Commission was presented in the Progress Report for 2015. Meeting of this criterion by Kosovo's Assembly, required amendment of Article 108 of the Constitution of Kosovo, regarding the election and appointment of KJC members. It should be noted that Kosovo's Assembly was challenged by the Ministry of Justice¹¹, namely the Government to modify the Constitution in order to ensure the independence of judiciary, but the will of the executive had not existed to legislative, which had not voted the constitutional amendments on this issue during that time.¹² At the same time, this will of the Republic of Kosovo institutions to change the election manner of KJC members is a step forward, in terms of the *de iure* creation of a judicial power constitutionally and legally independent. Entry into force of this constitutional amendment already added and strengthened the mechanisms for an independent judicial system, because the Constitution of the Republic of Kosovo, besides this, has offered and offers a number of mechanisms that ensure the independence of the judicial and prosecutorial system¹³.

Following, what was said above, Article 108 of the Constitution stipulated that eight (8) members of KJC are elected by the deputies of Kosovo's Assembly, which is in contradiction with the opinion no. 32 of Venetia Commission in the Report regarding the Independence of Judicial System, part I, Independence of Judges.¹⁴ Also the aspect of independence is related with the legal provisions dealing with the budget proposal of the judicial and prosecutorial, which is sent in two addresses, to the Government and Assembly. Practice has proven that Government has always made budget cuts in

⁹Note: Assembly of the Republic of Kosovo on February 24, 2016, based on Article 65 (2) and Article 144 of the Constitution of the Republic of Kosovo has adopted "Amendment of the Constitution of the Republic of Kosovo" Amendment no 25:

"Article 108, paragraph 6, subparagraph 1 and 2 of Constitution of the Republic of Kosovo amended as follows:

1. Seven (7) members will be judges elected by the members of the judiciary.

2. Two (2) members shall be elected by members of the Assembly, who hold the gain seats during the general distribution of seats, and at least one of these two must be judge."

¹⁰Recommendation 8: "The selection of KJC members, where eight out of thirteen members are selected with votes from the Assembly, represents a problem in the independent representation of the judiciary. Consequently, in order to ensure independence in every other aspect, the majority of members of the KJC have to be selected by the judges themselves". Gashi A. and Musliu B. "Independence of judiciary in Kosovo: An analysis of Institutional and Individual Financial Independence". (Prishtina: Kosovo Law Institute, November 2012).

¹¹Kosovo Assembly voted on March 14, 2013 against the Ministry of Justice proposal to change the composition of Kosovo Judicial Council to guarantee the independence of judiciary. Official record of the Plenary Session of the Assembly of Republic of Kosovo, held on March 14, 15 and 19, 2013. (see link http://www.kuvendikosoves.org/common/docs/proc/proc_s_2013_03_14_10_4805_al.pdf)

¹² KLI interview with Mr. Hajredin Kuçi, Minister of Justice in the Government of the Republic of Kosovo. August 2015.

¹³ This means all the constitutional mechanisms set out in Chapter VII of the Constitution and legal mechanisms who guaranteed and still guarantee the independence of judiciary and prosecutorial system.

¹⁴ 32. To sum up, it is the Venice Commission's view that it is an appropriate method for guaranteeing for the independence of the judiciary that an independent judicial council have decisive influence on decisions on the appointment and career of judges. Owing to the richness of legal culture in Europe, which is precious and should be safeguarded, there is no single model which applies to all countries. While respecting this variety of legal systems, the Venice Commission recommends that states which have not yet done so consider the establishment of an independent judicial council or similar body. In all cases the council should have a pluralistic composition with a substantial part, if not the majority, of members being judges. With the exception of ex-officio members these judges should be elected or appointed by their peers.

relation with the requirements of both Councils, making so impossible their effective and efficient functioning.

The manner of budget proposal and its cuts by the Government clearly reflects as an interference of the executive power in the judiciary and prosecutorial system.¹⁵ These interferences in judiciary, after many public pressures, have definitely contributed to the change of approach and expression of will of the executive and legislative power to reflect in the new laws, enabling KJC and KPC to do the budget proposal directly to Kosovo's Assembly, aiming to increase the independence of these systems. Moreover, this change in approach means that with the new laws, KJC and KPC their budget requests send directly to Kosovo's Assembly, which formally presents a new legal to increase the independence of judicial and prosecutorial system. In this regard it is worth mentioning that KLI considers that it was the most powerful promoter to advocate for the provision of budgetary independence for the judicial and prosecutorial system and has consistently offered its expertise through qualitative analysis¹⁶, raising public debate.¹⁷

Despite these important steps towards increasing the independence of judicial and prosecutorial system remains to be seen whether the political will demonstrated by changing the laws will be implemented in practice, and if the proposals presented by the Councils to Kosovo's Assembly will be considered or approved without budget cuts as was done until now.

b) Failure of KJC and KPC in adopting secondary legislation

KLI has made the elaboration of KJC and KPC failures in adopting secondary legislation necessary to enable the efficient and effective implementation of judicial laws package (Law on KJC, Law on KPC, Law on Courts and Law on State Prosecutor).

From the entry into force of LKJC, KJC has managed to adopt these Regulations¹⁸. Obligations deriving from the Law on KJC and Law on Courts are not completely fulfilled. Below are listed the Regulations that are not adopted by the end of 2015, based on the obligations of the two laws mentioned above:

- Regulation on Classification and Qualification of Documents in Kosovo Judicial System.
- Regulation on Communication with Public and Media.

¹⁵ Gashi A. and Musliu B. "Independence of judiciary in Kosovo: *An analysis of Institutional and Individual Financial Independence*". (Prishtina: Kosovo Law Institute, November 2012).

¹⁶ Gashi A. and Musliu B. "Independence of judiciary in Kosovo: *An analysis of Institutional and Individual Financial Independence*". (Prishtina: Kosovo Law Institute, November 2012).

¹⁷ Note: KLI in 2012 has conducted a qualitative research, in which many important aspects of judiciary independence are analyzed, with a focus on the institutional and individual financial independence of judiciary. In this research are derived concrete recommendations for the regulation of judiciary independence issue, including the key issue of the budget independence. KLI has held public roundtables and advocated strongly regarding the independence of judiciary, by requiring from the executive and legislative to change the package of laws, in order to enable for the budget of KJC and KPC to go directly to Kosovo Assembly, without the interference of the Government.

¹⁸ Regulation on Internal Organization and Systematization of Working Positions in the Supreme Court; Regulation on Internal Organization and Systematization of Working Positions in the Appeal Court; Regulations on Internal Organization and Systematization of Working Positions in Basic Courts in Prishtina, Peja; Gjakova, Prizren; Ferizaj; Mitrovica; and Gjilan; Regulation on maintenance of evidence for convicted individuals; Regulation on election of KJC Members by judiciary; Regulation on Court Organization; Regulation on Disciplinary Procedure for KJC Members; Regulation on Judges Promotion Procedure; Regulation on Disciplinary Committee Work; Regulation on appointment and re-appointment of Judges Procedure; Regulation on the Organization and Functioning of Conditional Release Panel; Regulation on Organization and Operation of KJC; Regulation on Performance Evaluation of Judges; Regulation on Setting Work Rates for Judges; Ethical Codes and Professional Conduct for KJC Members, Judges and Supporting Staff; Regulation on completing-amending of Regulation on election of KJC members, Regulation on appointment of court interpreters and translators, Regulation on appointment of court experts; Regulation on defining the rules and procedures for organizing the exam for candidates for judge.

- Regulation on Publication of Judgments.
- Regulation on Supreme Court regarding the management, appointment of judges and appointment of colleges and heads of colleges.
- Regulation on Appeal Court regarding the appointment of judges to departments in order to ensure efficiency in handling cases, appointment of heads of departments as needed and to ensure that each case is assigned to colleges.
- Regulation on Lay Judges.
- Regulation on Professional Collaborators.
- Regulation on the inclusion of Judges in Continuing Legal Education.
- Regulation on the Transfer of Judges.
- Regulation on Rules and Procedures Governing Complaints against KJC decisions on the permanent relocation or transfer against the will of Judges which exceed the six (6) months period.
- KJC and KPC should change and meet the Regulation of KJC on the Functioning of the ODC Office where is defined the issue of the mandate of ODC Director.

As KJC, from the entry into force of LKPC and LSP, KPC has also managed to adopt only a number of Regulations¹⁹. As obligations deriving from Law on KPC and Law on State Prosecutor are not fulfilled by the end of 2015, there is a number of regulations and documents that are not approved, including those as follows:

- Regulation on Classification and Qualification of Documents in Kosovo Prosecutorial System.
- Regulation on Communication with Public and Media.
- Regulation on the Transfer of Prosecutors.
- Regulation on Promotion of Prosecutors.
- Regulation on effective Disciplinary Procedure (for prosecutors, KPC members);

¹⁹ KPC has adopted these regulations since its establishment in 2011: Regulation on the Organizational Structure and Administrative Support of the Chief State Prosecutor Office; Regulation on Setting Procedures and Criteria for Performance Evaluation of Prosecutors and Prosecution Offices; Regulation on the Election of the Director of Prosecution Performance Review Unit; Regulation on Organizational Structure and Functional of Prosecution Performance Review Unit; Regulation on the Appointment Process of Prosecutors; Regulation on Disciplinary Committee Work; Regulation on Internal Organization and Systematization of Working Positions in Prosecutorial Council and State Prosecutor; Regulation on Assignment and Transfer of Prosecutors (Implementation of the law on State Prosecutor regarding the assignment and transfer of prosecutors according the new organizational structure); Regulation on Assignment and Transfer of supportive staff; Regulation on holding mutual meeting of KJC and KPC Regulation on the Mandate, Structure and Functioning of the Office for Protection and Assistance to Victims of Crime; Regulation on Prosecutors Recruitment, Appointment and Reappointment Process; Regulation on Functioning and Activity of Prosecutorial Council; Regulation on Criteria and Nomination Procedure and Appointment proposal for Chief state Prosecutor; Regulation on Establishment and Functioning of National Coordinator in Fighting Economic Crimes; Regulation on Assignment of Rules and Procedures for Organization of Exam for Prosecutor from the non-majority Community in Kosovo; Ethical and Professional Conduct Codes for members of KPC, for Prosecutors and Supportive Staff;

- Regulation on Disciplinary Responsibility of KPC Members;
- Regulation on Standardization regarding Prosecutors Lecturing;
- Standard Operating Procedures concerning the Avoidance of Conflict of Interest in Performing the Function by KPC Members;
- Regulation on Rules and Procedures Governing Complaints against KPC decisions on the permanent relocation or transfer against the will of Prosecutors which exceed the six (6) months period.

Lack of secondary legislation adoption by KJC²⁰ and KPC²¹ has created major problems in fulfilling the obligations and responsibilities of judicial and prosecutorial council, posing so an obstacle to the proper functioning in practice. Holders and representatives of these two institutions emphasize that the lack of secondary legislation has created practical difficulties which have been concrete and have created a real opportunity to not establish best practices, and in some cases with double standards.

KLI considers that the lack of secondary legislation has created serious problems in the right implementation of legal obligations in practice. In the lack of this legislation, KJC and KPC have often prevented directly the judges, prosecutors and support staff in fulfilling their obligations, functions and responsibilities arising from the law.

Among others, this approach as it is stated above has enabled the creation of inadequate policies and with double standards.

c) Accountability of judicial and prosecutorial system

In relation to the functioning and accountability of judiciary as an important dimension and which is related to the independence principle, Progress Report has constantly required from the judicial and prosecutorial system to try harder to ensure their functioning and accountability. Among other things, this report states: *“In order to ensure full implementation of the laws on the judicial and prosecutorial councils, both councils still need to adopt several pieces of implementing legislation”*.²²

So far, the accountability mechanisms in judicial and prosecutorial system have not proven to be efficient and effective. In terms of efficiency and effectiveness of these mechanisms, KLI has noted a disconnection between KJC and the Courts, by not implementing mutual obligations, namely by not being accountable and responsible at all. Regarding the accountability aspect, it is worth mentioning that KJC has not created mechanisms to oblige Basic Court Presidents in relation with the responsibilities they have in implementing the legal obligations, strategies, plans and other documents approved by this Council. In this regard, one of Basic Court Presidents obligation is submission of the written regularly report in KJC every three months. This obligation has not been fulfilled by these

²⁰ IKD interview with Mr. Enver Peci, President of KJC; and Mr. Agim Maliqi member of KJC, also Head of the Committee for Normative Acts dhe in KJC. October, December 2015.

²¹ KLI interview with Mr. Teki Bokshi, a member of KPC who is not a prosecutor and at the same time Head of the Committee for Normative Acts; Mr. Florent Muçaj a member of KPC from civil society, who is not a prosecutor; Mr. Jetish Maloku member of KPC and Mr. Besim Kelmendi prosecutor at the Office of Chief State Prosecutor, authorized representative of the Chief State Prosecutor to be interviewed for this research of KLI. October, December 2015.

²² Progress Report of European Commission for Kosovo for 2014. Page 13. (See link <https://mapl.rks-gov.net/getattachment/2be0beff-485a-44f5-93c0-bceca4f5d6b3/Raporti-i-Progresit-2014-per-Kosoven.aspx>). (Last accessed on March 12, 2016).

Court Presidents.²³ This approach towards accountability has created practical problems, which have affected the non-implementation of legal provisions.

Consequently until now KJC has never held responsible anyone and has never taken any punitive measures against a President of the Court for poor performance, lack of results and implementation of policies and acts of the Council.²⁴ This proves the practical separation created between KJC and the Courts, within the bilateral obligations, as determined above. Also on the other hand neither KJC has ever fulfilled their legal obligations to hold responsible the Court Presidents for not reporting to KJC.

These actions have weakened a lot the control and supervision system, therefore KLI assesses that in these cases there is a lack of accountability system and mutual will between KJC and Court Presidents to respect and implement the legal provisions in force. Furthermore, on December 2, 2015 all Basic Court Presidents have reported to KJC for the year 2014 and the first six months of 2015, in which case this accountability approach seems to be quite formal just to realize a certain legal and regulatory obligation.

Similar situation stands also with the accountability in prosecutorial system. KLI has noted that even here, there is a disconnection between KPC and Prosecution Offices. It is very evident the same practice relating to the fact of Chief Prosecutors at all levels not reporting to KPC. So despite the obligations arising from internal acts of KPC, they are not regularly respected in terms of these accountability mechanisms. This is noted also with the fact that KPC has never initiate disciplinary measures against Chief Prosecutors about not fulfilling the obligations, and until now there is not any case when a Chief Prosecutor is degraded for poor performance, lack of results and implementation of policies and acts of the Council.²⁵ On the other hand KPC has failed in implementing legal obligations relating to the fact for holding responsible the Chief Prosecutors about not fulfilling their obligations to KPC.

Unlike KJC, which adopted the Regulation on Disciplinary Responsibility of KJC Members,²⁶ KPC has never adopted such a regulation regarding the disciplinary responsibility of KPC members. This institution since its establishment in 2011, as an independent institution in the management and administration of prosecutorial system in Kosovo, although it was obliged by law, has not yet adopted the Regulation that determines and publishes the rules and disciplinary procedures applicable to KPC members, including those procedures that determine investigation, suspension or recommendation for

²³ Article 24 paragraph 3 of LKJC foresees that “*The President Judge of a Court shall have general administrative authority and shall ensure the efficient and effective administration of justice by all branches, departments and divisions of the court. The President Judge shall, in collaboration with the judges of the court, develop the annual case management plan and assign cases to departments and judges in a manner to ensure the efficient disposition of cases. The President Judge of a Court shall submit annually to the Council a report on the success of implementing the previous annual case management plan. The President Judge of a Court shall submit quarterly to the Council a written report that addresses the work of the Court, identifies any problems facing the court, and proposes remedial steps to address such problems. The President Judge shall take such other steps as necessary within the rules and directives of the Council to ensure the effective management of the Court and its resources and the timely adjudication of cases. The President Judge may make appropriate delegations of authority.*” Law on Kosovo Judicial Council.

²⁴ KLI interview with Mr. Enver Peci, President of KJC and Mr. Albert Avdiu, Director of KJC Secretariat. August 2015.

²⁵ KLI interview with Mr. Besim Kelmendi, prosecutor at the Office of Chief State Prosecutor, authorized representative to be interviewed for this research of KLI by Chief State Prosecutor, Mr. Aleksandër Lumezi and Mr. Shkëlzen Maliqi, Director of Secretariat at the Office of Chief State Prosecutor. September 2015.

²⁶ Regulation on Disciplinary Procedure for KJC Members (see link http://www.kgjk-ks.org/repository/docs/Rregullore_per_proceduren_disiplinore_per_anetaret_KGJK_se_262530.pdf;) (Last accessed on October 30, 2016).

removal of any member of the Council.²⁷ Lack of regulation and rules regarding the development of disciplinary procedures against KPC members, has provided full amnesty and immunity to the members of the Council in respect to any action or activity of their own, and out of the functional immunity guaranteed by Article 11 of LKPC. In practice the lack of this regulation has immunized²⁸ certain KPC members during 2014 and 2015, for which there has been public accusations of violations and infringement of the image of prosecutorial system, since against them it is impossible the disciplinary persecution in absence of rules and procedure.²⁹

Lack of judges and prosecutors accountability is presented in Rule of Law Assistance Strategy in Kosovo 2016-2019, in which is emphasized that in this regard improvements are needed. Criticism for no effective disciplining of judges and prosecutors are not only presented in this Strategy, but also in Kosovo's Progress Report for 2014, when among other things it is stated: "*Among others, despite the imposition of disciplinary measures against judges and prosecutors in 2012 and 2013, these did not result in any termination. In this regard, it is required that the disciplinary regulations of KPC and KJC against judges and prosecutors be improved, so that disciplinary measures and policies in fighting corruption in the judiciary produce concrete outcomes.*"³⁰

In this Rule of Law Assistance Strategy in Kosovo 2016-2019, it is also stated that "*In this regard, the establishment and capacity building of the Policy Analysis Units in KJC and KPC, professionalization of disciplinary committees and strengthening of the Office of Disciplinary Counsel (ODC) should have positive effects. This is particularly important because upon completion of the current mandate of EULEX Mission, there is no legal and practical possibility for these cases to be transferred to EULEX judges, respectively prosecutors.*"³¹

Moreover, KLI has been part of the KJC Strategic Plan drafting, in which are set advanced frameworks for the development of judicial system, including also the accountability aspect within the judicial system. Among other things, it is also highlighted the lack of human and professional resources in planning and drafting strategic documents. KJC has no structure that is responsible for coordinating, planning and policy research. In KJC Strategic Plan it is recommended the establishment of the Office on KJC Strategic Plan or at least to appoint officials in order to implement these activities.³²

²⁷ Article 11 of Law on Kosovo Prosecutorial Council: Council determines and publishes applicable rules and disciplinary procedures against its members including those procedures related to investigation, suspension or recommendation for removal of any member of the Council.

²⁸ KLI interview with Mr. Teki Bokshi, member of KPC. December 2015.

²⁹ KLI interview with Mr. Jetish Maloku, member of KPC. March 2016.

³⁰ Rule of Law Assistance Strategy in Kosovo 2016-2019. Page 15.

(See link [http://www.md-](http://www.md-ks.net/repository/docs/Strategjia_per_Asistence_ne_Sektorin_e_Sundimit_te_Ligjit_ne_Kosove_2016...pdf)

[ks.net/repository/docs/Strategjia_per_Asistence_ne_Sektorin_e_Sundimit_te_Ligjit_ne_Kosove_2016...pdf](http://www.md-ks.net/repository/docs/Strategjia_per_Asistence_ne_Sektorin_e_Sundimit_te_Ligjit_ne_Kosove_2016...pdf)) (Last accessed on February 1, 2016).

³¹ See footnote 30.

