



Effective Legal Remedies in Administrative Justice

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About KLI

KLI, Kosovo Law Institute it is a non-governmental organization and non-profit of the public policies, think tank specialized in justice sector.

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I. Introduction

Administrative justice is an important area of law addressing the legality of acts or omissions of public and state administrative institutions that directly or indirectly affect the rights of citizens of the Republic of Kosovo guaranteed by the Constitution of the Republic of Kosovo and international instruments applicable in the Republic of Kosovo¹. Societies governed by the rule of law require effective judicial remedies so that citizens are able to exercise rights arising from challenged administrative decisions, and public administrative actors. This implies commitment to the principle that the institutions of the public and state administration must act in accordance with procedures and deadlines set by the law. In the absence of an effective system of administrative justice, the citizens of Kosovo are in danger of suffering from unlawful and arbitrary government action in violation of their rights.

This report provides objective and subjective data regarding current court practice in administrative matters and analyzes whether these practices comply with the obligations arising from applicable law. Through this analytical process, KLI reveals how administrative justice is implemented in practice; which administrative authorities generate the most legal disputes and the most common basis for such disputes. KLI also sheds light on how administrative authorities operate when cases are remanded for retrial, the extent to which legal deadlines are observed by claimants and administrative bodies, and ultimately the decisions rendered by the court.

In doing so, this report provides insight into the Department for Administrative Matters of the Basic Court in Pristina's (hereinafter the Court) effectiveness in providing adequate legal remedies to protect citizens' rights in administrative justice. We offer the data and analysis presented in this report as the basis for a productive discussion among all relevant actors to resolve existing problems in the administrative justice in Kosovo.

¹ Article 22 of the Constitution of the Republic of Kosovo.

II. Methodology

For the purpose of this report, the KLI used empirical and doctrinal methods to gather evidence necessary to expose systematic violations of the right to an effective remedy and a trial within a reasonable time. KLI's methodology commenced with a careful analysis of applicable legislation in Kosovo and international standards. Next, KLI collected and analyzed the Court's annual statistics, and then gathered evidence of Court practice through the process of monitoring 86 court sessions spanning 41 cases during the period of 1 February 2017 to 30 April 2017. In addition to analyzing final court decisions in these 40 cases, KLI supplemented its data by conducting a series of 10 interviews with judges presiding over the 41 monitored hearings/cases. Finally, KLI led a focus group comprised of administrative dispute actors and stakeholders to complete and validate the findings in question.

a) Preparatory work

Prior to gathering the necessary data for this report, KLI held meetings with the President of the Basic Court in Pristina and the Head of the Administrative Department to inform them and secure their cooperation with the purpose of this report. The KLI's review of Court decisions was made possible by applying for access to these public documents in accordance with the Law on Access to Public Documents (No. 03 / L-215)². The KLI has also analyzed the KJC annual reports of 2014, 2015 and 2016 to calculate the clearance rate and time to disposition of the administrative cases according to CEPEJ indicators in order to measure the efficiency of the Administrative Department. The KLI also collected statistics for the first quarterly report of 2017 from the Basic Court in Pristina. Meanwhile, in preparation for monitoring Court proceedings, the KLI drafted a Manual of Monitoring of Administrative Justice (Manual) in Kosovo which describes the purpose of the monitoring, the national and international legal framework, and the reporting methodology³. The Manual complies with OSCE standards for monitoring of the administrative justice, and was used to guide KLI monitors, each of whom received continuous training throughout the monitoring period.

b) Data collection

During the period of 1 February to 30 April 2017, the KLI field monitors conducted monitoring of court cases/hearings in the Court based on manual instructions in, monitored 86 sessions and the same are reported on the webpage "Oath for Justice"⁴.

On 18 April 2017, the KLI organized a focus group with judges of the administrative department of the Basic Court in Prishtina, the Supreme Court, representatives of institutions such as the

² Note: The KLI requested access to 40 final judgments in administrative cases that have been decided in 2014, 2015 and 2016. The court responded positively to the KLI request and provided access to the 40 requested cases. The selection of cases was made by the court staff.