³² Rule of Law Assistance Strategy in Kosovo 2014 – 2019. Kosovo Judicial Council. April 2014.

d) Amnesty of alleged violations by judges and prosecutors through laws

The new amending and supplementing of the package of judiciary laws have also produced negative and irreparable consequences for accountability system. KLI has reacted against judges and prosecutors legal amnesty, which are a subject of investigation and disciplinary procedures presented on ODC. This amnesty is enabled through amending and supplementing of the Law on Kosovo Judicial Council (LKJC) and Law on Kosovo Prosecutorial Council (LKPC), respectively Articles 15 and 16 of them.

In the two laws mentioned above, the changes have determined that: “disciplinary procedure against judges and prosecutors will not be initiated and implemented in the Disciplinary Committee of KJC and KPC, after the expiration of one (1) year deadline from the notification received in the Office of Disciplinary Counsel, for the alleged violation and two (2) years from the day of alleged violation”.

KLI assesses that amending of these legal provisions, produce negative and irreparable consequences and as such clearly enable a general amnesty for judges and prosecutors, for whom is supposed to have committed misconduct or acted in contradiction with ethics and professional conduct codes for judges and prosecutors. To increase even more the unclarity of the provisions of Article 15 and 16 of the respective laws on LKJC and LKPC, there are not foreseen the transitional provisions in relation to cases that are currently at work in ODC.

Given that ODC in currently treating hundreds of cases, which have been received at work years ago, and for which has not presented a report to Committees of KJC and KPC, the same one cannot be treated by these two committees in cases where there has expired the one year deadline from when the notice is received in ODC or when have passed two years from the day of alleged violation.

In terms of these provisions all these cases will remain untreated and therefore there will not have any consequences on judges or prosecutors against whom the initiation of disciplinary proceedings is filed. So this clearly justifies the thesis raised above that this is a silent amnesty of judges and prosecutors who allegedly violated the Ethics Code and that disciplinary cases against them have been dragged for years in ODC.

KLI assesses that amendment of these laws, has caused irreparable damages that will directly affect in further damage of the integrity of judicial and prosecutorial officials and of the judicial and prosecutorial system itself. The impunity cult in concrete provisions towards judges and prosecutors for their potentially improper conduct is already guaranteed in these two basic laws for judicial and prosecutorial system. Low public trust in judicial and prosecutorial system, in last months had the major decrease, while through this amnesty to offenders by the line of judges and prosecutors can eventually affect a greater decrease of citizen’s trust in the justice system in general.

These provisions of the laws mentioned above which provides impunity for a significant number of judges and prosecutors, for their alleged violations clearly transmit the fragile will of KJC and KPC in building an efficient accountability system.

The fact that there is a lack of punishment of offenders within the judiciary in Kosovo, is also mentioned in the Progress Report for 2015, which among other things states: “*However, the judiciary remains prone to political interference. Further efforts are required to ensure independence in law*”

and in practice, to prevent and fight corruption within the judiciary, to recruit and train more qualified staff and to allocate adequate resources.”³³

Also with the completion of these laws, it still remains a concern the short deadlines defined with these changes by limiting the investigation towards alleged violations by judges and prosecutors in only one year, from the announcement received in ODC. This limitation will directly affect the quality of the Office of Disciplinary Counsel work, taking into account the large number of cases received and treated by this office.³⁴ It will also hinder the functioning of ODC and would be unable to exercise the mandate under the law to function independently, impartially, and professionally.

In relation to ODC, this short deadline of prescription of investigation among others it means the need for their awareness for the disciplinary cases to be investigated and forwarded to Disciplinary Committees as soon as possible. However to achieve this there is also a need to increase capacity of ODC, otherwise, as mentioned above the difficulties that ODC may face in its work will be proven.

Following KLI expresses its concern as a result of these provisions, in lack of sufficient human resources in ODC, in relation to the large number of complaints filed against judges and prosecutors, in practice may come to the selective justice or perception that ODC implements selective justice against certain judges or prosecutors. This is because the small number of resources and limitation of deadline for handling cases will not allow for the same ones to be treated equally in front of the law, a fundamental right guaranteed by the Constitution.

KLI in 2015, during the monitoring of ODC work also noted application of selective justice while handling disciplinary cases against judges and prosecutors, and for this there have been public complaints by the stakeholders who were part of these disciplinary proceedings.³⁵ Complaints presented in relation to the work of ODC, are related to allegations that this office, in certain instances, performs cases against judges or prosecutors within a very short time, with the speed of the light³⁶, while there is an extraordinary large number of cases that have been reported in this office for years and the same ones have not been treated or processed to Disciplinary Committees of KJC and KPC. *“This office makes selective justice, due to the fact that there are many cases where judges and prosecutors are being investigated for serious violations of Ethical Code and duties waiting there for years and remaining unsolved”.*³⁷

On this occasion, KLI recommends to Ministry of Justice to urgently commence the amendment of these two basic laws for the functioning of the judicial and prosecutorial system to improve the administration of justice in disciplinary cases where the subject may be judges or prosecutors. Through these changes it should be addressed the issue of the timeliness of handling cases from the ODC, Disciplinary Committees and Councils, which should be adapted to the context and specifics of the justice system in Kosovo. Limitation set of one year, must be reviewed and this deadline must be

³³ Progress Report of European Commission for Kosovo for 2015. Page 5. (See link http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf). (Last accessed on March 10, 2016).

³⁴ KLI interview with Mr. Zef Prendrecaj, Director of ODC. December 2015.

³⁵ KLI interview with Mrs. Shpresa Bakija, Chief Prosecutor of Basic Prosecution Office in Gjakova. November 2015. (See link <http://betimiperdrejtesi.com/emisionet/drejtesia-selektive/>). (Last accessed on March 12, 2016).

³⁶ KLI interview with Mr. Shyqyri Sylja, Chief Prosecutor of Basic Prosecution Office in Mitrovica. March 2016. (See link <http://betimiperdrejtesi.com/emisionet/lufta-kunder-korrupsionit/>). (Last accessed on March 20, 2016).

³⁷ Chief Prosecutor of Mitrovica charges ODC, defended Prosecutor Badivuku. (See link <http://www.arbresh.info/lajmet/kryeprokurori-i-mitrovices-akuzon-zpd-ne-mbrojti-prokuroren-badivuku/>). (Last accessed on March 20, 2016).

extended at least in two years, taking into account the increase of human resources in ODC with additional positions of qualified personnel, with experience and expertise in handling these cases.

Taking into account the current resources of ODC and the enormous number of alleged violations by judges and prosecutors, KLI recommends that “disciplinary proceedings against judges and prosecutors will not be initiated and implemented in the Disciplinary Committee of KJC and KPC, after the expiration of two (2) years from the notification received in the Office of Disciplinary Counsel, for the alleged violation and (6) years from the date of the alleged violation”. While regarding the deadline for handling cases submitted by ODC, KLI recommends for Disciplinary Committee to finish the case as the first instance within six (6) months. Therefore, in cases of complaints, KJC and KPC is recommended to finish the handling of these cases within the period of three (3) months.

KLI considers that it is necessary for ODC to prepare a detailed report with all the information’s including the number of cases against judges and prosecutors which will be amnestied, as a result of these new legal provisions mentioned above, in order to inform the citizens of the Republic of Kosovo regarding the expressed will of the legislators, for amnesty of offenders of the justice system.

ODC should create a tracking mechanism, where would be registered all cases received, including the date of receipt of the reports and their treatment according to line, unless the cases when the administration of justice in certain cases requires urgent actions. This would affect the office to perform its obligations in a independent, impartial and professional way, and would avoid cases when this office receives and proceeds certain disciplinary cases in Disciplinary Committees of KJC and KPC within a very short time, while old cases stay in the drawer for years and reach the statutory limitation.

e) KJC and KPC transparency in relation to public and media

A very important aspect related to the transparency and accountability of the judicial and prosecutorial system has never been addressed by both Councils. In this KJC has managed to recruit spokesman at all levels of courts in order to facilitate and enhance cooperation with the media and with the public, and in May 2014 adopted the Communication Strategy 2014-2019. Among other things in this document is stated that: *“Purpose of this strategy is creating and implementing instructions for publication of information’s of all courts and KJC which are relevant to public. This Strategy enables KJC and courts to act with the Regulation on Internal Organization and Systematization of Work Positions in full transparency and in accordance with the democratic standards for human rights and public security known internationally.”*³⁸

However, the practical implementation of the law with the lack of relevant regulations is difficult. In this regard, KJC has not adopted the *Regulation on Qualification and Classification of Documents in KJC and Courts*, and the *Regulation for Communication with Media and Public*. Despite the fact that this was an obligation that must be met under Article 4, paragraph 1.23 of the basic law on KJC, namely the drafting and promulgation of laws in accordance with the laws on public information relating to the management and disclosure of information that is stored by the judiciary of Kosovo.

Similar situation as in KJC stands also in KPC, which despite the obligation foreseen with Article 4 paragraph 1 point 25, of LKPC, has not adopted the *Regulation on Qualification and Classification of Information’s and Documents in Prosecutorial System*, namely in KPC and in relevant prosecution offices. Beside this, KPC has not adopted yet the *Regulation for Communication with Media and*

³⁸ Program for Effective Rule of Law and Kosovo Judicial Council, Communication Strategy 2014-2019. May 2014.

Public. However in accordance with this, KPC has appointed two contact persons regarding the requests for Access to Public Documents and Protection of Personal Data.

It should be emphasized that the lack of rules and regulations regarding the classification and qualification of documents in the judicial and prosecutorial is an obstacle in practice regarding the provision of information by the public, media and civil society, which information is guaranteed by applicable legislation regarding law on Access to Public Documents, by respecting and protecting personal data as foreseen by law.

Lack of these documents has a direct impact on the lack of cooperation between the judicial and prosecutorial system with media, individuals and organizations responsible for independent monitoring of justice system, and thus with the lack of transparency and accountability.³⁹

A concern that continues to seriously challenge the efficient and effective functioning of the State Prosecutor is the current lack of basic rules for the functioning of this system. Despite the legal obligation, KPC by the end of 2015, has adopted the Regulation on Internal Organization of the Prosecution Offices, and which entered into force on January 15, 2016. State Prosecutor until this date has based the internal organization of the work in an Administrative guidelines of State Prosecutor of 2010.⁴⁰ Guidelines in question refers to the Internal Organization of Work in State Prosecutor, taking into account the organizational structure of the prosecution offices before the entry into force of the law on State Prosecutor in 2013. Although this regulation was adopted, many important issues dealing with the internal organization of the State Prosecutor have not been clearly addressed. In this context it is important to be emphasized that all the years of KPC without this regulation have created many practical difficulties in efficient work of the state prosecutor.

f) Transfer and promotion of judges and prosecutors

KLI while analyzing KJC decisions for 2014 and 2015, has noted that KJC during these two years has transferred three judges from a Basic Court to another Basic Court within a period of six (6) months, while a permanent transfer happened in two (2) cases, one from the Basic Court of Gjilan to the Basic Court of Ferizaj and vice versa.⁴¹ In the lack of the Regulation of Transfer adopted by KJC, the above transfers were realized mainly on the basis of individual applications submitted by judges and based on practices that KJC created in this case. KJC only by the end of 2015, had adopted regulations regarding this issue.

KPC also has not determined rules and procedures regarding the transfer and promotion of prosecutors.⁴² The lack of these rules and procedures, in practice has resulted with non-implementation of Article 22 of LKPC, regarding the appointment and promotion of prosecutors, with

³⁹ *Note:* KLI has continuously made requests for access to public documents and various information in KPC and the answer of KPC officials for a part of our requests was positive, while for the other part they did not give any answer at all.

⁴⁰ Guideline for Prosecutorial Offices of the Republic of Kosovo: Administrative Procedures. May 2010. (See link http://www.drejtësia-ks.org/repository/docs/PAM%20Prosecution%20Administrative%20Manual_ALB%2030%20May%202010.pdf). (Last accessed on March 20, 2016).

⁴¹ **Decision from KJC 138 meeting held on October 21, 2015**, Mr. Kreshnik Radoniqi, judge in the Basic Court of Peja, temporarily transferred, within six (6) months in the Basic Court of Prishtina; **Decision from KJC 141 meeting held on November 18, 2015**; Approval of request of Mr. Burim Emerllahu, judge in the Basic Court of Gjilan for transfer in the Basic Court of Ferizaj and Approval of request of Mr. Venhar Salihu, judge in the Basic Court of Ferizaj for transfer in the Basic Court in Gjilan; **Decision from KJC 144 meeting held on December 31, 2015**: Judge Elmaz Zenuni, is temporarily transferred within the period six (6) months starting from January 1, 2016, from Basic Court of Ferizaj in the Basic Court of Prishtina in the serious crime Department. Judge Valon Kurtaj, is temporarily transferred within the period six (6) months starting from January 1, 2016, from Basic Court of Prizren in the Basic Court of Prishtina in the serious crime Department.

⁴² KPC on April 2016, has adopted the Regulation on Prosecutors Transfer.

the lack of accountability and political interference as well as the creation of selective and double standards concerning transfer and promotion of prosecutors. Regarding this the Progress Report for 2015, expressed concerns about the contested appointments and that unclear mandates have undermined the activities of the main institutions such as the activities of the KJC, KPC and Office of Chief State Prosecutor.⁴³ While Article 22 of the law stipulates that:

- “Upon the submission of the request by the Chief Prosecutor, the Council may transfer a prosecutor into another prosecution office for a time period not longer than six (6) months at any one time.
- The transfer as per paragraph 1 of this Article may be made in cases where a prosecution office has insufficient prosecutors for effectively prosecuting cases under its competency.
- The Chief State Prosecutor, for extraordinary circumstances, may temporarily transfer a prosecutor to another prosecution office. A transfer under this provision shall not exceed thirty (30) days unless approved for a longer period by the Council”.

Prosecutorial Council has already turned into a practice the promotion of prosecutors from the General Department at the Serious Crimes Department, only based on the request submitted by the Chief Prosecutor of the relevant Prosecution Office. Current practices built from KPC from 2011, have overlooked the competition institute, by not providing equal conditions to all interested candidates that meet the criteria for being promoted.⁴⁴ Worrying is the fact that there is no defense mechanism in system for prosecutors to appeal against such decisions when they have complaints although KPC had an obligation to “*announce rules and regulations that define the standards and procedures that govern the complaints.*”⁴⁵

In the context of what was noted above, in accordance with the accountability and transparency concept an important fact worth mentioning is related to the fact that KPC despite the fact that has authorized the Committee for Normative Acts of KPC, for drafting the Regulation Appointment of Criteria for the Election of Chief Prosecutors, such regulation was adopted in Council only by the end of 2015. This has affected for the position of Chief Prosecutor of SPRK Office to still be acting from 2014. Also, the Appeal Prosecution Office in Prishtina is headed by acting Chief Prosecutor of this prosecution office. KPC has not announced the competition for these two positions yet.

Among others the lack of KPC will to appoint the Chief Prosecutor of SPRK Office, has a direct impact in the functioning of this prosecution office, and with this also in the lack of results in this prosecution office. SPRK Office has almost exclusive competences in fighting organized crime and high-level corruption, two main areas that for Kosovo have become an obstacle in the process of European integration,⁴⁶ and this is also reflected in the Progress Report for 2015. “*Kosovo is at an early stage of preparations in the fight against corruption. A comprehensive and strategic approach is necessary to ensure real results in fighting the endemic corruption in Kosovo. A track record of*

⁴³ Progress Report of European Commission for Kosovo for 2015. Page 12. (See link http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf). (Last accessed on March 15, 2016).

⁴⁴ KPC from January 1, 2013 until December 31, 2015, has taken 36 Decisions on the transfer or advance of prosecutors based only in individual requests or in those presented by Chief Prosecutors of the relevant prosecution offices, while three (3) requests for transfer or advance are not adopted in KPC.

⁴⁵ Article 22 point 6 of Law on Kosovo Prosecutorial Council.

⁴⁶ Progress Report of European Commission for Kosovo for 2015. Page 3. (See link http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf) (Last accessed on March 15, 2016).

successful prosecution and convictions remains to be established. The rare investigations into high-level corruption have so far not resulted in final conviction". As it has already been demonstrated the lack of KPC will strengthen and functionalize SPRK Office. This prosecution office from 18 positions allowed for prosecutors has filled only 8 positions. This approach of KPC proves the conclusion of Progress Report that there is a comprehensive and strategic lack to create at least the basic conditions in SPRK Office to fight organized crime, high-level corruption, war crimes, and money laundering and terrorism criminal offenses.

Progress Report for 2015, also clearly confirms the lack of accountability and will of judicial and prosecutorial system stakeholders to undertake actions within their competences in order to functionalize the judiciary in Kosovo. Among others in this report is stated that: "*However, the administration of justice is slow and there is insufficient accountability of judicial officials. Judicial structures are still prone to political interference. There are concerns that disputed appointments and unclear mandates have undermined the activities of key institutions such as the Kosovo Judicial Council, Kosovo Prosecution Offices, and the Office of the Chief State Prosecutor*".⁴⁷

g) Lack of effective judicial protection for judges and prosecutors

A very important issue that is not addressed in the package of judiciary laws to the Kosovo Assembly, is related to effective judicial protection for judges and prosecutors when they are subject to decisions of the Councils and potentially with the decisions their rights are being violated. This legal gap was noted in the Progress Report, referring to the selection process of the Chief State Prosecutor, when was requested that during the amendment of these laws, "*to present appropriate legal remedies against decisions of the Prosecutorial and Judicial to avoid the only chance remained against these decisions and which is the Constitutional Court*".

However, despite this raised concern and the request submitted by the European Commission through Progress Report, during the amendment and supplement of the laws on KJC and KPC, this problematic issue is not addressed in these laws, despite the fact that provisions guaranteeing legal protection for judges and prosecutors have been part of the draft laws submitted by the Ministry of Justice in the Kosovo Assembly.⁴⁸ The provisions concerning the judicial protection have not been supported by state legislature.

Lack of legal effective remedy against the decisions of KJC and KPC is a legal uncertainty for judges⁴⁹ and prosecutors and other parties while exercising of their functions. Such thing deprives them with automatism to realize one of their rights in a reasonable time, as foreseen in Article 13 of the European Convention on Human Rights (ECHR), which is applied directly to the Republic of Kosovo but also decisions of the European Court of Human Rights (ECtHR), which is also applied directly to the Republic of Kosovo, in accordance with Article 53 of the Constitution of the Republic of Kosovo.

Lack of judicial effective protection against KJC and KPC decisions regarding discipline, appointment, re-appointment, the proposal for dismissal, performance assessment or transfer of judges and prosecutors will reflect in limiting the rights of judges and prosecutors as subject to the decisions of both Councils, and with this also the limitation of accountability, independence and transparency of

⁴⁷ Progress Report of European Commission for Kosovo for 2015. Page 12. (See link http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf). (Last accessed on March 15, 2016).

⁴⁸ KLI interview with Mr. Mentor Borovci, Director of Legal Office on MJ. December 2015.

⁴⁹ KLI interview with Mr. Agim Maliqi, member of KJC. December 2015.

the judicial and prosecutorial system. The issue of effective means of legal protection against Councils decisions is also recommended by the Venice Commission,⁵⁰ which has recommended the creation of the possibility of complaint against the decisions of the Council.⁵¹ Lack of a legal remedy against the decisions of KJC and KPC creates the real possibility for violations of human rights foreseen in the Constitution and in the ECHR, notably the right to a legal effective remedy.⁵²

IV. KJC AND SUPREME COURT OBLIGATIONS REGARDING THE IMPLEMENTATION OF LAWS COMPLEMENTED FOR KJC AND COURTS

With the new changes in the package of judiciary laws, changed the concept and current practice regarding the procedures and criteria related to the recruitment and appointment of judges and prosecutors. With the entry into force of these laws, KJC and KPC have recently adopted regulations and internal acts of both councils associated with the recruitment and proposal for the appointment of new judges and prosecutors. These changes have come considering that Progress Report for 2014, required to be harmonized the provisions relating to the recruitment of judges and prosecutors. During the completion of recruitment both councils had to harmonize the same ones, considering the specifics for judges and prosecutors.

Therefore amending and supplementing of the Law on KJC, on this specific issue, has reflected the substantial changes in determining the rules and procedures for organizing the exam for candidates for judges and announcement and organizing the exam for judges, criteria set by Article 26 point 1.7 of Law on Courts. KJC did not adopt these rules and procedures until December 31, 2015, while their approval is done on April 2016.⁵³ Once again this highlights the slow dynamics of these substantial and much needed changes.

Another problem emerging from the amendment of the Law on KJC and Law on KPC has to do with the representation of Kosovo Bar Association in both councils, which was represented before these alterations happened. Article 3 point 9 of the amended law⁵⁴ defines that KJC and KPC's member representing the Kosovo Bar Association cannot exercise the profession of lawyer while being a member of the KJC and the salary of the member will be defined and paid by the Chamber. The practical application of this provision is quite problematic first of all for the KBA due to the financial influence and budgetary deficit of the material compensation granted to its member in the KJC. The

⁵⁰ Report on the Independence of the Judicial System. Part I: The Independence of Judges. European Commission for Democracy through Law (Venice Commission) Comment 43. The Venice Commission has consistently supported the principle of irremovability in constitutions. Transfers against the will of the judge may be permissible only in exceptional cases. As regards disciplinary proceedings, the Commission's Report on Judicial CDL-AD(2010)004 - 10 – Appointments 4 favors the power of judicial councils or disciplinary courts to carry out disciplinary proceedings. In addition, the Commission has consistently argued that there should be the possibility of an appeal to a court against decisions of disciplinary bodies. Page 9-10.(See link [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e)). (Last accessed on March 20, 2016).

⁵¹ Report on the Independence of the Judicial System. Part I: The Independence of Judges. European Commission for Democracy through Law (Venice Commission) Conclusions of Venice Commission: "Judicial councils, or disciplinary courts, should have a decisive influence in disciplinary proceedings. The possibility of an appeal to a court against decisions of disciplinary bodies should be provided for". Page 17. (See link [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e)). (Last accessed on March 15, 2016).

⁵² Constitutional of the Republic of Kosovo Article 22.2, Article 32, Article 53 and 54.

⁵³ *Note:* This regulation along with other acts and decisions of KJC will be subject of the analyze in the next periodical report, which will be published by KLI as a result of KJC monitoring.

⁵⁴ Law no.05/L-33, for amending and supplementing of law No. 03/L-233, for Kosovo Judicial Council. (See link <http://gzk.rks-gov.net/ActDetail.aspx?ActID=2713>). (Last accessed March 20, 2016).

same provision is foreseen for its member in the KPC. In this context it should be noted that this provision or new solution has opened dire problems in practice, apart from the material compensation also restricting the exercise of a regulated profession.

It will be rather difficult that experienced lawyers with a great level of expertise to sacrifice their carrier and clientele within the frames of this free legal profession, by suspending their work as lawyers for five years- the length of a Council member's mandate, for a salary that can be defined by the KBA, but still isn't certain.

It is clear that practices established by the Kosovo Assembly, regarding the Council's membership by the KBA and the specifics of new solutions can lead to the situation where KBA won't be represented in either council by any lawyer. Moreover, what strengthens this claim is the fact that the adoption of this provision is assessed as a judicial absurdity by the representatives of the KBA that are members of the KPC.⁵⁵

Therefore, this new legal provision will result in the situation where the KPC won't have a member representing the KBA. It should be noted that the drafting and adoption of this provision has derived from political and partisan clashes⁵⁶. The idea that through this provision the conflict of interest for representatives of the KBA shall be avoided is not sustained, due to the fact that a KPC member who isn't a prosecutor but a lawyer, himself or herself should carefully avoid the conflict of interest because the same action is labeled in the domain of criminal liability by internal rules. This argument is supported by relying on democratic countries that have lawyers in the structure on judicial institutions.⁵⁷

In the context of the aforementioned, KLI recommends that the possibility of reviewing the Law on KJC and KPC in cooperation with the Ministry of Justice to be considered, so that this issue can be addressed and improved, as well as the supplementation of these laws with transitional provision can be done in order to clarify the status of the candidates that have passed the preparatory exam for judges and prosecutors.

The amendment of the Law on Courts, Article 6 of the Basic Law, added the obligation that Courts should promulgate enforceable verdicts, by always protecting personal data in their official websites within the timeline of sixty (60) days from the date when the enforceability is reached according to the current legislation and KJC's rules. It is significant to emphasize that the KJC hasn't adopted a Regulation related to the Qualification and Classification of Documents in the KJC and Courts. Such step hasn't been taken despite the fact that this was an obligation pursuant Article 4 paragraph 1.23 of the Law on the KJC, respectively the drafting and promulgation of bylaws in accordance with laws on public information related to the management and information disclosure protected by Kosovo judiciary.

In the absence of this bylaw, the promulgation of enforceable verdicts by courts shall challenge those institutions that are lacking a qualified personnel, bearing in mind that every promulgated verdict should respect and protect the personal data of third parties incorporated in the verdict, or other information of parties incorporated, whose publication constitutes a violation of the Law on the Protection of Personal Data.

⁵⁵ KLI interview with Mr. Teki Bokshi, member of KPC. December 2015.

⁵⁶ See footnote 55.

⁵⁷ KLI interview with Mr. Teki Bokshi, member of KPC. December 2015.

Moreover the absence of the Regulation related to the Qualification and Classification of Documents in the Judiciary will become an additional obstacle also in the efficient and lawful implementation by the judiciary system.

Apart from this, the KJC should immediately start the preparation and establishment of a new infrastructure in terms of the development of new Court Branches in Obiliq, Fushë Kosovë, Junik, Shtime etc, given the short amount of time that the KJC has regarding the implementation of this obligation derived by Kosovo Assembly. The implementation of these provisions should begin in January 1, 2016, despite KJC's request for them to enter into force in January 1, 2017.⁵⁸ This constitutes an additional challenge regarding the efficient implementation of judicial law packages, whilst the inefficiency could lead to practical repercussions in terms of a genuine dysfunction of the judicial and prosecutorial system.

V. THE ADOPTION OF SECONDARY LEGISLATION AND POLICIES BY THE KJC

The drafting and adoption process of policies and secondary legislation by the KJC, alike the KPC, continues to be a continuous challenge in both qualitative and quantities aspects, especially when it comes to the lack of transparency related to the decision making of drafting this legislation.

KLI throughout the research process has noted the ongoing lack of transparency in the drafting of secondary legislation, in the setting of the agenda in relation with secondary legislation, in the participation of groups of interest in this process and in the discussions with the public. The lack of expertise and the involvement of judges and Court Presidents in the drafting process of policies and secondary legislation of the KJC have influenced the quality of the adopted bylaws which are characterized with a displeasing quality due to the problems created during their implementation.

The prolongation of bylaws drafting are depicted as the KJC's negligence and lack of will in order to implement the legal provisions. This approach of negligence is difficult to comprehend; therefore this unreasonable delay has created the chain effect of non-implementation of these acts in all the sectors of Rule of Law institutions.⁵⁹ Furthermore, a great challenge remains the implementation of this legislation in practice and the manner in which it is implemented, even if it's done through these legal acts.⁶⁰

KJC throughout the second half of 2015 has adopted these regulations: Regulation on Internal Organization and Systematization of job positions in the Supreme Court; Regulation on Internal Organization and Systematization of job positions in the Appellate Court; Regulation on Internal Organization and Systematization of job positions in the Basic Courts in Pristina, Peja, Gjakova, Prizren, Ferizaj, Mitrovica and Gjilan; Regulation on Internal Organization and Systematization of job positions in the Secretariat of the KJC and the Review Unit of Court Performance, Regulation on Defining the Rules and Procedures of Examination for becoming a Judge; Regulation on Changing and Amending the Regulation on KJC's Election of Members by the Judiciary; Regulation on Appointing the Judicial Interpreters and Translators; Regulation on Appointing Judicial Experts.

⁵⁸ KLI interview with Mr. Enver Peci, President of KJC and Mr. Albert Avdiu, Director of KJC Secretariat. August 2015.

⁵⁹ KLI interview with Ariana Qosaj Mustafa, High Investigator in KIPRED Institute. Janar 2016.

⁶⁰ Progress Report of the European Union on Kosovo for 2015. Page 13. (See the link http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf). (Last accessed on March 10, 2016).

The KJC has adopted also Administrative Guidelines (AG) on implementing the KJC's decisions, AG on responsibility delegation in matters of personnel, budget and finances, procurement and logistics, AG on transitional periods, AG on expenditures of the representation, AG on implementing the procedure for compensation.

For all these bylaws and specific decisions issued by the KJC, KLI has conducted analysis of their content in view of the fact whether these acts are compatible with the primary legislation, international practices and standards that are applicable in the Republic of Kosovo.

a) Regulations

KLI has analyzed some of the most important bylaws that have been adopted in November and December of the year 2015. Among other findings, KLI indicated that some of the adopted acts aren't aligned with international practices and standards.

- **REGULATION ON CHANGING AND AMENDING THE REGULATION ON KJC'S ELECTION OF MEMBERS BY THE JUDICIARY**

The Regulation on KJC's Election of Members by the Judiciary adopted on May, 21 2015 has defined the procedures and rules for member election of the KJC among colleagues of the judiciary.

Article 3 of this Regulation has foreseen the criteria for electing judges as members of the KJC. KLI has noticed that in this Regulation the KJC, among other criteria that needs to be fulfilled in order to be elected as its member, has foreseen that the judge needs to be elected with a permanent mandate and to possess the necessary level of professional knowledge and expertise. While vice-versa the regulation adapted from the KPC in relation to the selection of its members hasn't foreseen the same criteria and has been restricted to the mere condition that the prosecutor that runs for election in the KPC has no disciplinary measures imposed over the last three years and hasn't been convicted of a criminal offence, with the exception of misdemeanor. Overall, these criteria results to be very general.⁶¹

As it can be noted, the practices followed by the KPC in alignment with this criteria has enabled for an ample number of prosecutors running for KPC's membership, that in the time of their application had just begun their mandate and the same prosecutors were elected in January, 1 2016.⁶²

KLI among other things assesses that the adoption of KJC and KPC's Regulations on Member Election does not comply with the spirit of the two laws; recommendations and the goal of the European Commission which throughout the process of law amendment has specified the harmonization of the legal provisions with the practices between the KJC and KPC as a criteria for the Republic of Kosovo.

The adoption of Regulations not in accordance with the spirit of law and recommendations issued by the European Commission is a further proof that policies and secondary legislation are drafted and adopted due to individual interests.⁶³ The establishment of such practices imposes dire obstacles in

⁶¹Regulation on KPC's member selection, adopted in August 5, 2015, http://www.psh-ks.net/repository/docs/Nr.786.2015-Rregullore_Nr.02.2015--Per_zgjedhjen_e_anetareve_te_KPK-se.pdf

⁶²Regulation of the KPC on the election of its members, http://www.psh-ks.net/repository/docs/Nr.786.2015-Rregullore_Nr.02.2015--Per_zgjedhjen_e_anetareve_te_KPK-se.pdf

⁶³Note: In the fifth plenary meeting related to the Stabilization and Association Agreement between Kosovo and the EU held in July 8 2015, Mr. Jean-Eric Paquet the Director of the European Commission for the Western Balkan expressed his insights on the implementation of law packages stating the following: "We welcome the adoption of these four laws that derive from the judicial package. The adoption of this legislation is just the first step on system or structure alteration.

respect to KJC and KPC exercising their functions and competences as dictated by the Constitution and law, due to the fact that the prosecutors with an initial mandate appointed as members have to be appointed as members of the Permanent Committee or other Committees of the KPC such as: the Disciplinary Committee, the Committee on Prosecutor's Performance Assessment, Appointment, Reappointment, Promotion or Transfer of Prosecutors, a practice that does not comply with the constitutional spirit and logic in relation to the prosecutorial mandate as well as the constitutional division that exists between the initial mandate and the permanent one.

Following this, KLI assesses that it is unacceptable that the prosecutors with an initial mandate, a mandate consisted of a couple of months' worth professional and practical experience, to be given the opportunity to assess the performance of experienced prosecutors including the level of prosecutors working for the OCHSP, Appellate Court, SPRK and BP or furthermore to be in charge of disciplining the violations committed from their colleagues. In fact, such a phenomenon is now enabled and incorporated in the actual structure of the KPC.

It has to be noted that the criteria and professional standards for judges and the KJC, in the majority of other countries that apply the functioning model of the KJC and KPC are equivalent also for the prosecutors, which means that the same practice applies for both judges and prosecutors. Whereas, Kosovo has fulfilled this criterion throughout the process of filing judicial amended law ⁶⁴, the adoption of regulations with various criterion and both Councils have strayed away from the purpose why the law amendment and change was conducted. This occurs due to the fact that both Councils share the same constitutional task and mission, therefore the application of their standards cannot differ to such extent.

In the midst of this session it is crucial the fact that KJC in November 18, 2015 adopted the Regulation on Amending the Regulation on KJC's Member Election by the Judiciary that initially was adopted in May 21, 2015. The amendment of this regulation had incorporated the restriction imposed by Article 3 of the Law Amendment on KJC's Law related to the endorsement of Court Presidents as members of the KJC. Exceptionally, a Court President can run for a KJC membership with the condition to firstly concede from their position as Court President.

One of the flaws of this act is the fact that the Regulation on Amendment and the Basic Regulation haven't foreseen a clear provision on gender equality and the assignment of judges of various levels of the judiciary. Among other things, it hasn't been assigned whether the judges of the Special Chamber of the Supreme Court and Kosovo Property Agency Appeal Panel share the equal status with the judges of the Supreme Court and if the above-mentioned should participate in the process of KJC's member election conducted by the judges of the Supreme Court.

The paucity of these provisions in this Regulation is displayed as an obstacle in the process of appointing new members of the KJC, members selected by the Supreme Court,⁶⁵ including the disagreements of KJC's members on the subject who should be appointed as the new Chairman of the KJC before or after March 8, 2016 when the mandate of the Chairman Enver Peci expired according

Kosovo needs to focus on implementing these laws a rigorously and accordingly manner." Mr. Paquet raised the concern regarding the legal basis of the mandate for some members of the KPC.

⁶⁴ The third report related to Kosovo's progress on fulfilling the criterion for visa liberalization. Published in December 18, 2015. 3rd Block, Security and Public Order. Page 6. (<https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-906-EN-F1-1.PDF>)

⁶⁵ KJC's Meeting, February 2, 2016. (<https://www.youtube.com/watch?v=E997F90pbOw>)

to the decision of the KJC⁶⁶. This issue was accompanied with a significant debate within the institution..

- **REGULATION ON APPOINTING JUDICIAL INTERPRETERS AND TRANSLATORS**

In November 16, 2015 KJC adopted the Regulation on Appointing Judicial Interpreters and Translators that regulates the procedure of status appointment, the conditions, the rights and obligation of legal translators and interpreters.

- **REGULATION ON APPOINTING JUDICIAL EXPERTS**

In November 10, 2015 the KJC adopted the Regulation on Appointing Judicial Experts with the sole purpose of defining the procedures regarding status appointment , conditions, rights and obligations, the amount and manner of compensation. The adoption of this regulation derived as a legal obligation stipulated under Article 33 of the amended Law on Courts.

Article 3 of this Regulation defines the Committee on Appointing the Experts and has envisaged its structure composed by a member of the KJC in the capacity of President, and two judges. The European Commission for Efficiency of Justice, established by the Council of Ministers of the Council of Europe in the year 2012, in order to assess the efficiency and quality of judicial systems, has concluded that there is no consensus for unified practices or European standards regarding judicial witnesses, as well as the recruitment or appointment of judges. While in some countries they are elected by the judiciary, in other countries the election or appointment is exercised by the Ministry of Justice.

KLI finds that a shortcoming of this provision consists on the lack of representation of experts from the judicial sector during their selection process in the Committee of Representatives. Although not specified, international practices and standards recommend that the committees or panels of appointment or selection should include technical experts as well.⁶⁷ The selection of professionals in this field has a crucial importance in view of the fact that those same experts will advise judges in practical cases related to particular legal issues or issues with an accented judicial interest.

Article 5 of this Regulation defines the criterion regarding the appointment of judicial experts and the criterion is quite general. Bearing in mind that judicial experts derive from different fields of expertise, the criterion and condition should be defined specifically. Various EU-country practices envisage the possibility on the participation of legal entities, a possibility that is not incorporated with this Regulation. The apriori defined criterion and selection play a crucial role regarding the reliability and integrity of experts, due to the fact that their work requires not only a great level of expertise, but also inclined level of qualification fully compatible with the complexity of the examination and complete impartiality and independence of the expert. In order for these standards to be fulfilled and a fair process of selection and appointment to be conducted, it is necessary that the KJC through this

⁶⁶ Note: Even through the KJC has decided to elected its new Chairman before the expiration of the mandate of KJC's current Chairman Mr. Enver Peci. In the KJC's meeting held in February 10,2016, the KJC has elected Mr.Nehat Idrizi as the Chairman of the KJC with a 3 year long mandate beginning in March 8,2016.

⁶⁷The report related to European judicial systems, Published 2014 (data 2012), The efficiency and quality in Justice, Chapter 15, page 444. (http://www.coe.int/t/dghl/cooperation/cepej/evaluation/2014/Rapport_2014_en.pdf). (Last access in March 20, 2016)

Regulation to define and implement rules and criterion that will guarantee an aligned work of the expert with constitutional principles.⁶⁸

Finally, Article 11 of this Regulation defines the procedure of the engagement of judicial experts. The article restricts the selection of experts solely from the court and excludes the defendant from the opportunity to access the list of experts adopted by the KJC. This provision contradicts basic principals guaranteed with the Constitution and the Criminal Procedural Code for a fair trial where the parties are equal. The same principle should apply in civil and commercial proceedings.

- **REPORTING OF PRESIDENTS OF BASIC COURTS BEFORE THE KJC**

During the months October, November and December of the year 2015, Court Presidents in Pristina, Prizren, Mitrovica, Gjilan and Peja have reported before the KJC regarding the organization and supervision of the proper functioning of courts respectively, the regular periodic assessments, the court caseloads associated with their efficient operation and other obligation arising from the Law on the KJC and Regulation on Internal Organization of Courts.⁶⁹

Decisions published by the KJC related to the reporting of Presidents of Basic Courts did not reference at all the reporting specified under Article 24⁷⁰ of the Law on the KJC. Article 24 paragraph 4 of this Law stipulates the following: “*The President of the court is responsible on ensuring that the court and its proceedings are opened and transparent for the public. Upon review and acceptance from the Council, quarterly and annual reports on case management plan will be made public.*” Despite this obligation, the adopted reports by the KJC on the work of the Basic Courts haven’t been published nor made available to the public.

KLI throughout the monitoring process of the reporting conducted by Presidents of Basic Courts has found that this process consisted merely on the formal fulfillment of a legal obligation defined by the Law on the KJC and the Internal Regulation, an assessment of the actual situation and identification of problems that exist within the Basic Courts where every President has expressed their complaints regarding the deficit of judges in numbers, the high number of old cases, inadequate work conditions such as in the Basic Court of Mitrovica, working difficulties in the Palace of Justice etc. Such statements sometimes display the seriousness of the situation in terms of installing an effective accountability.

Furthermore, even though the members of the KJC in most cases of the reporting delivered by Court Presidents have admitted the problems that the judiciary, judges and Presidents are confronted with, they have never requested or have attempted to hold accountable any Court President due to the lack of results.