³ Note: The KLI when drafting the manual is based on the practice of the Organization for Security and Cooperation in Europe (OSCE) regarding the monitoring of the court hearings.

⁴ "Oath for Justice" in: <http://betimiperdrejtesi.com/>.

Ombudsperson, Ministry of Justice, Free Legal Aid Agency, non-governmental organizations that monitor administrative justice etc. In this focus group, the findings of the monitoring were discussed, including discussion of the current situation and the practical implementation of administrative justice.

Through interviews conducted by KLI with 6 judges in the administrative department and 4 judges at the Court of Appeals and the Supreme Court, the data were collected on the number of cases in process, the obstacles and challenges they face with these cases during the work process.

III. Legal framework

The Constitution of the Republic of Kosovo has materialized the highest standards regarding the guarantee and protection of human rights and freedoms⁵.

The applicable legislation in the administrative justice contains some discrepancies in the legal provisions of the LAC and the LGAP, which also do not ensure effective implementation of the administrative procedure by the court and, thus, also the protection of the rights of individuals⁶.

Multiple instances of appeal (in the judiciary as well as in the administrative bodies) negatively affect the efficiency of the procedure of administrative disputes. For example, according to the Law on Civil Servants, there are two possibilities of appeal within the administration in cases of recruitment, disciplinary measures and dismissals. The last instance within the administration is the Independent Oversight Board of the Kosovo Civil Service, which decisions may be appealed to the court (which consists of three instances and together with the authority that has taken the initial decision, are a total of six instances that can deal with an administrative dispute before the final decision is reached. The same applies for most of the administrative bodies⁷.

a) Administrative Justice in the Kosovo Constitution and Laws

Article 32 of the Constitution of Kosovo guarantees the right to legal remedies against judicial and administrative decisions that violate the rights or interests of its citizens⁸. The Constitution

⁵ The Constitution of Kosovo establishes that fundamental human rights and freedoms are inseparable, inalienable and inviolable, and are the basis of the legal order of the Republic of Kosovo. The Republic of Kosovo protects and guarantees the fundamental human rights and freedoms provided for in this Constitution. Everyone has a duty to respect the human rights and fundamental freedoms of others. Moreover, in its Article 22, the Constitution lists the international human rights instruments that are applied directly in Kosovo.

⁶ Outcome from the focus group held with judges of the Supreme Court of Kosovo, the Administrative Department of the Basic Court in Pristina, the Ombudsperson, the Ministry of Justice and the Agency for Free Legal Aid, Kosovo Bar Association, civil society actors monitoring administrative justice in Kosovo on May 18, 2017.

⁷ Outcome from the focus group held on May 18, 2017.

⁸ Article 32 of the Constitution of the Republic of Kosovo, Official Gazette of the Republic of Kosovo, at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=3702> (hereinafter: the Constitution).

has also established as a criterion that the legal remedies, in addition to being available, they should also be effective⁹.

Article 13 of the Law on General Administrative Procedure¹⁰ (Law on GAP) guaranties the right to legal remedies (administrative and judicial remedies) against an administrative action or inaction of a public authority that violates a person's right or a legal interest¹¹.

Law on Administrative Conflicts (LAC)¹² regulates the competencies, the composition of the court and the rules of procedure, based on which the competent courts decide on the legality of the administrative acts by which the competent bodies of the public administration decide on the rights, obligations and legal interests of natural and legal persons and other parties, as well as on legality of the actions of administrative authorities. The purpose of this law is to provide judicial protection of the rights and legal interests of natural, legal and other persons whose rights and interests have been violated by individual decisions or actions of public administration bodies.

According to the LAC, in a given case the court may decide to annul the contested administrative act and the administrative body is obliged to act as it is specified in the judgment and to render a new administrative act¹³.

Article 43 paragraph 1 of the LAC provides that "The court shall decide on the administrative conflict issue, based on the facts ascertained in the administrative proceeding". According to the paragraph 2 of the same Article, "In case the court concludes that the administrative conflict can not be reviewed based on the facts ascertained in the administrative proceeding as in the viewpoint of the ascertained facts there are contradictions in acts, and that an inaccurate conclusion in the factual state viewpoint has been issued from the ascertained facts, or the court concludes that the proceeding rules haven't been abided, rules that are of importance for solving the issue, the court shall annul through an adjudication the administrative contested act. In such a case, the competent body is obliged to act in the manner determined by the adjudication and issue a new administrative act".