⁶⁸EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ), Guidelines of CEPEJ. Page 41. (http://www.coe.int/t/dghl/cooperation/cepej/textes/Guidelines_en.pdf). (Last access in March 8, 2016)

⁶⁹ *The reporting of Basic Court Presidents before the KJC*; (<https://www.youtube.com/watch?v=FoBWLokwGVA>; https://www.youtube.com/watch?v=2l34_yLr6hc). (Last access in March 22, 2016)

⁷⁰ Article 24- “The responsibilities of the Court’s President”. “The President of a Basic Court has a general- administrative authority and shall ensure the efficient and effective administration of justice in every branch, department and division of the Court. The President of the Court, in cooperation with judges develops the annual plan on case management and delegates the matters into certain departments and judges in order to ensure the efficient resolution of the cases. The President of the Basic Court sends to the Council the quarterly report that addresses the quality of work of the judges, identifies issues that the Court is confronted with, as well as proposes steps on repairing such issues. The Court President, according to the Council’s rules and orders shall undertake other similar steps according to necessity in order to ensure the effective management of the Court and ensure the adjudication of cases within time. The Court President may conduct appropriate delegation of authority.” Law on Kosovo Judicial Council.

Clearly the KJC during the process of reporting delivered by Court Presidents has failed to fulfill its constitutional and legal obligation on supervising the courts and their efficient and effective functioning.⁷¹ After this reporting was addressed, the KJC hasn't reached a decision, given a measure or specific recommendation to increase the efficiency related to specific court performances or to the judiciary in general. Also, throughout this reporting process it is depicted that only a small number of KJC members were active in asking questions and clarifications, whilst the majority of KJC members did not participate in the discussions. The above-mentioned proves that this process has been assessed as a legal formality.

No member of the KJC directed question to the Court Presidents regarding the implementation of strategic plans, policies or other obligations adopted by the KJC itself.

The lack of proactive supervision conducted by the KJC towards the performance of respective Basic Courts, continuously results into an impasse of competences and responsibilities exercising provided to the KJC by the Constitution and law.

- **ACTION PLAN ON RESOLVING CORRUPTION CASES**

In September 25, 2015 the KJC adopted the Action Plan on Resolving Corruption Cases. KLI⁷² in cooperation with the KJC had suggested a draft plan for the resolution of corruption cases, a plan that was adopted by the KJC pursuant an amendment.

Throughout this plan KJC depicts the general situation, the shortcomings related to corruption case treatment, the identification and delegation of cases. The plan has also defined specific activities and practical time periods in order to enhance the activity of corruption case treatment. This plan has foreseen the establishment of the Committee on Supervising the Implementation of the Plan, a committee whose competences have been restricted only regarding the supervision of the action plan implementation. The committee in question won't discuss or interfere with the merit of the case or persons that are subjects of judicial proceedings, but will limit its competence solely on the implementation of prescribed periods of time, while being aligned with the highest judicial standards of impartiality.

This Action Plan has foreseen also the deadlines related to the assessment of its implementation. The first assessment of the plan implementation should have been done in November 2015, whilst the second assessment in January 2016. Despite the obligation defined with this Action Plan, the KJC has failed to fulfill its assessment obligations according to the deadlines prescribed in the Action Plan.

During the reporting done by the Court Presidents before the KJC, there were several things that weren't conducted such as the reporting related to the implementation of this plan, as well as the discussion and questions from the KJC member regarding the implementation of this plan by the Basic Court.

⁷¹KJC's competences and responsibilities, Article 4 of the Basic Law on KJC.

⁷²Note:with KLI's initiative for the implementation of the recommendations published in the analytical reports that intertwine with the efficient and effective treatment of corruption cases by the judicial and prosecutorial system, KLI has held meetings with the KJC's Chairman, Mr. Enver Peci who expressed willingness to cooperate on drafting the Action Plan on resolution of corruption cases. KLI has compiled a draft of this Plan, that was adopted after the amendment process by the KJC in September 25, 2015. "Action Plan on Resolution of Corruption cases" Kosovo Judicial Council, September 25, 2015.

b) The participation and discussion of the KJC members during meetings

KJC throughout November and December 2015 held three meetings. In every meeting of the KJC, 10 out of 11 actual members of the KJC participated, aside from the meeting of November 18, 2015 when Gjimeshit Gaushi was absent. Salih Mekaj was the member who missed out every meeting of the KJC due to his suspension as a result of a disciplinary measure imposed by the KJC.

According to the Law on the KJC, the council's quorum is composed by 9 members and the decisions are reached with a simple majority of votes of the members who are present, unless otherwise specified by law.⁷³

KLI while monitoring the meetings of the KJC, alike the situation of the KPC, has noticed the lack of discussion between all the members of the KPC related to the points specified in the agenda of discussion. Also in the KJC, a limited number of its members have actively participated in the meetings of the Council by exposing complaints, suggestions and recommendations related to the policies, strategies and decisions discussed and adopted by the Council, whilst a great number of members were passive by only participating during the voting process. This approach results to not be the most optimal one for an institution that defines and defends the policies of the judicial system.

KLI while monitoring these meetings has analyzed and calculated the time period where every member of the KJC has participated in the discussions for each point set in the daily agenda. In many daily points of the agenda discussion was lacking related to the adoption of regulations, work reports of Basic Courts and important decision making for the well-functioning of the judicial system in Kosovo.

In the 141st meeting held in November 18, 2015 the Acting President of the Basic Court in Mitrovica Ali Kutllovci has reported before the KJC that "In this the northern part of the country of these Court 1719 criminal proceedings and 1254 civil proceedings haven't been preceded at all. A total of 686 cases in the Serious Crimes Department were never delegated to the judges and in November 12, 2015 he personally delegated these cases by putting a stop to them being shelved." He also expressed his concern due to the deficit of 30 judges that this courthouse has in proportion with the number of inhabitants. There for, he requested from the KJC to fill in the position of judges and professional associates. A problematic area, according to Kutllovci, is the issue of sequestration and confiscation. He stated that the judges of Mitrovica find themselves in a rather difficult position that can result in the abandonment of their positions. Kutllovci requested from the KJC to visit the Court in Mitrovica at least once or twice per year in order to understand their situation.

After the reporting of the Court President in Mitrovica, the members of the KJC Enver Peci, Agim Maliqi, Valdete Daka and Asllan Krasniqi discussed the presented report, a discussion that mainly was related to the statistical dimension of the concluded cases in this Court and its branches. No other member of the KJC participated in this discussion and the Acting President of the Basic Court in Mitrovica Ali Kutllovci did not receive answers in correlation to the problems and challenges depicted in the report of the year 2014 and first half of the year 2015.

Before the KJC in this meeting reported Zyhdi Haziri, President of the Basic Court in Gjilan and he emphasized that the work efficiency during 2015 was much more inclined than 2014. It should be

⁷³ Article 14 point 4 of the Law on KJC, (<https://gzk.rks-gov.net/ActDetail.aspx?ActID=2713>). (Last access in March 16, 2016)

taken into consideration that throughout 2014 this Court and its branches were composed of 31 judges in total, lacking 6 judges from the intended number (37), but in the year 2015, 2 more judges joined and this repaired slightly the situation. Haziri requested from the KJC to fill in the 5 or 6 intended position of judges in this Court. Apart from this he requested the Council to hold its meeting for the reviewed annual report for Presidents in the region of the places the reporting is done, because this would affect positively upon the administration and judges of the Courts.

The reporting of President, Zyhdi Haziri did not spark a debate among the members of the KJC. The President wasn't challenged with questions or clarifications related to the administration and functioning of this Court. The only ones who participated in the discussion were Enver Peci and Nebojsa Boricic.

The next one to report during this meeting was Elmaze Syka, President of the Basic Court in Peja. According to her this period was very efficient in terms of work-flow. Although, she rose her concern related to the deficit of judges because during 2014, 10 judge positions were lacking and a year later only 5 positions were filled in. Yet, the biggest concern is in the Branch of Klina that is composed only from one judge who is also the Supervisor of the Branch, whilst the number of cases is very high. Syka recalled that the 40 days boycott affected their work because more than 700 cases were pushed back and she blamed the KJC's indifference for this situation.

The only members that debated Sylja's reporting were the Chairman of the KJC Enver Peci and Valdete Daka. The President stated that the capacities should be inclined along with the number of judges, but he had considered that the situation was bearable. Whilst, no other member of the KJC participated in the discussion or debate introduced by the presented report.

Despite the fact that KJC had reached a written decision related to the reports of Basic Court Presidents of Mitrovica, Gjilan and Peja, a formal voting among the members of the KJC never took place.

Another point of the agenda in this meeting was the revision and adoption of the Draft Regulation for amending the Regulation 02/2015 on Selection of the KJC's Members by the judiciary. This point as well was followed with a limited number of the KJC's members participating on the text of the Regulation, whilst most of the members didn't bother to discuss at all.

In the 142nd meeting held in December 2, 2015 The President of the Basic Court in Pristina, Hamdi Ibrahim presented the annual work report for the year 2014. According to him, an ongoing challenge shall remain the treatment of old judicial cases. Other issues include the work overload of judges, the deficit of judges, the level and quality of work in the Serious Crimes Department. He emphasized as a limited issue the legal regulation of the composition of panels in the Serious Crimes Department. He stated that another issue is the Administrative Disputes Law that sets a deadline of 90 days to proceed with a case, a time period that does not suffice due to the constant inclination of the number of cases.

Ymer Hoxha, the President of the Basic Court in Prizren in his presentation of the annual report for the Basic Court in Prizren depicted a decline of the number of cases. Among the problems he mentioned are the deficit of 5 judge positions, difficulties with interpreters and the fact that nonetheless the many requests of the Court, the KLC's wasn't very helpful towards them.

Like mentioned before, throughout the presentation conducted by Court Presidents of Prizren and Pristina, a limited number of members participated in the discussion and among the most distinguished were the President of the Council, Valdete Daka and Agim Maliqi.

The KJC lead a discussion related to the Code of Ethics for Judges. The President of the Council proposed that the draft compiled by the Committee for Normative Acts for this code to be sent to all the judges so that they can address their comments and concerns and afterwards to approve the code. The members of the KJC agreed upon this proposal. Two points of the agenda: the request of judges to engage in learning processes and the adoption of the Regulation on the Board of the Project SMIL, respectively were postponed for the next meeting.

In the 143rd meeting held in December 16, 2015 the KJC lead a discussion related to the Progress Report and its findings on the area of the judiciary. In this point of the agenda the creation of mechanisms within the judicial system was a request in order to increase the accountability and transparency in the judiciary, in the reduction of old cases and the increase of the judiciary budget.

For another point discussed solely by the member Agim Maliqi during this meeting that was the Report on the Strategic Plan Implementation, the rest of the members agreed that the voting process won't be set forward for this issue.

In this meeting a discussion was set forth regarding the Work Plan of the Committee for Corruption Cases. The Chairman Peci pointed out that the purpose consists on harmonizing statistical data, an issue that is experiencing difficulties, as well as to conclude a clear image of the cases. Peci said that the Strategic Plan has foreseen the issues that should be reported on and the Court Presidents aren't performed accordingly to this plan. There for, he considers that in the future they should strictly comply with the requests of the KJC.

c) The transparency of the KJC on the publication of regulations, strategies, reports and decisions

The KJC has adopted and publish in November the following:

- Regulation on amending the Regulation 02/2015 on Selection of the KJC's Members by the judiciary;
- Regulation on Appointing the Judicial Interpreters and Translators;
- Regulation on Appointing Legal Experts; and
- Amendment of the Administrative Guideline 01/2015 on implementing the KJC's decision on the delegation of responsibilities from the SKJC to the Court

The KJC hasn't published the Court President reports, but has published the decisions on:

- The report of the President of the Basic Court in Mitrovica
- The report of the President of the Basic Court in Gjilan
- The report of the President of the Basic Court in Peja
- The report of the President of the Basic Court in Prizren
- The report of the President of the Basic Court in Pristina

Following are depicted other decision published on the website of the KJC for this time period:

- The transfer of judge Burim Emerllahu, from the Basic Court in Gjilan to the Basic Court in Ferizaj
- The transfer of judge Venhar Salihu, from the Basic Court in Ferizaj to the Basic Court in Gjilan
- The endorsement of judges Manushe Karaçi dhe Hajrije Shala as judges of the Special Chamber in the Supreme Court; and
- The decision on delegating the responsibilities from the SKJC to the Court.

The KJC didn't publish the Work Reports of the Basic Courts in Mitrovica, Gjilan, Peja, Prizren and Pristina.

The KJC has translated and published almost every regulation adopted in Serbian language, aside from the Regulation on amending the Regulation 02/2015 on Selection of the KJC's Members by the judiciary.

The KJC didn't translate and publish in Serbian language any of the decisions adopted by the KJC throughout the months of November and December 2015.⁷⁴

VI. KPC OBLIGATIONS RELATED TO THE ENFORCEMENT OF AMENDED LAWS ON KPC AND SP

Article 19 of the Law on the Kosovo Prosecutorial Council, foresees that Articles 3, 4, 8 and 10 of this Law will enter into force on January 1, 2016. While the rest part of it, will enter into force 15 days after publication of this law in the official gazette.

One of the challenges of KPC is also the short period of time for taking actions and activities to implement provisions related to the new composition of KPC and to the transfer of Secretariat from the Office of Chief State Prosecutor to KPC. One of the shortcomings of the amended law on KPC, is the lack of transitional provisions related to the mandate of current members of KPC, whether among prosecutors or non-prosecutors members, but who at the same time exercise the function of Chief Prosecutors of respective Prosecution Offices, with the exception of the Chief State Prosecutor, who based on the law, serves as a member of KPC ex officio. This lack has caused polarization and significant problems in practice.

In order to have an easy transition without obstacles and in order to fulfill the obligations arising from the law on KPC, on September 11, 2015 the Council has established a large⁷⁵ and comprehensive working group consisted by members of KPC, the Secretariat and prosecutors from respective Prosecution Offices to draft and amend KPC regulations.

One of the challenges of KPC in fulfilling obligations has been the process of electing the members of KPC, among prosecutors. This has been by given the fact that the Law on KPC does not foresee transitional provisions related to the mandate of the current members of KPC. KPC has not paid the

⁷⁴Note: KLI has involved in focus of this report, publication and translation of KJC documents until the end of 2015. The data on this report involve only fulfilled obligations until this date.

⁷⁵ KPC Decision on establishment of the Working Group in charge of Drafting and Amending Regulations KPC. (http://www.psh-ks.net/repository/docs/No.913.2015_Decision-_Establishment_of_the_Working_Group_in_charge_of_drafting_and_amending_Regulations.pdf) .(Last accessed on March 22, 2016).

necessary attention to the acquired rights of current members of the Council, by not respecting the law and the best international standards and practices for similar cases.⁷⁶

During this transition stage, KPC must have cooperated with the Committee on Legislation in the Assembly of Kosovo about the vacancies announcements for non – prosecutor members, among KBA and Law Faculties, whereas the lack of this cooperation has impacted to the election of these KPC members, who have not been elected yet. Furthermore, this situation has gone so far so that before electing the Chairperson of KPC, during December, the proposals of members from KBA and Law Faculties were submitted to KPC instead of submitting them to the Assembly of Kosovo.

Also, during the transition stage, in accordance with the obligations arising from Article 5 of the new law and Article 19 paragraph 2, as of January 1, 2016, KPC must draft regulations and other documents related to the establishment and functioning of the Committee for the Administration of Prosecution Offices.

Among these challenges of KPC, one of them has been the transfer of the Secretariat from the Office of Chief State Prosecutor to KPC. Considering the fact that the Secretariat of the Chief State Prosecutor Office, is consisted by a large number of offices and personnel, it has been necessary to amend and to change a large number of regulations which regulate the functioning of Secretariat, as regulations on the: Functioning and Activity of KPC, the provisions related to the Secretariat, Regulation on the Organizational Structure and Administrative Support of the Chief State Prosecutor Office. KPC has not carried such and obligation yet, and it still operates by the old regulations.

Despite the fact that KPC has been obliged to transfer Secretariat from the Office of Chief State Prosecutor to KPC, this has not happened neither during April of 2016. KPC still operates with the old regulation which regulate the activities of Secretariat of Chief State Prosecutor Office, even though from January 1, 2016 , the Law on KPC has foreseen the operation of Secretariat under KPC. Through its mismanagement, KPC has come in a position to make such an important institution as it is the Secretariat of KPC, to operate in violation of the law. Therefore, KPC must urgently address this issue and not continue to breach the law on which it was established.

⁷⁶*Petition from Miloš Melčák, Member of Parliament, seeking the annulment of constitutional Act no. 195/2009 Coll., on Shortening the Fifth Term of Office of the Chamber of Deputies.* There is a fundamental difference in the framework shortening the term of office of the Czech National council by constitutional Act no. 64/1990 Coll., on the one hand, and shortening the term of office of the Chamber of Deputies of the Parliament of the Czech Republic by constitutional Acts no. 69/1998 Coll. and no. 195/2009 Coll., on the other hand. The first of the three cited constitutional acts was adopted before elections were held and a representative assembly constituted, and the two others were adopted afterwards. Thus, they retroactively set the conditions for exercising voting rights (active and passive), The presumptions on the basis of which the voters decided in the elections to the Chamber of Deputies were changed with retroactive effect. The Constitutional Court considers such circumvention of fundamental constitutional principles to be incompatible with the principle of the prohibition on retroactivity, in connection with the principles of protecting justified confidence by the citizens in the law and the right to vote freely, i.e. – among other things – the right to vote with knowledge of the conditions for creating the democratic public authorities resulting from the elections, including knowledge of their term of office. The Constitutional Court considers violation of these constitutional principles arising from Art. 1 par. 1 of the Constitution to be interference with the essential requirements for a democratic state governed by the rule of law, enshrined in Art. 9 par. 2 of the Constitution. ([http://www.usoud.cz/en/decisions/?tx_ttnews\[tt_news\]=468&cHash=b239af8f32f409fe77493adf911e665f](http://www.usoud.cz/en/decisions/?tx_ttnews[tt_news]=468&cHash=b239af8f32f409fe77493adf911e665f)). (Last accessed on January 15, 2016).

In December 2015, KPC has adopted the Regulation on Internal Organizing for Prosecution Offices, which has started to be implemented on January 15, 2016. The adoption of this Regulation, has been one of the basic obligations for prosecutorial system, by considering that this regulation is fundamental for the efficient functioning and administration of Prosecution Offices at all levels.

The main challenge of prosecutorial and also judicial system is the implementation of legal provisions regarding recruitment and appointment process for prosecutors and judges. In fact, this was a criteria for the Visa Liberalization and one of the findings in the Kosovo Progress Report 2014, of the European Commission, where among other things it was noted the harmonization of the legal provisions relating to recruitment and appointment of judges and prosecutors.

Given this, KJC and KPC in accordance with the legal obligations and amendments in Articles 7 and 8, it is foreseen for these two Councils to draft and adopt specific regulations regarding the initial exam for judges and prosecutors. These regulations must be harmonized between the two Councils, always by taking into consideration the specifics for judges and prosecutors, and must define clear criteria, conditions and procedures. Moreover, this represents an additional challenge in implementing them, for both Councils, because so far, such a competence has been implemented by the Kosovo Judicial Institute.

The new law has made some substantial changes in terms of the criteria that must be met by the candidates who apply for the position of prosecutor, therefore in accordance with this, KPC has adopted the amendment of the Regulation on Prosecutors Recruitment, Appointment and Reappointment Process.

VII. ADOPTION OF SECONDARY LEGISLATION AND POLICIES BY KPC

During 2015 KPC was followed by a lot of controversies and uncertainties regarding the legal mandate of three members of KPC, respectively the mandate of Mrs. Sevdije Morina, member of KPC from SPRK, Mr. Jetish Maloku, member of KPC from the Basic Prosecution Offices and Mr. Bajram Uka, a non-prosecutor member from Law Faculties. While, on March 8, 2010, Mrs. Morina was elected as a member of KPC at that time and also a member of the Independent Judicial and Prosecutorial Commission (IJPC). During March 2011, Mrs. Morina was transferred as a member to KPC which was recently established under the Article 43 of the Law on KPC and which entered into force on January 1, 2011. While Mr. Maloku on July 15, 2010, was elected as a member of KPC and at the same time as a member of IJPC. Same as Mrs. Morina, Mr. Maloku was transferred as a member to KPC which was a recently established Council, under the Article 43 of the Law on KPC and which entered into force on January 1, 2011. The Law on KPC has foreseen a five year mandate for the members of KPC by not opening possibilities for extension. Also, international representatives who supported KPC had given their opinion regarding aforementioned mandates of KPC, who had come to a conclusion that the five-year mandate of members amongst prosecutors cannot be extended, as it was foreseen by the law.⁷⁷

⁷⁷Note: International advisers of EU project, who support Kosovo Judicial and Prosecutorial Councils, in their opinions regarding the mandate of KPC members among prosecutors, had concluded that "after analyzing all relevant facts and applicable legal framework, the Project Team do not find sufficient arguments to support the legality of permitting the require to extend the additional mandate for one-year, to one of the current members KPC, transferred from KJC / IJPC - Mrs. Morina or Mr. Maloku."

Even despite the recommendations of international consultants⁷⁸ who support KPC, the same Council has decided to extend the mandate in an unlawful manner to Mrs. Morina and Mr. Maloku until 2015.

While international consultants from EULEX, who support KPC, have had a different opinion from other international consultants and recommended to extend the mandate of Mrs. Morina and Mr. Maloku until 2016. EULEX recommendation and the illegal extension of the mandate of two KPC members was also discussed at the fifth plenary meeting regarding the Stabilization and Association Agreement between Kosovo and the EU, held on July 8, 2015. At this meeting, the Director for the Western Balkans of the European Commission has expressed its opinion regarding the implementation of the package of laws, by stating: "*We welcome the adoption of four laws arising from the judicial package. Adoption of legislation is the first step to change the system or the structure. Currently, Kosovo needs to focus on the rigorous and appropriate implementation of these laws*". Mr. Paquet has expressed his concerns about the legal basis of the mandates of some KPC members.

By deciding to extend the mandate for the contested members, KPC has also acted contrary to international standards and practices. While the same members with an extended mandate, have participated in the discussion and voting process to extend their mandate. This action by the members of KPC is in contradiction to the recommendation of the international consultants who support KPC.⁷⁹

KPC members for whom it was discussed the extension of the mandate have participated in the discussion and has enabled the quorum for the extension of this mandate. KLI considers that such an action shall be reviewed if it is in violation of the Code of Ethics and Professional Behavior for KPC members, and such action consumed the criminal offense conflict of interest, which issue has never been treated by Agency Anti-Corruption or State Prosecutor.

By the end of 2015, KPC has adopted regulations, decisions and other documents by having a composition of contested members with unlawful mandates, and this issue was stated in the Progress Report of the European Commission for Kosovo, because these decisions were taken contrary to the hierarchy of normative acts in Kosovo.⁸⁰

Adopted decisions by KPC by an unlawful composition, could be subjects of court proceedings, including here the Constitutional Court in cases of violations of human rights and freedoms.

Regarding unlawful mandate of KPC members, the same situation has happened also with the Judicial Council of Serbia. In the case known as "Saveljic case", based on the appeal addressed to Constitutional Court of Serbia, this Court has decided regarding the mandate of a member of the Judicial Council and has found law violations during the establishment of this Council. In this case the Constitutional Court has annulled the decision of Serbia Judicial Council taken on December 25,

⁷⁸ Note: The analysis of United States Department of Justice, regarding the mandates of members among prosecutors, has advised KPC: "*The mandate of the two KPC members from IJPC must expire on March 2015. This represents the natural expiration of the first appointed member. Since both of these two mandates begin with the first appointed member then will end with the expiration of the first appointed member's mandate, and both of mandates must end on March 2015*" (The law on the Temporary Composition of the KJC, Article 7, p.1)

⁷⁹ "As a conclusion, there are clear conflicts of interest that need to be addressed before the process of discussion and voting. First, none of KPC member, whose mandate is questioned, should not serve on the working group for the preparation of legal analysis that must be delivered to the Council. Second, none of members, whose mandate is questioned, should be allowed to participate at any discussions and to vote on their mandate. In order to maintain the quorum for review and final vote, the two issues should be treated separately. Regarding the mandate of prosecutors, none of two of them should be allowed to participate in the voting and discussing process." The analysis of United States Department of Justice

⁸⁰ Progress Report of the European Commission for Kosovo for 2015. Page 13. (See the link <https://mapl.rks-gov.net/getattachment/5f36573c-bb6e-4caf-9974-e12b1e2db841/Kosovo-2015-Report.aspx>). (Last accessed on March 22, 2016).

2009, and it has opened the possibility for every judge who considered that was affected by the unlawful composition of the Judicial Council, to file an appeal to the Constitutional Court.⁸¹

Same as it happened in KJC, the process of drafting and adopting policies and secondary legislation by KPC have been and remain to be an ongoing challenge, in qualitative and quantitative terms but also in other aspects. The lack of transparency in the process of adopting and drafting this legislation remains to be a problem to KPC.

During the research process, KLI has noted the lack of transparency in the process of drafting bylaws, determining the agenda of secondary legislation, in the participation of stakeholders in this process and in discussions with the public. Another problem are also the delays in adopting bylaws which means that KPC has neglected them, and had no will to implement legal provisions. Among other things, this negligence has cost KPC many practical complications of several processes that depend on these regulations and other legal acts.⁸²

a) Regulations

Further, KLI has analyzed some of the legal acts, which were adopted during November and December 2015. KLI's findings show that some of the adopted legal acts violates laws and international practices and standards.

- **REGULATION ON THE COMMITTEE FOR NORMATIVE ACTS**

The Article 8A of the supplemented Law on KPC, has explicitly specified that the Council has its Standing Committees, involving here also the Normative Matters Committee. Also the provisions of the basic law have foreseen the establishment of Committees, which are considered as necessary from the Council.⁸³ Until amending and supplementing the Law on KPC, the Normative Matters Committee, was established on March 4, 2013 and had operated only under the Article 26 of the Regulation on Functioning and Activity of KPC.

In the meeting held on December 1, 2015, KPC has approved the Regulation on the Committee for Normative Acts, through which are defined the powers and responsibilities of the Committee.

⁸¹On the occasion of the declaration by the Chairman of High Judicial Council, Nate Mesarović, who during the past days has stated in the media, that: "The Constitutional Court of the Republic of Serbia in its opinion that the composition of the High Judicial Council was not completed, does not affect to the legality of work because the law has foreseen that High Judicial Council's decisions are made by the majority of votes" and the conclusion of the High Judicial Council that the meeting from January 16, 2012 "because the uncompleted composition of the Council cannot put on question the legality of work and decision-making" which was evaluated also by the Constitutional Court by the decision: no. VIII U-102/2010 dated on May 28, 2010, by which it was decided on the appeal of the newly elected judge Zorana Saveljića "in order to provide full information, the Constitutional Court of Serbia, informs the public as follows: The Constitutional Court on May 28, 2010 has received an appeal by Mr. Saveljić and has annulled the decision of High Judicial Council made on December 25, 2009, to the part on which the judges has ceased judicial functions. The Constitutional Court has exclusively explained by this decision, regarding the question of the constitution of the first composition of High Judicial Council, regarding the legality and legitimacy of the current High Judicial Council, the Constitutional Court has not been declared until now, but it will do it through its decisions based on cases of judges' appeals against High Judicial Council. (See the link http://www.ustavni.sud.rs/page/view/sr-Latn-CS/0-101537/saopstenje-za-javnost?_qs=Nate). (Last accessed on March 15, 2016).

⁸² Progress Report of the European Commission for Kosovo for 2015. Page 13 (See the link http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf).(Last accessed on March 15, 2016).

⁸³ Article 4, paragraph 1.26. The on Kosovo Prosecutorial Council (See the link <http://www.kuvendikosoves.org/common/docs/ligjet/2010-224-eng.pdf>). (Last accessed on January 20, 2016).

Article 5 of this regulation specifies that the Committee shall have at least three members and they shall serve for a five (5) year mandate. Committee Chairman shall be elected among Council members, whereas prosecutors may also serve in the capacity of Committee members. It is worth mentioning that there has not been any significant debate regarding the adoption of this regulation, moreover, it was discussed to involve all of KPC Standing Committees in just one regulation, due to an easier practical implementation.⁸⁴

- **REGULATION ON ASSIGNMENT OF CASES**

The supplemented Law on State Prosecutor has foreseen that KPC shall be obliged that within three months after the entry into force of this Law, to issue a Regulation regarding the Assignment of Cases. In this regard, on December 1, 2015 KPC has adopted the Regulation on Assignment of Cases⁸⁵, in order to regulate the system of assignment of cases in the Institution of the State Prosecutor, which is an obligation for all Chief Prosecutors, State Prosecutors and administration staff. It is expected that this regulation will facilitate this process in practice, which so far has hindered the efficient work in a better management of prosecution offices and also in prosecutors' efficiency.⁸⁶

- **REGULATION ON CHIEF PROSECUTORS' APPOINTMENT**

Conclusions from the sectorial meeting on justice, freedom and security regarding the Stabilization and Association process between Kosovo and the European Union, held in Brussels on 27-29 January 2015, had foreseen a number of conditions that Kosovo must meet until June 2015.⁸⁷ One of the conditions that KPC should have met was the appointment of the Chief Prosecutor of SPRK. Consequently, before the appointment process of the Chief Prosecutor of Prosecution Office, the Regulation on Chief Prosecutors' Appointment, should have been drafted and adopted. Yet despite this, KPC has not fulfilled this obligation during 2015, because it has failed to appoint the Chief Prosecutor of SPRK and Appellate Prosecution Office. While, KPC has managed to adopt in December 2015, the Regulation that foresees the manner of electing and appointment process of Chief Prosecutors of SPRK, Appellate Prosecution Office and Basic Prosecution Offices.

The Law on amending and supplementing the laws related to the mandate of the European Union mission for the rule of law in Kosovo, which entered into force in May 2014, has foreseen to transfer the powers related to the management and administration of SPRK to the local prosecutors, for the first time since the establishment of this Prosecution Office. On May 30, 2014, based on their decision, KPC has appointed the former Deputy / Chief Prosecutor of SPRK, Mrs. Sevdije Morina, as Acting Chief Prosecutor of SPRK⁸⁸, While the former Chief Prosecutor of this Prosecution Office, Mr. Jonathan Rathel, was appointed by the EULEX mission, the Deputy Prosecutor of the SPRK. Mrs. Sevdije Morina has exercised this function until August 2015, when she was advanced to the

⁸⁴ KLI interview with Mr. Florent Muçaj, non-prosecutor member of KPC among the civil society. December 2015.

⁸⁵ Regulation on Assignment of Cases. Adopted on December 1, 2015. Kosovo Prosecutorial Council. (See the link http://www.psh-ks.net/repository/docs/Regulation_06.2015_on_Assignment_of_Cases.pdf). (Last accessed on March 20, 2016).

⁸⁶ KLI interview with Mr. Florent Muçaj, non-prosecutor member of KPC among the civil society. December 2015.

⁸⁷ Conclusions from the sectorial meeting on justice, freedom and security regarding the Stabilization and Association process between Kosovo and the European Union, held in Brussels on 27-29 January 2015. (See the link http://eeas.europa.eu/delegations/kosovo/documents/press_corner/2015/20150223_final_sapd_jls_follow-up_actions.pdf). (Last accessed on Mars 15, 2016).

⁸⁸ Kosovo Prosecutorial Council Decision, No. 141/2014, dated on May 30, 2014, for the assignment of Acting Chief Prosecutor of Special Prosecution of the Republic of Kosovo. (http://www.psh-ks.net/repository/docs/Decision_588_2014_on_assignment_of_Sevdije_Morina_Acting_CHP_of_SPRK.pdf). (Last accessed on January, 20 2016).

position of prosecutor in the Office of Chief State Prosecutor. While KPC has continued to appoint acting Chief Prosecutors in this Prosecution Office, respectively, on August 4, 2015, in this position was appointed the prosecutor Reshat Millaku, who exercised this function also in April 2016.

In the meeting held on November 9, 2015, KPC has adopted the Regulation on Chief Prosecutors` Appointment. Based this regulation, the Council has determined the procedures for the appointment of Chief Prosecutors of SPRK, Appellate Prosecution Office and Basic Prosecution Offices. It should be emphasized that this was done on a significant delay.

Regarding this regulation in terms of the content it offers, it should be noted that based on this regulation are defined specific criteria for appointment of Chief Prosecutors, which criteria are almost the same as the criteria for exercising the function of prosecutors in SPRK and in the Appeal Prosecution Office. The Article 8, of the amended Law on State Prosecutor, foresees that to exercise the function of a prosecutor at the Appellate Prosecution Office, the candidate must have at least five (5) years of legal experience as a prosecutor or a judge in the Specialized Departments of Basic Prosecution Offices or SPRK.

One of characteristics of the criteria foreseen by the aforementioned Regulation is that the criteria's for the Chief Prosecutor of the Appellate Prosecution Office are the same with the criteria set by law, for exercising the function of prosecutors in these Prosecution Offices, which means that Chief Prosecutor of Appellate Prosecution Office must have five (5) years' experience same as the criteria for exercising the function of the prosecutor in this Prosecution Office. The same logic was applied also regarding the criteria for the position of Chief Prosecutor of SPRK.

Also, in the case of electing the Chief State Prosecutor, this regulation is in contradiction with the Law on State Prosecutor, and the standards applied in this law. Article 8 of this law, foresees that to exercise the function of a prosecutor for the Office of Chief State Prosecutor, the candidate must have at least seven (7) years of legal experience as a prosecutor. On the other hand, to exercise the function as the Chief State Prosecutor, the candidate must have at least eight (8) years' experience as prosecutor.

This practice and this standard were not applied also to the criteria for Chief Prosecutor of SPRK and Appellate Prosecution Office, by lowering the required criteria to exercise the function of a prosecutor in Prosecution Offices, despite the fact that according to the Law on State Prosecutor, Chief Prosecutor has the authority and responsibility in administration and management of the Prosecution in which it is appointed.

KLI has also noted that the title and purpose of this regulation do not coincide with its own content. Since based on this regulation KPC aims to define procedures and criteria for appointing the Chief Prosecutors of the relevant Prosecution Offices, part of this regulation are also premature termination or dismissal of the mandate of Chief Prosecutors.

Moreover, after the analysis and research of the applicable law in Kosovo, KLI considers that Articles 12 and 13 of the Regulation on Chief Prosecutors` Appointment⁸⁹ are inconsistent with the Constitution itself, the Law on State Prosecutor, Law on KPC and international practices and standards applicable in Kosovo, by defining additional criteria and procedures related to premature

⁸⁹ Regulation on Chief Prosecutors` Appointment. Kosovo Prosecutorial Council. (http://www.psh-ks.net/repository/docs/Regulation_no.03-2015,_on_Appointment_of_Chief_Prosecutors.pdf). (Last accessed on March 20, 2016).

termination of Chief Prosecutors' mandate from relevant Prosecution Offices, out of the scope of criteria foreseen by law.

Article 109 and 110 of the Constitution foresees that the appointment and dismissal of prosecutors must be based in the criteria and procedures determined by law. Also, the Article 4 of the amended law on Chief State Prosecutor has foreseen that Chief Prosecutor of the Appellate Prosecution Office, Chief Prosecutor of SPRK, and Chief Prosecutors of Basic Prosecution Offices are appointed and dismissed in accordance with the Law. While the Article 20 of the same law foresees that prosecutor's mandate ends upon the resignation, dismissal, death, retirement, the loss of working ability due to proved medical reasons, and not being re-appointed with a permanent mandate.

Amended and supplemented Law on KPC has also foreseen performance assessment of prosecutors with permanent mandate, including also performance assessment of Chief Prosecutors. This baseline assessment is performed every three (3) years, and does not foresees the assessment of prosecutors of Chief Prosecutors with permanent mandate out of the scope of criteria and procedure foreseen by the law.

The Regulation on Chief Prosecutors' Appointment, has foreseen additional criteria and procedures, out of the scope of what was foreseen by the Constitution and law. These criteria have foreseen the possibility that a prosecutor or Chief Prosecutor may be dismissed in cases when s/he fails accomplishing tasks as defined by law, s/he fails in managing with the Prosecution s/he leads or when s/he fails to apply the instructions and orders of Chief State Prosecutor, issued in written, regarding the performance effectiveness, unification of practices and, for failing to inform the Chief State Prosecutor as per instructions issued by the latter.

Also, Article 13 of this Regulation has foreseen that the Chief State Prosecutor may directly recommend to KPC dismissal of a respective Chief Prosecutor, in accordance with the criteria set in Article 12, which are not defined by law

Article 12 and 13 of the Regulation are in contradiction with the spirit of the law on KPC, which foresees that the Committee of Prosecutors' Performance Assessment is competent to evaluate the performance of Prosecutors and Chief Prosecutors and this Committee reports its results only to KPC.

Also, Article 2 of the amendment and supplemented Law on KPC, has foresees to give KPC competences only to issue Regulation on the procedure of Chief State Prosecutor's Appointment and Appointment of Chief Prosecutors. Whereas none of the provision has foreseen the issuing of a Regulation on dismissal or premature termination of respective Chief Prosecutors' mandate, unless at cases when the regular assessment is done or in cases when are imposed disciplinary measures by competent mechanisms within KPC.

Also the proposal of Chief State Prosecutor to initiate the dismissal of Chief Prosecutors from respective Prosecution Offices is in contradiction with the best international practices and standards which aim to preserve the independence and to prevent external influence. The opinion number 712/2013 of Venice Commission, dated on March 24, 2014 regarding the draft law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, has provided concrete recommendations in order to avoid possible ways to enhance a person's individual powers or particular position such as the position of Chief State Prosecutor. Respectively this Commission has clarified its opinion regarding Article 53 of the aforementioned draft law: *"An additional problem regarding this, is the empowerment Chief Prosecutor to select deputy chief prosecutors from among the appointed prosecutors in the office who satisfied the necessary requirements. He or she then*

*notifies the decision to the HJPC. It seems these appointments are entirely in the hands of the Chief Prosecutor. In a hierarchical system such as that of Bosnia and Herzegovina, giving so much power over appointments to a single individual especially without any requirement to consult with anybody else, could be a recipe for the Chief Prosecutor to select deputies chosen for their compliance and lacking the necessary independence of thought necessary in a good prosecutor”.*⁹⁰

Also in this opinion the Venice Commission, gives explanations and concrete recommendations regarding the process of assessment to prosecutors, judges, Court Presidents or Chief Prosecutors. Among other things in its opinion the Venice Commission explicitly explained that it is unjustifiable that the draft law for HJPC to give competences to the President of the Supreme Court or to Chief State Prosecutor, for deciding regarding the need to make assessments for Court Presidents or Chief Prosecutors of lower levels. According to this opinion, the disciplinary procedure should be open in case of having concrete problems in specific cases, including here providing necessary guarantees.⁹¹ Moreover, the Commission considers that criteria on assessment must be defined by law, transparent and not ambiguous, must be published earlier regarding the possibility for dismissal of a judge or Court President. Any excess of this procedure could open up the possibility of having initiated manipulation based on political and personal grounds.

- **REGULATION ON PROSECUTORS RECRUITMENT, APPOINTMENT AND REAPPOINTMENT PROCESS**

In accordance with obligations that have arisen from the supplemented Law of the State Prosecutor and supplemented Law on KPC, on December 11, 2015, KPC has adopted an Regulation on Prosecutors Recruitment, Appointment and Reappointment Process. Actually, this is a supplemented regulation of the same Regulation adopted by KPC in September 2013.⁹² In this sense, this regulation does not contain any innovations, in terms of new choices.