Paragraph 3 of article 43 of the LAC provides that the court may establish itself the factual situation and based on that factual situation can issue a judgment on merit if any of the following requirements have been met:

⁹ Article 54 of the Constitution.

¹⁰ Law no. 05/L-0-131 on General Administrative Procedure, Official Gazette of the Republic of Kosovo / no. 20/21 June 2016, Pristina, at: <http://map.rks-gov.net/getattachment/beba5693-99b9-4c04-869a-50bbc431dc26/LIGJI-PER-PROCEDUREN-E-PERGJITHSHME-ADMINISTRATIVE.aspx> (hereinafter: Law on GAP).

¹¹ Article 13 of the Law on GAP.

¹² LAW No. 03/L-202 on Administrative Conflicts, Official Gazette of the Republic of Kosovo / Pristina: Year V / No. 82/21 October 2010 at: <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2707> (hereinafter LAC).

¹³ Article 43, paragraph 2, of LAC.

- if the annulment of the administrative act and repeated proceeding in the competent administrative body would cause any harm to the claimant, harm that is difficult to be repaired;
- if based in official documents or other evidences in the documents of the case it is clear that the factual situation differs from the situation ascertained in the administrative proceeding;
- if the administrative act has been once annulled in the similar administrative conflict, whereas the competent administrative body hasn't acted according to the judgment"¹⁴.

Moreover, according to article 67 of LAC "if the competent body after the annulment of the administrative act issues an administrative act in contradiction with the court aspects, or in contradiction with remarks of the court regarding procedure, whereas the claimant submits new claim, the court shall annul contested act and as a rule, the court shall decide on the matter with a judgment. Such judgment shall substitute the act of the competent body".

Article 65 of the LAC obliges administrative bodies to enforce court decisions. Similarly, Article 147 of the Law on GAP also obliges the administrative authority to execute the act amended or replaced by the court¹⁵.

KLI has monitored the application of these particular provisions by the court, as the Ombudsperson's report published last year¹⁶ attracted KLI's attention regarding the large number of cases by which the administrative bodies and courts created the so-called "ping-pong" effect. According to Ombudsperson's report courts are not deciding on the merits of the case and to assess if any of the conditions set in Article 43 para. 3 is met. Whereas the administrative bodies are not enforcing the court decision as foreseen in Article 147 of GAP and Article 65 of LAC, thus taking the same decision for the second time.

Based on the KLI analysis of the LAC, there are no procedural provisions regulation the complaining procedure. Article 63 of the LAC gives reference to application of the Law on Contested Procedure in cases when LAC is silent to some procedural aspects¹⁷. Article 63 was used by the court in all final decisions analyzed by the KLI. LAC was adopted before the Administrative Department of the Basic Court in Prishtina was formed and at that time the administrative disputes were being handled by the Supreme Court. The Supreme Court did not have a three level of complaint procedure as it is currently regulated and the LAC has not changed accordingly.

¹⁴ Article 43, paragraph 3, of LAC.

¹⁵ Article 147, paragraph 1 of the Law on GAP.

¹⁶ Ombudsperson Institution: Report with Recommendations: Prek Krasniqi complaint no. 72/2015 regarding the lack of effective remedies, in: http://www.ombudspersonkosovo.org/repository/docs/1072-2016_Raport_me_rekomandime_680722.pdf.

¹⁷ Article 63 of LAC.

As it will be elaborated below, KLI findings confirm the same. These issues identified by KLI monitoring have been endorsed by justice sector actors as well, who stress the issue of applicable legislation being an impediment for effective administrative justice and respect for the rights and interests of the parties in the proceedings¹⁸.

Even though KLI did not monitor administrative bodies, the problem seems to have roots particularly in the phase where administrative bodies decide on an administrative issue or have to act upon court decision to change their initial decision. However, the staff working at administrative bodies have training regarding the implementation of obligations deriving from the Law on General Administrative Procedure¹⁹.

b) Effective legal remedies: International Conventions and implementation in practice

The Constitution of Kosovo stipulates that the ratified international agreements and binding legal norms of the international law have priority over the laws of the Republic of Kosovo²⁰.