The main challenge for prosecutorial and judicial systems remains to be the implementation of legal provisions regarding recruitment and appointment process for prosecutors and judges. One of the criteria for Visa Liberalization and one of the findings of EC Progress Report for Kosovo for 2014, inter alia, was to harmonize the legal provisions relating to the recruitment and proposal for appointment of judges and prosecutors.

Given this, in accordance with legal obligations and amendments in Articles 7 and 8, KJC and KPC must draft specific regulations regarding the initial exam for judges and prosecutors. These regulations must be harmonized between the two Councils, always by considering the specifics of

⁹⁰Venice Commission’s opinion no. 712/2013, dated on March 24, 2014, regarding the draft law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. Page 16. “*An additional problem is that Article 53 of the draft Law empowers the Chief Prosecutor to select deputy chief prosecutors from among the appointed prosecutors in the office who satisfied the necessary requirements. He or she then notifies the decision to the HJPC. It seems these appointments are entirely in the hands of the Chief Prosecutor. In a hierarchical system such as that of BiH, giving so much power over appointments to a single individual especially without any requirement to consult with anybody else, could be a recipe for the Chief Prosecutor to select deputies chosen for their compliance and lacking the necessary independence of thought necessary in a good prosecutor.*” (See the link [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)008-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)008-e)). (Last accessed on February 10, 2016).

⁹¹Venice Commission’s opinion no. 712/2013, dated on March 24, 2014, regarding the draft law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina. Page 17. point 87. (See the link [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)008-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)008-e)). (Last accessed on February 10, 2016).

⁹² Regulation on Prosecutors Recruitment, Appointment and Reappointment Process (See the link http://www.psh-ks.net/repository/docs/Nr.1045.2013-Rregullore_Nr.03.2013-Per_procesin_e_rekrutimit,emerimit_dhe_riemerimit_te_prokuroreve1.pdf). (Last accessed on March 15, 2016).

judges and prosecutors, and which must foresee harmonized and clear criteria, conditions and procedures. Moreover, this is an additional challenge for both Councils, because such competence has been implemented so far by the Kosovo Judicial Institute.

One of the ongoing criticisms from local and international institutions, that have followed judiciary and prosecution system, is the one related to integrity of proposed candidates for the state prosecutor or judge. Also, Kosovo Progress Report has consistently criticized Kosovo regarding the submission of proposals Article 21 of adopted regulation by KPC on the process of prosecutors' appointment, generally defines only the assessment process of personal integrity of candidates for prosecutors, by not clarifying and defining what is meant by personal and professional integrity, which is a deficiency that causes major problems in practice.

Moreover, the lack of clear criteria foreseen by law or bylaws regarding the meaning of personal integrity, and giving the chance the Recruitment Committee founded by KPC⁹³ to assess on their will the meaning of personal integrity, have caused in practice situations when Recruitment Committee proposed to KPC to pass candidates for prosecutors who have been accused of committing criminal offenses in the past, or candidates who have failed in prosecutorial assessment and verification. This has led to situations where KPC itself has proposed candidates to the President of Republic, who at earlier recruitment stages were not proposed for appointment by KPC itself, because of the contested integrity. Also, a certain number of candidates for prosecutors were proposed by KPC and were appointed by the President of Republic, even though the same had already failed during their application for judges because of their contested integrity.⁹⁴

The adoption of this regulation by KPC, represents an additional paradox because of the fact that it lowered at minimum the criteria and standards of assessment and verification of candidates for prosecutors, which criteria and standards were applied and foreseen by the Regulation on Prosecutors' Appointment, adopted on September 23, 2013⁹⁵, and earlier implemented Regulations in several recruitment processes by KPC itself.

Lowering criteria and standards regarding the assessment and overall verification of the past of candidates for prosecutors and non-harmonization and exchange of information between KPC and KJC regarding these candidates, will enable and legitimize a large number of candidates who did not pass in the past, to be proposed and appointed as prosecutors. In the past there were several prosecutors who at earlier stages of their applications for positions of prosecutors or judges, have not met the criteria and were not proposed for prosecutor or judge enactment because of their contested integrity or other allegations. Anyway, through this regulation KPC has paved the way for them to be part of prosecutorial system very soon

It is clear that such policies approved by KPC itself, cause serious damages to the integrity of prosecutorial system at first, and such actions affect to the loss of public's trust in this system.

Also, the establishment of the Committee for Recruitment under the Article 5 of this Regulation is not aligned to the spirit and the purpose for which KPC was established. According to this article, the

⁹³“The easy transition of prosecutors through the “filter” of decreeing”. Kallxo.com. (See the link <http://kallxo.com/kalimi-i-lehte-i-prokuroreve-neper-siten-e-dekretimit/>). (Last accessed on March 22, 2016).

⁹⁴ See the footnote no. 93.

⁹⁵ Regulation for Recruitment, Appointment and Re-appointment of Prosecutors. Kosovo Prosecutorial Council. (See link http://www.psh-ks.net/repository/docs/Nr.1045.2013-Rregullore_Nr.03.2013-Per_procesin_e_rekrutimit,emerimit_dhe_riemerimit_te_prokuroreve1.pdf). (Last accessed on March 22, 2016).

Committee is composed by Chief State Prosecutor, a prosecutor from the Office of CHSP a prosecutor from Appellate Prosecution Office, and two prosecutors from the basic level.

This composition, does not stipulate that the Chairman of this Committee should be a member of KPC appointed by the Council itself, which is a standard and practice applied and implemented since the establishment of KPC in 2011. On the contrary, the regulation has directly foreseen that the Chairman of this Committee should be the Chief State Prosecutor and four other prosecutors from other Prosecution Offices, by not including any members from KPC and by entirely oversee KPC in the process of prosecutors' recruitment. The only representative from KPC in this Committee is the Chief State Prosecutor himself/herself. Such composition is not aligned with Article 110 of the Constitution, which foresees that KPC is the only body which shall recruit and propose candidates for the position of prosecutors. Also, Article 1.4 of the Basic Law on KPC foresees clearly that: "*The Council shall be responsible for recruiting and proposing for appointment and reappointment candidates for prosecutorial office and shall assess, promote, discipline, dismiss, transfer, and provide for the training of prosecutors.*"

Despite the fact that Chief State Prosecutor is a member of KPC, his/her function and position as Chief State Prosecutor and his/her appointment as a Chairman of this Committee, represent a conflict of competences and responsibilities between the institution of State Prosecution and KPC. Appointment of Chief State Prosecutor, in the position of Chairman of this Committee, poses a threat to empower the position of Chief State Prosecutor, and to subdue KPC, and such an approach does not comply with international aforementioned standards established by Venice Commission.

One of the characteristics of this regulation is also its signing by the Chief State Prosecutor and President of KPC, who must be a technical error, since also the Law on KPC and the Regulation on Functioning and Activity of KPC, defines and foresees that the President of KPC has the exclusive competences to sign decisions and documents adopted by KPC⁹⁶, and if an adopted document by KPC is signed by Chief State Prosecutor, it represents law violations and exceed Chief State Prosecutors' competences.

- **REGULATION ON ELECTION OF THE CHAIRPERSON AND VICE-CHAIRPERSON OF KOSOVO PROSECUTORIAL COUNCIL**

On December 29, 2015, KPC has adopted the Regulation on Election of the Chairperson and Vice-Chairperson of KPC. Also in this regulation it is noticed an imposition and authority exercise of Chief State Prosecutor in relation to KPC and its members.

The imposition of Chief Prosecutor authority was noticed primarily due to the fact that he transferred KPC's responsibilities and collegial competences to his individual competences, starting from the nomination process for the Chairperson, Vice-Chair Person and all members of KPC. Based on the Article 4 of this Regulation, all members willing to candidate for the position of the Chairperson and Vice-Chairperson of KPC, shall submit their official nomination to the Chief State Prosecutor, by specifying the position they are applying.

⁹⁶ Article 4 - Regulation on Functioning and Activity of Kosovo Prosecutorial Council, foresees that KPC Chairperson, signs decisions and documents on behalf of KPC; (See the link http://www.psh-ks.net/repository/docs/No.290.2013_on_the_Regulation_No.01.2013_KPC.pdf). (Last accessed on March 15, 2016).

The process for electing the Chairperson of KPC during the meeting held on January 12, 2016⁹⁷, was conducted in an orderly manner, where three members of KPC, Blerim Isufaj from SPRK, Bahri Hyseni prosecutor in the General Department of the Basic Prosecution Office in Ferizaj with an experience of three years as prosecutor and Idain Ismajli prosecutor of Serious Crimes Department in Appellate Prosecution Office, had run for the position of Chairperson of this Council. From the voting process in the second round, the Chairman of KPC was elected Blerim Isufaj with eight (8) votes against Bahri Hyseni, who got only two (2) votes from ten (10) members who were present in this voting process.

On the other hand the election process of KPC Vice-Chairman, did not comply with the Article 1 of this regulation, which foresees that the KPC Chairperson and Vice-Chairperson election process shall be opened, transparent, impartial and objective and the respective process shall be implemented in accordance with the principles of competitiveness. Despite the fact that the regulation foresees that the same competitive procedure for Vice-Chairperson must be applied between interested candidates, the Chief State Prosecutor as Chairperson of the first meeting of KPC after the adoption the new Law on KPC, has decided to appoint Idain Smailji as Vice-Chairperson through the voting process, thus by violating others the right to candidate for this position.⁹⁸ Moreover, this clearly interferes in violation of human rights.

Also, the first meeting of KPC in 2016, in accordance with amended law on KPC, was characterized by the expulsion of a member from the civil society and ceasing of constitutional and legal mandate in a contested manner by KPC. While the election of a non-prosecutor member of KPC, from civil society was done after announcing a public vacancy by KPC according to the Law no. 03 / L-224 on KPC and other provisions of this law and Regulation on Functioning and Activity of KPC.⁹⁹ This arbitrary exemption has begun much earlier, by opening a public vacancy for the election of a representative from the civil society, namely on November 5, 2016, but it was finalized with an arbitrary exemption when the member from the civil society without any reasons was not invited to KPC meetings after January 1, 2016, even though he had a 5 year mandate.¹⁰⁰

Moreover, in order to argue the aforementioned issue, it is worth noting that the Article 7 of the Law on KPC has foreseen that KPC members have a five (5) year mandate, as it was foreseen also by the decision for electing KPC member from the civil society.¹⁰¹ Referring to the decision of KPC for the election of civil society member, his mandate has begun from September 9, 2014, the same date when the 78th meeting of KPC was held, in which meeting Mr. Florent Muçaj was elected as a non-prosecutor member of KPC from the civil society and he was voted unanimously, with no votes against.¹⁰² Also, under Article 7 of Law no. 03 / L-224 on KPC and the decision dated on September 9, 2014, the 5 (five) year mandate of KPC member from the civil society ends on September 9, 2019.

As noted above, despite this, in the meeting held on November 5, 2015, KPC has taken the decision No. 321/2015 regarding the announcement for KPC member's vacancy, from the civil society, which was announced on November 21, 2015. KPC's decision to terminate the mandate of Mr. Muçaj and

⁹⁷ The meeting no. 111 of Prosecutorial Council of Kosovo held on January 14, 2016. (See the link https://www.youtube.com/watch?v=EF_HrMeQz5U). (Last accessed on February 20, 2016).

⁹⁸ See the footnote no. 98.

⁹⁹ See the documents as followed: Constitution of the Republic of Kosovo; Law no. 03/L-224 on the Kosovo Prosecutorial Council; Regulation on Functioning and Activity of Kosovo Prosecutorial Council and the Decision no.260/2014 of the date 15.09.2014.

¹⁰⁰ KLI interview with Mr. Florent Muçaj, non-prosecutor member of KPC among civil society. December 2015.

¹⁰¹ Point 1 of the provision from the Decision no.260/2014 of the date 15.09.2014.

¹⁰² Record and Transcript of 78th Meeting of KPC, point 5 of the agenda.

the decision to announce vacancy, has terminated in an unconstitutional and unlawful manner the mandate of civil society KPC member, who had this mandate based on the constitution and law. Moreover, this premature termination of the mandate cannot be made by a decision, by law nor by the Constitution because it is inconsistent with the right to be elected, under Article 45 of the Constitution of the Republic of Kosovo.¹⁰³ This right is guaranteed by the Constitution and confirmed by Kosovo Constitutional Court which had prohibited the premature termination of the mandate for the President of the Republic of Kosovo, according to cases K.O. 29/12 and K.O. 48/12.¹⁰⁴ This ruling of Constitutional Court has *erga omnes* effect to constitutional mandates and their premature termination. This practice of premature termination of the mandate is also prohibited by international and constitutional standards.¹⁰⁵

The decision for premature termination of the mandate for KPC member from civil society and his right guaranteed by the Constitution and law, is a subject of Court proceedings of regular Courts and Constitutional Court, which did not give any response or ruling yet regarding this issues.¹⁰⁶

- **REGULATION ON THE ORGANIZATION AND ACTIVITY OF KOSOVO PROSECUTORIAL COUNCIL**

On the meeting held on December 29, 2015, KPC has adopted the Regulation on the Organization and Activity of KPC, which is a supplemented and amended Regulation of the Regulation on the Functioning and Activity of KPC, adopted on March 4, 2013.¹⁰⁷ During the assessment of the analysis for these two regulations, KLI has noted that by this new Regulation, KPC has managed to address some of the obligations arising from the amended Law on KPC, as also noted that some of the certain provisions of this Regulation do not comply with the aforementioned law.

As at other cases mentioned above, through this regulation KPC is influenced by the authority of Chief State Prosecutor, regarding the invitation of the extraordinary meetings of KPC, defined by Article 19 of this regulation. According to this article, the extraordinary meetings of the Council for reviewing matters of emergency may be invited upon the request of the Chairperson, Chief State Prosecutor or five (5) members of the Council. Based on this provision the position of the Chairperson of KPC and Chief State Prosecutors are equal with each other and have a privileged report in relation to other KPC members, who at such cases must be at least five (5) of them.

While this right is reserved for the Chairperson and Chief State Prosecutor, this regulation declines it for the Vice-Chairperson. Moreover, this provision is not aligned to the rights and authority reserved by the Law on KPC to the Vice-Chairman, who automatically replaces the Chairman of the Council when he absents.¹⁰⁸

¹⁰³ Article 45 of the Constitution of the Republic of Kosovo.

¹⁰⁴ Cases K.O. 29/12 dhe K.O. 48/12, constitutional proposed amendments, delivered to the Chairman of the Assembly of the Republic of Kosovo, on March 23 and May 4, 2012.

¹⁰⁵ *Petition from Miloš Melčák, Member of Parliament, seeking the annulment of constitutional Act no. 195/2009 Coll., on Shortening the Fifth Term of Office of the Chamber of Deputies* (See the link [http://www.usoud.cz/en/decisions/?tx_ttnews\[tt_news\]=468&cHash=b239af8f32f409fe77493adf911e665f](http://www.usoud.cz/en/decisions/?tx_ttnews[tt_news]=468&cHash=b239af8f32f409fe77493adf911e665f)). (Last accessed on 15 January, 2016).

¹⁰⁶ KLI interview with Mr. Florent Muçaj, non-prosecutor member of KPC among civil society. December 2015.

¹⁰⁷ Regulation on Functioning and Activity of Kosovo Prosecutorial Council. Adopted on March 4, 2013. (See the link http://www.psh-ks.net/repository/docs/No.290.2013_on_the_Regulation_No.01.2013_KPC.pdf). (Last accessed on March 20, 2016).

¹⁰⁸ Article 4: *“The Vice-Chairperson shall exercise responsibilities and duties of the Chairperson when he/she is absent. The Vice-Chairperson has full authority to act on behalf of the Council in case of Chairperson’s absence or incapacity.* Law no.

- **REGULATION ON INTERNAL ORGANIZATION AND FUNCTIONING OF THE STATE PROSECUTOR OF KOSOVO**

On December 31, 2015¹⁰⁹, KPC has adopted the Regulation on Internal Organization and Functioning of the State Prosecutor of Kosovo, which will be implemented from January 15, 2016. The adoption of this regulation is an achievement for KPC and a fulfillment of a legal obligation regarding the organization, administration, management and operation of State Prosecutor. This is due to the fact that prosecutorial system of Kosovo has passed to the new organizational structure on January 1, 2013 and it took three years for the Council to draft and adopt this regulation, which is considered as a basic and necessary document for operation and activities of State Prosecutor.

During the assessment and analysis process of this regulation, KLI has noted that a large number of provisions of this regulation are a repetition of provisions taken from the Law on State Prosecutor. The text of Article six (6) of this regulation is almost a description of the texts in Articles 14, 15, 16 and 17 of the Law on State Prosecutor.

Also, the paragraph 1.3 under the Article 7 of this regulation, foresees that State Prosecutor leads the Committee for review of applications for Chief Prosecutor and on behalf of the Committee recommends to KPC the candidate for Chief Prosecutor of respective prosecution office. While the process of recruitment, appointment, re-appointment and dismissal proposals of prosecutors are exclusive competences of KPC defined by the Law on KPC. In this case, this provision is not aligned with the spirit of the aforementioned law, by empowering the position of Chief State Prosecutor in relation to the process of appointing Chief Prosecutors and by exceeding the powers and authority of Chief State Prosecutor in relation to KPC.

This provision exceeds competences and procedures of Chief State Prosecutor, in relation to KPC, and this represents a potential risk that such competence could be abused, respectively this could open the possibility for having manipulation initiated and based on political and personal grounds, during the process of appointing Chief Prosecutors.¹¹⁰

Also, paragraph 1.13 of Article 7 of this regulation, is in contradiction with the Law on KPC and the Kosovo Constitution, which clearly define that the proposal for prosecutors' dismissal is an exclusive competence of KPC, based on the recommendation of Prosecutors Performance Assessment Committee of KPC. None of the provisions of Law on KPC or State Prosecutor, have a legal basis whereby, Chief State Prosecutor may propose the dismissal of prosecutors and Chief Prosecutors. This provision does not comply with the opinion of the Venice Commission regarding the appointment or dismissal of prosecutors.¹¹¹

The tendency to empower the position of Chief Prosecutor and to minimize the position of KPC in relation with Chief Prosecutors of respective Prosecution Offices, is also noticed at Article 9, which does not comply with the spirit of Law on KPC and SP. Paragraph 1.6 of this Article foresees that none of Chief Prosecutors from lower levels, cannot communicate with public and media without the request of Chief State Prosecutor. This provision does not comply with the Code of Ethics and

05/L-035 on Amending and Supplementing the Law No. 03/L-224 on Kosovo Prosecutorial Council (*See the link* <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-035%20a.pdf>). (Last access on March 22, 2016).

¹⁰⁹ Regulation on Internal Organization and Functioning of the State Prosecutor of Kosovo. Kosovo Prosecutorial Council. December 31, 2015.

¹¹⁰ See the footnote no. 90

¹¹¹ See the footnote no. 90

Professional Behavior for Prosecutors, which foresees that the prosecutor may keep an open and active communication with the public and media. This code was adopted by KPC in 2012.¹¹²

Also, this article seriously violates the independence, competences and responsibilities of Chief Prosecutors from respective Prosecution Offices, which were delegated to the administration and management of Prosecution Offices by the Law on State Prosecution.

Moreover, this provision centralizes the power regarding communication with the media and public only in the hands of Chief State Prosecutor, by lowering transparency and accountability of prosecutorial system. This control and excess of the subsidiarity principle, represent the possibility that this system may be subject of outside interferences or political influences.¹¹³

The other provisions of this regulation which are contrary to the Law on KPC and which interfere to competences of the Council by the Chief State Prosecutor, are Article 27, paragraph 2, which foresees that Chief State Prosecutor, in cooperation with the Council, is responsible for internal structuring and determining the number of officials within the administration of the State Prosecutor.