Moreover, Article 53 of the Constitution establishes that human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted consistent with the court decisions of the European Court of Human Rights. This provision obliges the courts in Kosovo to apply the case law of the European Court of Human Rights when deciding on administrative matters.

In this regard, Article 13 of this Convention guarantees the right to an effective remedy, namely to everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

“Effective remedy” means an appropriate and functioning judicial and administrative mechanism for addressing and deciding upon claims of violations under domestic law. This applies equally when the violation has been committed by persons acting in an official capacity. The OSCE participating States have committed themselves to ensure that everyone will enjoy recourse to

¹⁸ Outcome from the focus group held with judges of the Supreme Court of Kosovo, the Administrative Department of the Basic Court in Pristina, the Ombudsperson, the Ministry of Justice and the Agency for Free Legal Aid, Kosovo Bar Association, civil society actors monitoring administrative justice in Kosovo on May 18, 2017.

¹⁹ *Ibid.*

²⁰ Article 22 of the Constitution is subject to unilateral obligations in the direct application of the International Agreements and Instruments. Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the Republic of Kosovo and, in the case of conflict, have priority over provisions of laws and other acts of public institutions, including, but not limited to, international instruments such as: (1) Universal Declaration of Human Rights; (2) European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols; (3) International Covenant on Civil and Political Rights and its Protocols.

effective remedies against any violation of their rights, as well as to ensure the right of the individual to appeal to executive, legislative, judicial or administrative organs²¹.

Remedies cannot be considered effective when they prove illusory because of the general conditions prevailing in the country, when they are excessively onerous for the affected individual, or when the state does not ensure their proper enforcement by the judicial authorities. Furthermore, if a court refuses to review the substantive issues related to an administrative action by an executive body that it deems to be a permissible exercise of its full discretion, the appeal cannot be considered an effective remedy²².

IV. Results and Findings

a) Structure of the Department for Administrative Matters of the Basic Court in Prishtina

The Administrative Department of the Basic Court in Prishtina has a total of 7 judges. One of them is the Head of Department and two judges who are exclusively assigned in the fiscal division. The Administrative Department by the end of January 2017 had processed 5800 cases²³. KJC Annual Report for 2016 shows that by the end of 2016 there were 5192 unresolved cases, which means 742 cases per judge. The data from January show 5800 processed cases, which means that each judge in this department has processed 825 cases.

The case load in Administrative Department makes it difficult for judges to handle the cases in timely fashion so that parties can receive justice. The administrative department has insufficient number of judges and supporting staff to handle the cases, including lack of professional staff that have expertise in dealing with cases concerning customs, tax administration and pension rights matters. Also, judges receive a large number of interim measures which affects the handling of other cases. Furthermore, this department is generally new and has not yet developed any practice²⁴.

The increase in the number of the cases resolved in the administrative department during 2016 in 2404 cases, out of 959 cases resolved during 2015, is attributed to the increase of the number of judges in this department, from two judges in 2015, to seven judges in 2016.

²¹ Handbook for Monitoring Administrative Justice, Tirana, February 2015, page 48, at: <http://http://www.osce.org/sq/albania/165886?doenload=true>.

²² Ibid, page 49.

⁷ Interview with the Head of the Administrative Department of the Basic Court in Prishtina - Judge - Ms. Delushe Halimi.

²⁴ Outcome form the focus group held with judges of the Supreme Court of Kosovo, the Administrative Department of the Basic Court in Pristina, the Ombudsperson, the Ministry of Justice and the Agency for Free Legal Aid, Kosovo Bar Association, civil society actors monitoring administrative justice in Kosovo on May 18, 2017.

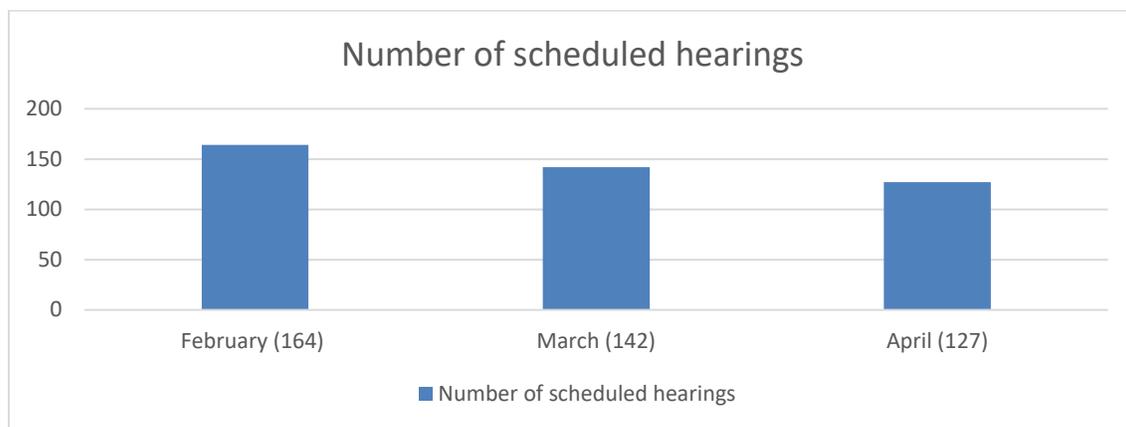
Administrative Cases	No. of unresolved cases	No. of received cases	No. of resolved cases	No. of unresolved cases in 31.12	Clearance rate - CR (%)	Disposition Time - DT (per day)
2014	2601	2568	1130	4039	44%	1,304
2015	4039	2300	959	5380	42%	2,047
2016	5380	2216	2404	5192	108%	788

Table 1 - Statistics on the number of cases at Administrative Department of Basic Court of Prishtina

Table 1 shows a significant increase in the clearance rate of administrative cases by the Basic Court in Prishtina. As seen above, this department in 2014 and 2015 was not efficient in resolving cases, because at that time there were only 3 judges and no fiscal division. By the end of 2015 and in the beginning of 2016, the number of judges (now 7 in total) who are dealing with administrative matters and the functioning of the fiscal division has been increased, out of 7 judges, two (2) exclusively deal with fiscal issues.

b) Findings from the monitoring of the court hearings

KLI has received in the beginning of each month the schedule of court hearings from the judges of Administrative Department. For February, March and April, the Administrative Department planned/ scheduled 433 court hearings²⁵ (see Graph 1). KLI field monitors have monitored a total of 75 hearings from February 1st to April 1st 2017. Out of the 75 hearings monitored only 47 were held, while 28 of them have been adjured (see Table 2).



Graph 1 - Number of hearings scheduled at the Administrative Department in Prishtina Basic Court.

²⁵ Note: This statistical information is based on the data provided by all judges of the administrative department regarding the number of hearings planned for the respective month, as well as on the basis of the monitoring process by the KLI monitors.

During the monitoring KLI noted that not all judges have the same efficiency in managing the schedule of the court hearings. For example, some judges schedule up to 33 court hearings within a month. Some other judges schedule only 5 hearings within a month period. The table below presents the number of hearings scheduled by each Administrative Department judge on monthly basis during February, March and April 2017²⁶.

<i>Judge</i>	<i>February</i>	<i>March</i>	<i>April</i>	<i>Total</i>	<i>Average by months</i>
<i>1</i>	<i>33</i>	<i>0²⁷</i>	<i>0</i>	<i>33</i>	<i>33</i>
<i>2</i>	<i>19</i>	<i>24</i>	<i>19</i>	<i>62</i>	<i>20.66</i>
<i>3</i>	<i>32</i>	<i>32</i>	<i>28</i>	<i>92</i>	<i>30.66</i>
<i>4</i>	<i>15</i>	<i>22</i>	<i>5</i>	<i>42</i>	<i>14</i>
<i>5</i>	<i>21</i>	<i>22</i>	<i>27</i>	<i>70</i>	<i>23.33</i>
<i>6</i>	<i>24</i>	<i>21</i>	<i>22</i>	<i>67</i>	<i>22.33</i>
<i>7</i>	<i>20</i>	<i>21</i>	<i>26</i>	<i>67</i>	<i>22.33</i>

Table 2 - Number of hearings scheduled by each judge on monthly basis.