This provision is in direct contradiction to the duties and powers of the Council, defined by Article 4, paragraph 1.14 of the basic Law on KPC, which clearly foresees that it is an exclusive competence for KPC to oversee the administration of the prosecution offices and its personnel. None of Law provisions on KPC and SP have foreseen that such competence is reserved for the State Prosecutor.

- **STRATEGIC PLAN (2016-2018) AND ACTION PLAN TO INCREASE THE EFFICIENCY OF THE PROSECUTORIAL SYSTEM IN FIGHTING CORRUPTION AND ECONOMIC CRIMES, INCLUDING HERE SEQUESTRATION AND CONFISCATION OF ILLEGAL ASSETS**

On December 1, 2015, KPC has adopted the Strategic Plan (2016-2018) and the Action Plan to Increase the Efficiency of the Prosecutorial System in Fighting Corruption and Economic Crimes, including here Sequestration and Confiscation of Illegal Assets.

This Strategic Plan has defined several aims, such as lowering the number of unsolved cases, increasing efficiency in solving new cases, increasing the level of cooperation with institutions, increasing capacities through specialized trainings, accountability and transparency.

Despite the fact that KPC through this Strategic Plan has expressed declarative willingness to increase accountability and transparency of the prosecutorial system in solving referred cases in this plan, the opposite has happened in reality. KLI has filed a request to the Office of State Prosecutor to have access in the Strategic Plan adopted by KPC, but has received a negative response on the filed request based on the Law on Access to Public Documents.¹¹⁴

¹¹² The Code of Ethics and Professional Conduct for Prosecutors. Adopted by KPC on July 31, 2012. (See the link [http://www.psh-ks.net/repository/docs/ENG_Code_of_Ethics_for_Prosecutors_\(Approved,_July_31\).pdf](http://www.psh-ks.net/repository/docs/ENG_Code_of_Ethics_for_Prosecutors_(Approved,_July_31).pdf)).

¹¹³ Summary of opinions and reports by the Venice Commission regarding prosecutors: *“The Law on the organisation and procedure of the Office of Procurator should define the procuracy as a system of relatively independent authorities preferably organised in correspondence to the court system. It would be for the higher authority to control the level immediately below. However, the highest authority should not directly control the lowest one. In this way, the system of prosecution would be protected against direct political intervention or influence.”* Page 29. (See the link [http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2015\)009-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2015)009-e)). (Last accessed on March 25, 2016).

¹¹⁴Response by the officer for public documents access, appointed by KPC. *“On December 1, 2015, Prosecutorial Council has adopted the Strategic Plan (2016-2018) and Action Plan to Increase the efficiency of the prosecutorial system in fighting corruption and economic crimes, including here sequestration and confiscation of illegal assets, but this plan will be*

The response and the official position of KPC, regarding the adopted Strategic Plan is concerning, where they admit that even before beginning its implementation by Prosecution Offices, the Plan has some shortcomings and needs to be supplemented with recommendations of Council's members and international representatives who support the work of the Council.

Through this Strategic Plan prosecutorial system knows the fact that justice system has not achieved any appropriated success in fighting perpetrators of criminal offenses who are the subject of this plan, and according prosecutorial system this has affected negatively on the reputation of justice bodies.

KPC finds that this Strategic Plan is in line with the objectives of the Action Plan adopted by KPC, to increase the efficiency of judicial system in solving corruption cases. This plan was drafted by KLI in cooperation with KJC. This plan was approved by KPC, after the proposal of this Plan by KLI followed by some supplements and additions from KPC.

In the paragraph five (5) of this plan, KPC has foreseen that cases with high priority under SPRK and Basic Prosecution Offices, based on the official position of perpetrators and the amount of the profit acquired by criminal offenses.

Also in paragraph six (6) of this plan, KPC has foreseen the establishment of the Anti-Corruption Unit, Economic Crimes, Sequestration and Confiscation of Illegal Assets in the Basic Prosecution Office in Prishtina.

Considering the large volume of cases in the Basic Prosecution in Pristina and also the fact that approximately 60% of corruption cases or economic crimes in Kosovo, are in competences of this Prosecution Office, the establishment of this Unit can be considered as a strategic objective which will result in increasing the efficiency of prosecutorial system in addressing and combating corruption and economic crimes offenses, if there is willingness and dedication.

By analyzing and assessing this Strategic Plan and provisions related to Anti-Corruption Unit, KLI considers that under authorizations and responsibilities of KPC, it has competences in drafting and adopting policies to increase efficiency in prosecutorial system in fighting corruption and criminality in general, as it is foreseen by the Article 4 of the Law on KPC.

However, KLI considers that the provisions of this Strategic Plan which are related to the assignment of prosecutors in Anti-Corruption Unit, based on the procedures set by the Council, are in contradiction with the Law on State Prosecutor, namely with Article 4, which foresees that Chief Prosecutor shall head his/her office and be responsible to the office to which he/she is appointed. Chief Prosecutor is responsible for the work of Prosecution Office and he/she reports for this work to Chief States Prosecutor. Prosecutors report to Chief Prosecutor regarding their work.

Appointment of prosecutors in the Anti-Corruption Unit, undermines the authority of the Chief Prosecutor from the Basic Prosecution Office in Pristina, and this can be considered as an interference in the competences and responsibilities which are defined by the law regarding the management and administration of respective Prosecution Office by the Chief Prosecutor.

KPC has reserved the right to transfer or promote state prosecutors based on the criteria and procedures defined by law, however, any interference in the internal administration and management

supplemented by the recommendations of KPC members and international representatives who support the work of the Council. After supplementing and amending this plan by recommendations, the plan will be published in the websites of State Prosecutor and Kosovo Prosecutorial Council". KLI's communication with the officer of KPC, for public documents access, via electronic mail. "

of a respective prosecution office, out of the scope of procedures and criteria foreseen by law, affects to the authority of Chief Prosecutors by violating competences and responsibilities guaranteed by law.

Prosecutors appointment by KPC, even though collaboration with Chief Prosecutor in Pristina, excludes from liability the Chief Prosecutor of this Prosecution Office related to possible failures or non-fulfillment of obligations foreseen by this Strategic Plan.

The paragraph 8 of this Strategic Plan, foresees the assessment of the implementation of the strategy and action plan. Based on this paragraph, KPC aims to increase accountability and efficiency to prosecutorial system in fighting criminal offenses, set by this strategic plan. While, this plan's provisions related to competences given to monitoring mechanism for increasing prosecutors' and Chief Prosecutors' accountability, who fail in fulfilling obligations arising from this document through the recommendation for initiation of disciplinary proceedings against them, are welcome and they should endeavor to implement these provisions in practice. Their implementation requires willingness and commitment at first by KPC itself, and hitherto practices must be avoided because this willingness has been lacking and has not been implemented in practice.¹¹⁵

Even in this strategic plan, KPC delegates competences and responsibilities to its internal mechanisms that are in contradiction with the Constitution, laws which regulate prosecutorial system and international standards and practices applicable in Kosovo¹¹⁶ KPC delegates to monitoring mechanism competences to recommend the dismissal of prosecutors or Chief Prosecutors who fail in fulfilling their obligations.

The paragraph 9 of this Strategic Plan for the first time in the justice system, has foreseen the establishment of the Remuneration Institute for Prosecutors, in order to stimulate prosecutors to work more in solving the cases foreseen by this plan. This strategy has foreseen a remuneration that reaches the amount of 150 to 400 euros for Anti-Corruption Unit, on condition that such Unit and engaged prosecutors will implement successfully objectives of strategic and action plan.

¹¹⁵ "KPC itself has found the failures regarding registration of corruption cases, through the Prosecutor Performance Review Unit, by establishing (February 2014) the Verification and Supervision Committee of corruption cases in prosecution offices.138. The results of the work of this Committee have brought to light a big irresponsibly of a chain of officials in prosecution offices, starting from prosecutors to the support staff officials, who had not respected the rules of the Tracking Mechanism for the registration of corruption cases in the database. These findings and recommendations of the Committee were approved at the KPC meeting, held on February 25, 2014, where it was issued the decision no. 45-2014.139, through which all of Chief Prosecutors were obliged to initiate disciplinary actions against those who have failed to respect the rules for the registration of corruption cases in the Tracking Mechanism. Despite the numerous violations that were identified by the Committee and the decision of KPC to take measures against the responsible persons, Chief Prosecutors have never taken any actions to implement this decision, respectively they have not initiated disciplinary proceedings against any prosecutor or employee for their failures. By noticing the hesitation of Chief Prosecutors to hold accountable their officials, in the meeting held on April 25, 2014 140, KPC has taken a decision by which Chief Prosecutors of BPs and SPRK should report regarding the implementation of the decision no. 45-2014 of the date February 25, 2014. Through this decision, KPC has require responsibility directly from the Chief Prosecutors, for the non-punishment of their prosecutors and officials who have not registered corruption cases. KLI expresses its double concern about Chief Prosecutors who have not implemented the decision of the highest body in the prosecutorial system, KPC, but also expresses the concern about the non-implementation of the decision by KPC, to punish Chief Prosecutors if they did not punish their prosecutors and employees for the identified violations. This reaction is a continuation of KLI's reactions to KPC, which is failing to address the most of important issues on the implementation of its decisions related to fighting corruption in Kosovo" Fighting corruption in Kosovo, priority in paper". December 10, 2015. Pages 78-79. (See the link <http://kli-ks.org/wp-content/uploads/2015/12/2.-Fighting-Corruption-in-Kosovo-Priority-in-letter1.pdf>). (Last accessed on January 15, 2016).

¹¹⁶ See the footnote 90

The paragraph 9 of this plan is in contradiction at first with the Law on State Prosecutor, respectively with Article 21, paragraph 1.8 which defines “Each prosecutor permanently appointed to the Basic Prosecution Office shall receive a base salary of not less than seventy percent (70%) of the salary of the Chief Prosecutor of a Basic Prosecution Office. The Council shall promulgate a schedule for additional compensation that recognizes the unique responsibilities of prosecutors appearing before the Serious Crimes Department of the Basic Court; but in no case shall the sum of the base salary and the additional compensation exceed ninety percent (90%) of the salary of the Chief Prosecutor of a Basic Prosecution Office”.

The remuneration foreseen by the Strategic Plan of 150 to 400 euros, as additional compensation will exceed the salary of Chief Prosecutors of Prosecution Offices, and this is not in accordance with the basic Law on State Prosecutor.

If taken into account that the same standards should be applied to prosecutors¹¹⁷ and judges, The Venice Commission shares the opinion that the remuneration of judges has to correspond to the dignity of the profession and that adequate remuneration is indispensable to protect judges from undue outside interference. The level of remuneration should be determined in the light of the social conditions in the country and compared to the level of remuneration of higher civil servants. The remuneration should be based on a general standard and rely on objective and transparent criteria, not on an assessment of the individual performance of a judge. Bonuses which include an element of discretion should be excluded.¹¹⁸

Also the United Nations Commission on Human Rights shares almost the same opinion regarding judges’ salaries, defined in the comment no. 32, which is related to the implementation of Article 14 of the Covenant on Civil and Political Rights directly applicable in Kosovo. Committee of Ministers of the Council of Europe has also the same opinion, defined in the recommendation no. R (94) 12 Principle III, paragraph 1b. Also the Article 13 of the Universal Charter of the Judge foresees that a judge must receive sufficient remuneration to secure true economic independence. The remuneration must not depend on the results of the judge’s work and must not be reduced during his or her judicial service. Protection of judges’ independence is guaranteed also by the Constitution, as is the case of Article 3, under the section of the US Constitution which contains a direct prohibition to reduce the payment of judges during the exercise of his/her functions. The reduction of judges’ or prosecutors’ salaries may be done only at cases when disciplinary measures are imposed to them by internal mechanisms of accountability.

b) KPC decisions

From November 1, 2015 until December 31 2015, KPC has took 21 decisions, which were published to the official website of KPC and SP. Among these 21 KPC decisions, were adopted: *The Action Plan of Prosecutors` Performance Evaluation Unit for 2016*, decision on four (4) adopted regulations by KPC, *Regulation on Election of The Chairperson and Vice-Chairperson of KPC*, *Regulation on the*

¹¹⁷ “Like for judges, remuneration in line with the importance of the tasks performed is essential for an efficient and just criminal justice system. A sufficient remuneration is also necessary to reduce the danger of corruption of prosecutors” REPORT ON EUROPEAN STANDARDS AS REGARDS THE INDEPENDENCE OF THE JUDICIAL SYSTEM: PART II – THE PROSECUTION SERVICE, Adopted by the Venice Commission at its 85th plenary session (Venice, 17-18 December 2010). Page 13, point 69. (See the link [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)040-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)040-e)). (Last accessed on February 24, 2016).

¹¹⁸REPORT ON THE INDEPENDENCE OF THE JUDICIAL SYSTEM PART I: THE INDEPENDENCE OF JUDGES, Adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010). Page 10. (See the link [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)004-e)). (Last accessed on February 24, 2016).

Organization and Activity of KPC, Regulation on Internal Organization and Functioning of the State Prosecutor of Kosovo and Regulation on the Performance Evaluation of Prosecutors. On December 29, 2015, KPC has taken a decision to establish the Unit in Charge of Fighting Corruption, Economic Crimes, Sequestration and Confiscation of Unlawfully Acquired Assets in Serious Crimes Department and General Department of the Basic Prosecution in Prishtina. Also, on December 29, 2015, KPC has taken a decision to establish a Monitoring Committee in charge of Fighting Corruption and Economic Crimes, including Sequestration and Confiscation of Unlawfully Acquired Assets.

On November 10, 2015, KPC had taken the decision to announce elections for KPC members from SPRK and Basic Prosecution Office and the decision to establish the Election Committee in charge of Conducting Elections for Prosecutorial Council Members, from among prosecutors.

While on November 5, 2015, KPC has taken a decision to announce the vacancy for non-prosecutors members of KPC, from the civil society. Also in November 5, 2015, KPC has taken decision for the adoption of these regulations: on the Appointment of Chief Prosecutors, on the Compensation Scheme of the Committees` members of KPC and on the Activity of the Disciplinary Committee and Disciplinary Procedures against KPC members. On the same date, KPC has taken also these decisions: to establish the Committee on the Election of Secretariat Director in the Office of State Prosecutor, to Announce Internal Vacancy for Prosecutors in the Office of SP and the decision on the mandate ending to the prosecutor Jusuf Mejzini, due to reaching retirement age.

On December 1, 2015, KPC has taken a decision through which has approved Final Report of the Committee in charge of 21 Prosecutors` Performance Evaluation. On this date, KPC has also established the Committee in Charge of Reviewing the Eligibility of the Candidates Nominated by the Civil Society for Serving in the Capacity of the Member in KPC. On December 1, 2015, KPC has taken a decision through which it was approved the list of nominated candidates for members of KPC, Decision to amend KPC Decision no.308/2015, Decision to transfer the prosecutor Rafet Halimi from the General Department of the Basic Prosecution in Ferizaj to General Department of the Basic Prosecution in Prishtina and decision for a permanent transfer of the prosecutor in Elez Blakaj from BC in Pristina to SPRK. On this date, was also taken the decision to assign the prosecutor Lulzim Sylejmani as a member of the Committee in charge of Reconsideration in the Office instead of Mr. Jusuf Mejzini, due to reaching retirement age and also the decision to establish the Committee in charge of reviewing KPC Decision, regarding the engagement of experts.

KLI by assessing and analyzing these decisions, has found that a certain number of these decisions do not comply with the Law on KPC, the Law on State Prosecutor or internal acts of KPC. This clearly shows the commitment and neglect of KPC in terms of making decisions which do not have a clear legal basis and do not comply to the law. Unfortunately, this practice has followed KPC consistently.

KPC decision no.334/2015, taken on December 1, 2015¹¹⁹, regarding the approval of the Final Report of the Committee in charge of 21 Prosecutors` Performance Evaluation, has been objected by three prosecutors of General Departments of BP in Pristina and Gjakova regarding the evaluation and assessment by the Committee for Prosecutors` Performance Evaluation. From three (3) appeals of these prosecutors, KPC has approved one of them and has required from Committee for Prosecutors`

¹¹⁹ Decision on the approval of the Final Report of the Committee in charge of 21 Prosecutors` Performance Evaluation. Kosovo Prosecutorial Council. (See the link http://www.psh-ks.net/repository/docs/No._1298.2015.Decision_Final_Report_on_Prosecutors%60_Performance_is_approved.pdf). (Last accessed on March 20, 2016).

Performance Evaluation to evaluate the performance of the prosecutor Arian Gashi. While the appeals of two prosecutors, Fitore Sadikaj and Armend Hamiti, were not approved.¹²⁰

KPC decision to re-evaluate the performance of the prosecutor Arian Gashi, does not comply to the Regulation on the Performance Evaluation of Prosecutors, respectively to Article 31¹²¹ of this regulation, which clearly foresees that KPC as a second instance, decides on the evaluation of a prosecutor. According to this article, KPC may request additional information from the Chief Prosecutor or the Prosecutor involved in managerial duties, the Evaluation Committee and interview the Prosecutor who has filed the appeal on the decision of Evaluation Committee.

At this particular case, KPC has violated the procedures and provisions of the Regulation on the Performance Evaluation of Prosecutors, which regulation was approved by almost all members of KPC.

Such KPC decision strengthens the conclusions and findings of the European Commission Report for Kosovo in 2015, which among other things stated that KJC and KPC do not have the necessary capacities to draft and make decisions in accordance of the hierarchy of normative acts.¹²²

On December 29, 2015, KPC has took a decision to establish the Monitoring Committee in Charge of Fighting Corruption and Economic Crimes Sequestration and Confiscation of Unlawfully Acquired Assets.¹²³ KLI appreciates KPC for the establishment of this Committee, with the purpose of monitoring the work of prosecutors and Basic Prosecutions in fighting corruption in Kosovo, and for achievements regarding sequestration and confiscation of assets acquired by criminal offenses.

Through its periodic reports, KLI has consistently recommended to KPC the establishment of such Committee. However, this decision did not abrogate the unlawful Decision of State Prosecutor no.A.nr.404/2015, through which it was established the Monitoring Committee for corruption cases, consisted by the Deputy Chief State Prosecutor, Sevdije Morina and three prosecutors from the Office of Chief State Prosecutor, Besim Kelmendi, Lulzim Sylejmani and Laura Pula.¹²⁴

¹²⁰ KPC meeting held on December 1, 2015. Kosovo Prosecutorial Council. (See the link <https://www.youtube.com/watch?v=MnPFjEkX9aY>). (Last accessed on February 15, 2016).

¹²¹ Regulation on Performance Evaluation of Prosecutors. Kosovo Prosecutorial Council. (See the http://www.psh-ks.net/repository/docs/Regulation_no.12.2015_on_Performance_Evaluation_of_Prosecutors.pdf) (Last accessed on March 20, 2016).

¹²² “The KJC and the KPC experienced significant delays in approving strategic documents, regulations and other decisions or acts. There is still not enough capacity to draft regulations and take decisions in full compliance with the hierarchy of normative acts. There is a lack of capacity within the KJC and the KPC to monitor the implementation of their decisions”. *Progress Report of European Commission for Kosovo for 2015*. (See the link http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf). (Last accessed on February 10, 2016).

¹²³ KPC decision to establish the Monitoring Committee in Charge of Fighting Corruption and Economic Crimes. Kosovo Prosecutorial Council (See the link http://www.psh-ks.net/repository/docs/395_Decision_-_The_Monitoring_Committee_in_charge_of_fighting_Corruption_and_Economic_Crimes_is_established.pdf). (Last accessed on March 20, 2016).