KLI monitoring data reveal that in most of the cases the respondents were administrative bodies, such as The Ministry of Labor and Social Welfare (MLSW), the Independent Oversight Board for Civil Servants of the Republic of Kosovo (IOBCSK), the Procurement Review Body (PRB), Kosovo Customs (KC), the Ministry of Environment and Spatial Planning (MESP) etc. The table below presents statistics on top 10 administrative bodies that were suit during February, March and April 2017.

²⁶ The aforementioned data is provided by judges at the end of each month for the previous month.

²⁷ Judge 1 from March and April 2017 is on maternity leave.

No.	The respondent institution	February	March	April	Total
1.	Ministry of Labor and Social Welfare	60	46	36	142
2.	Independent Oversight Board for Civil Service	19	15	4	38
3.	Kosovo Customs	36	33	36	105
4.	Tax Administration of Kosovo	7	9	13	29
5.	Anti-Corruption Agency	4	6	4	14
6.	Ministry of Environment and Spatial Planning	5	2	1	8
7.	Procurement Review Body	3	9	4	16
8.	Municipality	4	5	3	12
9.	Ministry of Health	2	3		5
10.	Ministry of Internal Affairs	3	6	6	15

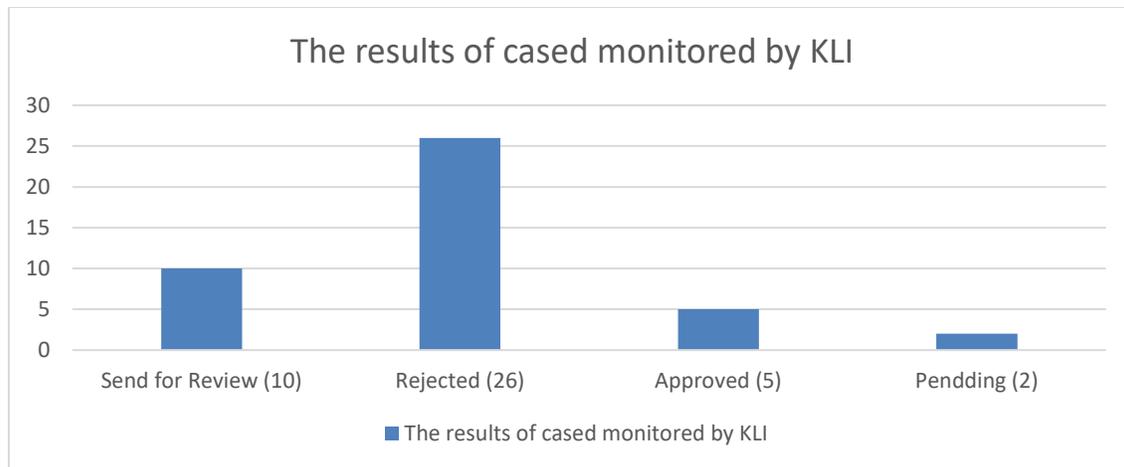
Table 3 – Statistics regarding claims filed against administrative bodies on monthly basis (February, March, April 2017).

An interesting finding was that in cases when citizens filed lawsuits against MLSW, the cases at matter had to do with persons seeking pensions rights.

Monitoring period	Number of hearings scheduled	Number of hearings held	Number of hearings adjured
February	34	22	12
March	20	17	3
April	21	8	3
Total	75	47	28