¹²⁴ “ This decision has foreseen that the duty of this Committee is to visit all prosecution offices and to require by each prosecutor the corruption cases in which they were working, in order to assess the actions that were taken by them. After the verification, the Committee is obliged to prepare a report to the Chief State Prosecutor. Such a decision is in contradiction with the spirit of the Law on State Prosecutor and it violates the independence of prosecutors in treating these cases, also this could be considered as a direct interference in the work of prosecutors.” Miftaraj E. and Musliu B. “Fighting Corruption in Kosovo, priority in paper”. *Kosovo Law Institute*. Pristina, December 2015. (See the link <http://kli-ks.org/wp-content/uploads/2015/12/2.-Fighting-Corruption-in-Kosovo-Priority-in-letter1.pdf>). (Last accessed on January 10, 2016).

c) Participation and discussion of KPC members during meetings

During November and December 2015 KPC has conducted four meetings. KLI has noted that the number of KPC members was never completed during these meetings. At KPC meeting no. 107 the member of KPC ex officio, Hajredin Kuçi was the only one who was absent. At the meeting no.108, dated on November 10, 2015, from nine members of KPC, three of them were absent (Mr. Hajredin Kuçi, Mr. Bajram Uka and Mr. Idain Smailji). At the meeting no. 109 held on December 1, 2015, were absent Mr. Hajredin Kuçi and Mr. Jetish Maloku. While, in the meeting no. 110, dated on December 29, 2015, were absent Mr. Hajredin Kuçi, Mr. Idain Smailji and Mr. Sylë Hoxha.

Based on the Law on Kosovo Prosecutorial Council, the quorum for Council meetings shall be six (6) members, and Council's decisions shall be made by simple majority vote of the members present, unless otherwise provided by law.¹²⁵

During the monitoring process of KPC meetings, KLI has noted the lack of debate between all KPC members related to items that have been part of the discussion. Since a limited number of Council' members have actively participated in KPC meetings by making remarks, suggestions and recommendations on policies, strategies and decisions discussed and approved by the Council, a large number of members were passive, and their only participation was noticed during the voting process.

During the monitoring process of these meetings, KLI has analyzed and calculated the number of times for each KPC member's participation at discussions of all agenda points. Since, KPC members had not discussed at all at a large number of agenda points, during these meetings were adopted many regulations and were approved important decisions for functioning of the Kosovo prosecutorial system.

At the meeting no.107, KPC has approved a range of decisions. At this meeting, the Council has decided to announce the vacancy for prosecutors in the Office of the Chief State Prosecutor, where from eight members who were present, only the KPC member from KBA has participated in this discussion. None of others KPC members have discussed on this point of agenda and the decision was voted unanimously. The other agenda point of this meeting was also the announcement of vacancy for three non-prosecutors members of KPC. At this point of agenda all KPC members participated in the discussion, by debating with each-other. This point was voted by three votes in favor and one against. During the discussion of this agenda point, the member of KPC from the civil society, Florent Muçaj, has contested the announcement of vacancy for KPC members from the civil society, because the current member has a mandate until 2019 and such a decision is unconstitutional, unlawful and against constitutional practice.

During the analysis, KLI has considered that the aforementioned decision adopted by KPC, does not comply with the Article 3¹²⁶ of the amended and supplemented Law on KPC, which clearly foresees that "Three (3) non-prosecutors members of the Prosecutorial Council, elected by the Assembly of the Republic of Kosovo according to Article 65 (10) of the Constitution, shall be elected by a secret ballot, with the majority of votes of all deputies of the Assembly, based on a list of at least three (3) candidates for each position proposed by relevant bodies and that includes, one (1) member from the Kosovo Bar Association and one (1) professor from the law faculties of Republic of Kosovo".

¹²⁵ Article 12, paragraph 2 of the basic Law on Kosovo Prosecutorial Council. From January 1, Kosovo Prosecutorial Council has 13 members and the quorum for conducting KPC meeting is nine members. .

¹²⁶ Law on Amending and Supplementing the Law No. 03/L-224 on Kosovo Prosecutorial Council (See the link <http://www.kuvendikosoves.org/common/docs/ligjet/05-L-035%20a.pdf>). (Last accessed on January 13, 2016).

Based on this Article and practices made by the Assembly of Kosovo also the election process for KJC members, is a competence of the Kosovo Assembly to announce the vacancy for two KPC members from KBA and law faculties. KPC's decision is unconstitutional, unlawful and it exceeds its competences and authority.

In the meeting held on November 10, 2015, KPC has taken the decision to announce elections for KPC members among prosecutors of SPRK and Basic Prosecution Offices, and to establish the Election Committee in charge of conducting elections for Prosecutorial Council members amongst Prosecutors.

During the monitoring of this meeting, KLI has noted the lack of a substantial debate by all members amongst prosecutors of KPC, and some of them did not participate at all in discussions, while non-prosecutor members from KBA and civil society has contributed at the biggest part of the meeting by discussing, debating and giving concrete recommendations.

At the meeting held on December 1, 2015, KPC has taken these decisions:

- Decision on establishment of Committee in charge of reviewing KPC Decision, KPC/No.81./2013, of 22nd of March 2013, regarding the engagement of experts,
- Decision, KPC/No. 158/2015, issued on 26th of June 2015, to assign the prosecutor in the Office of Chief State Prosecutor, Lulzim Sylejmani as a member of the Committee in charge of Reconsideration, instead of Mr. Jusuf Mejzini,
- Decision - Elez Blakaj, State Prosecutor with a permanent mandate, assigned in the Serious Crimes Prosecution Department of the Basic Prosecution in Prishtina shall be transferred with a permanent duty to SPRK,
- Decision - Shpend Krasniqi, Prosecutor in the General Department of the Basic Prosecution in Ferizaj shall be transferred in the General Department of the Basic Prosecution in Prishtina.
- Decision on the approved list of nominated candidates for KPC members
- Decision to approve the Final Report of the Committee in charge of Prosecutors` Performance Evaluation work, regarding the second evaluation of 21 State Prosecutors enjoying permanent mandate.

Participation of KPC members in the debate and discussion is minimal. Almost all adopted regulations and decisions in this meeting have passed without any debate or discussion by KPC members. Such an adoption of KPC documents, gives the impression that the Council has become a voting machine, to vote every document or strategy presented by the Normative Acts Committee, by not evaluating at all if the same documents are compatible and consistent with Constitution of law. Based on KLI's assessment, it turns out that KPC blindfolded believes to acts presented by the Normative Acts Committee, other Committees or working groups established by KPC. This practice results in the adoption of documents and policies in the Council, which are in contradiction to the hierarchy of legal norms, and it happened often times that these KPC decisions are based on personal interests of certain persons either within Council or the institution of State Prosecutor. This practice applied by KPC, was criticized also by the Progress Report of the European Commission for 2015, which states: *"The KJC and the KPC experienced significant delays in approving strategic documents, regulations and other decisions or acts. There is still not enough capacity to draft*

*regulations and take decisions in full compliance with the hierarchy of normative acts. There is a lack of capacity within the KJC and the KPC to monitor the implementation of their decisions”.*¹²⁷

Also at this meeting non-prosecutor members are distinguished with an active participation in the debate and discussion during the review of regulations and decisions of the Council. While, majority of KPC members, amongst prosecutors, have not participated in the discussion.

On the meeting held on December 29, 2015, KPC has adopted: The Action Plan of Prosecutors` Performance Evaluation Unit for 2016, the Regulation on Election of the Chairperson and Vice-Chairperson of Kosovo Prosecutorial Council, on the Organization and Activity of KPC, Regulation on Internal Organization and Functioning of State Prosecutor Of Kosovo, Regulation on the Performance Evaluation of Prosecutors, Strategic Plan (2016-2018) and Action Plan to Increase the Efficiency of the Prosecutorial System in Fighting Corruption and Economic Crimes, including here Sequestration and Confiscation of Illegal Assets, the Unit in Charge of Fighting Corruption, Economic Crimes, Sequestration and Confiscation of Unlawfully Acquired Assets in Serious Crimes Department and General Department of the Basic Prosecution in Prishtina, Monitoring Committee in charge of Fighting Corruption and Economic Crimes, including Sequestration and Confiscation of Unlawfully Acquired Assets of the Financial Report on State Prosecutor for 2015.

Also at this KPC meeting, where were adopted a range of strategic policies and documents related to functioning of prosecutorial system, there was no debates and discussion between KPC members. Almost all adopted decisions at this meeting have passed without questions, discussions or requests for clarifications from rapporteurs of these agenda points. Almost all of proposed regulation of Normative Acts Committee or working groups founded by KPC, have passed and voted by KPC members.

d) KPC transparency in publications of regulations, strategies and decisions

During November and December KPC has adopted and published the following Regulations:

- Regulation on the Performance Evaluation of Prosecutors;
- Regulation on Internal Organization and Functioning of State Prosecutor Of Kosovo;
- Organization and Activity of Kosovo Prosecutorial Council;
- Regulation on Election of the Chairperson and Vice-Chairperson of Kosovo Prosecutorial Council;
- Regulation on Normative Acts Committee;
- Regulation on Assignment of Cases;
- Regulation on Prosecutors Recruitment, Exam, Appointment and Reappointment Process;
- Regulation on Prosecutors` Appointment;

¹²⁷ Progress Report of European Commission on Kosovo for 2015. Page 13. (See the link http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf). (Last accessed on February 10, 2016).

- Regulation on the Compensation Scheme of Kosovo Prosecutorial Council Members and Committees
- Regulation on the Activity of the Disciplinary Committee and Disciplinary Procedures against prosecutors
- Regulation on Election of Kosovo Prosecutorial Council Members; and
- Regulation on Setting Rules and Procedures on Organizing the Exam for Candidates for Prosecutors
- During December, KPC has adopted, Strategic Plan (2016-2018) and Action Plan to Increase the Efficiency of the Prosecutorial System in Fighting Corruption and Economic Crime including here Sequestration and Confiscation of Illegal Assets. The strategic and action plan were not published in the website of KPC and SP.
- During November and December 2015, KPC has adopted twenty (20) decision in total.
- During November and December 2015, KPC has adopted The Action Plan of Prosecutors` Performance Evaluation Unit.
- KPC has not published at its website almost any of regulations, decisions or other documents in Serbian Language.

VIII. RECOMMENDATIONS

By considering all unimplemented obligations by the judicial package and the new obligations, which have emerged as a result of the amended and supplemented of judicial package of laws, KLI has issued a series of concrete recommendations to the Ministry of Justice, the Assembly of the Republic Kosovo, the Kosovo Judicial Council and Prosecutorial Council. The draft of these recommendations has been made as a result of legal research and international standards related to the independence and accountability of the judiciary. The implementation of these concrete recommendations will serve to increase independence and accountability of the justice system and also will enable effective and efficient implementation of judiciary laws. Further, KLI has presented specific recommendations for each institution

a) Recommendations for the Ministry of Justice

1. The Ministry of Justice should initiate amending the Article 105 paragraph 1 and Article 109 paragraph 5 of the Constitution of the Republic of Kosovo related to the initial mandate of judges and prosecutors. It is recommended for the initial mandate to be dismissed and the appointments of judges and prosecutors to become of a permanent status.
2. It is recommended that the Ministry of Justice throughout the supplementing process to foresee transitional provisions regarding the treatment of cases that are currently being elaborated by the ODC. The supplementing process should address the issue of prescribed period of time regarding the treatment of cases by the ODC, the Disciplinary Committee and Councils, a phenomenon that should comply with the context and specifics of the legal system in Kosovo. The one year defined restriction should be reviewed and extended to two years, at least. Relying on the actual resources of the ODC and the considerable number of cases in this office, KLI recommend the following: *“The disciplinary procedure against judges and*

prosecutors should not be initiated and applied by the Disciplinary Committee of the KJC and KPC after the expiration of two years from the notification date received in the ODC about the alleged violation and after the expiration of six years from the date of the alleged violation itself”.

3. Regarding the time limit for handling the cases submitted by the ODC, KLI recommends that the Disciplinary Committee to conclude cases in the first instance within the time period of six (6) months. Whilst in case of appeal, it is recommended for the KJC and KPC to conclude these cases within the time period of three (3) months.
4. It is recommended for the Ministry of Justice to emphasize the legal provisions in every case initiated by the ODC regarding alleged violations committed by judges and prosecutors, in order to conclude these cases and charge them if accountability. In cases when these judges and prosecutors request to concede from their position, this request should not be granted until the disciplinary procedure isn't concluded. Same applies for cases where judges and prosecutors have conceded from their position and the ODC has information that they could have committed a disciplinary violation. In these cases they should be investigated related to the alleged violations and given a disciplinary measures.
5. The issue of ODC's impartiality should be addressed immediately in order to ensure the impartial functioning of this office that will enable the increase of accountability of judicial and prosecutorial figures as well as the increase of the public's trust in these institutions.
6. The amendment of the aforementioned laws should ensure the effective judicial protection with the decisions of both Councils (KJC and KPC) related to disciplining, appointment, reappointment, proposals for dismissal, assessing and transferring judges and prosecutors.

b) Recommendations for Kosovo Assembly

1. Kosovo Assembly should express its utter willingness to amend the Constitution regarding Article 105 (1) and 109 (5) related to the initial mandate of judges and prosecutors. The Venetian Committee recommend that judges and prosecutors should be appointed with a permanent mandate until retirement. The amendment should be in utter harmony with the opinion of the Consultative Council of European Judges, which stipulates European practices in principle to have full appointment until retirement after reaching the retirement age.

c) Recommendation for the Kosovo Judicial Council

1. Bearing in mind the challenges and obstacles that the legal system is confronted with in terms of implementing the strategic plan 2007-2012 and the lack of will on realizing the obligations deriving from it, it is fundamentally necessary that the KJC in cooperation with the Supreme Court and Court Presidents to enhance the level of coordination, cooperation and accountability in implementing the objectives that derive from the Strategic Plan of Kosovo Judiciary 2014-2019.
2. It is recommended that the coordinator appointed by the KJC for monitoring the implementation of the Strategic Plan to compile reports or continuously report to the KJC regarding the implementation situation of this plan. It is recommended that the KJC to seriously analyze these reports so that they can produce the required effects to achieve the objectives set by this plan.

3. It is recommended that the KJC to prioritize the adoption of the Regulation on Classification and Qualification of Documents in the Judicial System of Kosovo. The amendment of the Law on Courts foresees that courts should publish the enforceable verdicts in their official websites in a timeline of 60 days after the verdict has become enforceable, always by protecting the personal data. In order to satisfy this obligation and other obligation related to other documents of the judicial system, the KJC has to adopt rules, criterion and procedures related to the qualification and classification of documents. This would facilitate the communication between the judicial system and media, public and interested parties as well as would incline the security level of documents and the restriction on accessing these documents from unauthorized persons.
4. It is recommended the preparation of guidelines for disclosing information in order to increase the legally based active communication between the Councils and public. It is recommended for the KJC to conduct specific trainings related to public relations for the members of the Council, judges, spokespersons and supporting staff. The classification and qualification of documents and information in the judicial system should be utterly harmonized with the obligation deriving from the law on information classification and security verification.
5. It is recommended for the KJC to prioritize the adoption of the Regulation on Public and Media Communication. The adoption of this regulation should define the procedures, criterion and manners of cooperation between the KJC, Courts and the public, media and interested parties.
6. It is recommended for the KJC to develop the capacities of strategic planning and managing by establishing the Office of Strategic Planning within the KJC or to appoint an official for the implementation of activities of such nature according to the Judicial Strategic Plan 2014-2019.
7. It is recommended for the KJC to establish a mechanism that would oblige Court Presidents to report before the Council accordant to the obligation deriving by law, to exercise an efficient supervision, respectively to hold accountable the Presidents of Basic Courts when they don't comply with the obligation to periodically report before the KJC.
8. It is recommended for the KJC to adopt the Regulation on the Publication of Verdicts. KJC has issued an Administrative Guidelines that does not comply with the law necessities and requirements and international standards on regulating the issue of verdict publication. There for, KLI recommends the adoption of a Regulation that would define the procedures that should be implemented by every courthouse, including the responsibilities of the officials and prescribed periods of time that shall be appointed and respected during the implementation of the obligations derived by law.
9. KJC should establish an infrastructure and necessary human and professional resources to enable the publishing of enforceable verdicts/rulings of Kosovo Courts in accordance with legal obligations. A paved care should be dedicated to the personal data protection, the creation of adequate infrastructure, the training and specialization of respective officials.

10. It is recommended for the KJC to adopt the Regulation on the Supreme Court related to the management, judge appointment, panel appointment and presiding judge appointment.
11. It is recommended for the KJC to adopt a Regulation on the Appellate Court related to the appointment of judges into Departments in order to ensure efficiency in case handling, assigning the heads of departments according to need and to ensure that every single case is delegated to a panel.
12. It is recommended for the KJC to adopt a Regulation on the Selection of the Supreme Court's President and Basic Court's President.
13. It is recommended for the KJC to amend and supplement the current Regulation on Judge Performance Assessment.
14. It is recommended for the KJC to adopt the Regulation on Rules and Procedures Governing Complaints against the decisions of KPC regarding the involuntary permanent relocation or transfer of judges exceeding the period of six (6) months.
15. KJC and KPC should amend and supplement the Regulation on the Office Functioning of the ODC where it is clearly stipulated the issues of its Directors mandate and a regulation that will remain into force until the adoption of a special law on ODC.

d) Recommendation for the Kosovo Prosecutorial Council

1. It is recommended for the KPC to review the Strategic Plan on Inter-institutional Cooperation for Combating Organized Crime and Corruption 2013-2015. The strategic plan review should precede analysis and risk assessment related for specific criminal offenses, foreseeing measurable and expectable objectives and results upon which the State Prosecutor, in cooperation and coordination with the Police and other agencies that implement the law, shall direct activities to efficiently prevent and combat crime.
2. It is recommended for the KPC to review the Strategic Plan (2016-2018) and the Action Plan to Increase the Efficiency of the Prosecutorial System in Combating Corruption and economic crimes, including Sequestration and Confiscation of Illegal Assets.
3. It is recommended for the KPC to adopt the Regulation on Classification and Qualification of Documents in the Prosecutorial System of Kosovo. The classification and qualification of documents and information in the prosecutorial system should be utterly harmonized with the obligation deriving from the law on classification of information and verification of security.
4. It is recommended for the KPC to adopt the Regulation on Communication with the Media and Public. The adoption of this regulation would define the procedures, criterion and the manner of cooperation between the KPC, prosecution offices with the public, media and interested parties.
5. It is recommended for the KPC to adopt the Regulation for Effective Disciplinary Procedures (for prosecutors, members of the KPC). It is recommended that KPC complying with the amendments of the LKPC, to amend the Regulation on Disciplinary Committee for prosecutors of the KPC, the structure of the Disciplinary Committee, the treatment of

disciplinary cases handled by this Committee and the KPC itself in various prescribed periods of time.

6. It is recommended for the KPC to adopt the Regulation on Disciplinary Responsibilities of KPC's member. The adoption of this regulation is of a crucial importance for the inclination of the responsibilities and accountability of KPC's members during the time they exercise their positions and responsibilities according to law and internal acts of the KPC.
7. It is recommended for the KPC to adopt the Regulation on Standardization regarding the Oration of Prosecutors. The participation of prosecutors in extracurricular activities, including lecturing done in public or private universities should be conducted according to rules and procedures adopted in the KPC in order to preserve the image of the prosecutorial system in the public eye.
8. It is recommended for the KPC to adopt the Standard Operating Procedures regarding the conflict of interest avoiding during the time KPC's members exercise their functions. The public's trust and perception towards the prosecutor's and their staff regarding KPC's decisions is of a crucial importance. There for, KPC and its members should apply high professional standards and avoid situations where the public or media perceps its decision based on personal or material interest.
9. It is recommended for the KPC to adopt the Regulation on Rules and Procedures Governing Complaints against the decisions of KPC regarding the involuntary permanent relocation or transfer of the prosecutor exceeding the period of six (6) months.
10. KPC should adopt a special Regulation for professional associates and trainees in the Prosecution Office.