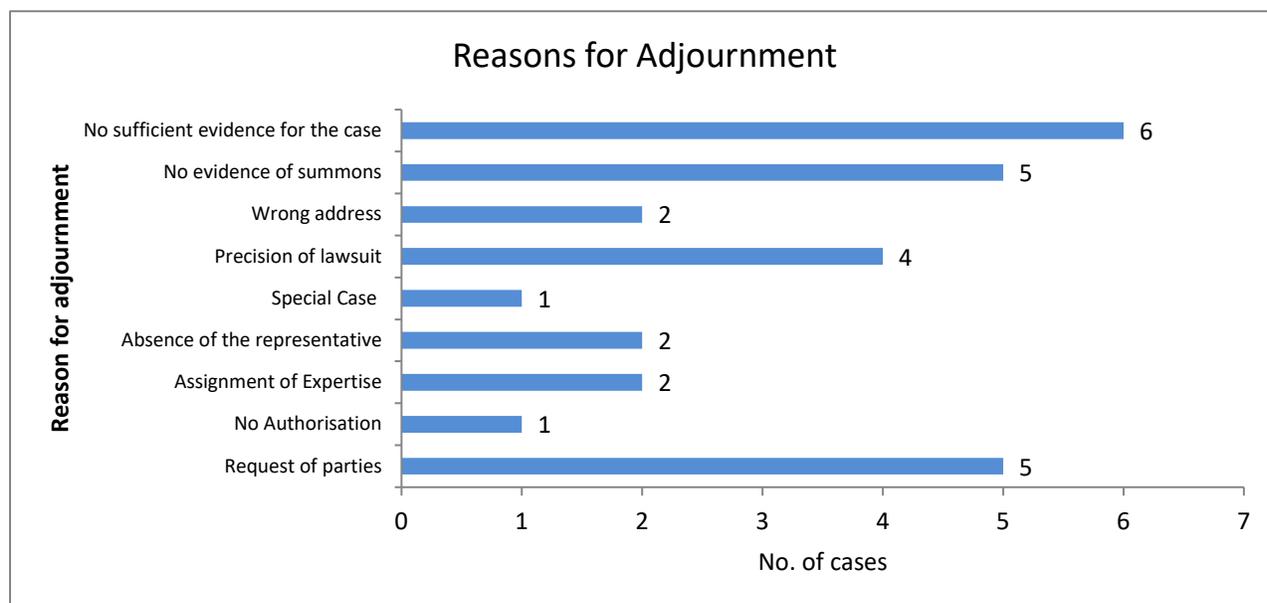
Table 4 - Sessions monitored by KLI (February, March, April 2017).

Of these monitored cases, the KLI field monitors have been able to have access to 43 final judgments. According to the KLI analysis in these judgments, it results that 10 cases were sent for reconsideration/review of administrative bodies, 26 cases were rejected because they did not have legal basis, 5 cases were approved and decided on merits and 2 cases were suspended because the claimants withdrew their claim (see graph 3).



Graph 3 – Results of cases monitored by KLI (February, March, April 2017).

The graph below shows the common reasons for which the cases have been postponed from February to April. The usual reasons for the postponement were that the parties requested the postponement, lack of power of attorney by the claimant, assignment of expertise, absence of representatives, special cases/circumstances, the requested specification of lawsuit, wrong addresses, lack of evidence regarding the summons, and lack of sufficient evidence regarding the case.



Graph 4 - Reasons for adjournment of monitored hearings by KLI (February, March, April 2017).

KLI findings indicate that out of 43 judgments, 10 cases were returned for a new decision, 5 cases were approved and decided based on the merits, while in two cases the proceedings are suspended. The Court has in 26 cases rejected the claim due to the lack of legal grounds. Absence of lawyers also affects the length of court proceedings. Based on interviews with the

judges, but also as a result of court monitoring, representation by a non-lawyer of plays a significant role in court's efficiency. While in cases where parties are represented by lawyers, there are issues with the quality of representation since most of the lawyers do not have expertise and special training in the administrative dispute field²⁸.

Interviews with stakeholders

For the purpose of collecting quantitative data KLI has developed four questionnaires for judges of Administrative Departments of the Basic Court, Court of Appeals, the Supreme Court and one questionnaire for the claimants.

1. Interviews with judges

KLI has interviewed 9 judges of the Administrative Department in the Prishtina Basic Court, Court of Appeals and the Supreme Court of Kosovo. From the interviews KLI learned that judges of the Administrative Department of the Prishtina Basic Court have at least 600 cases of work. Some of the judges were dealing with more than 750 cases.

According to the judges the Law on Administrative Conflicts does not allow them to take a meritorious decision the first time a claim has been filed. Instead the law instructs them to send the cases back for review to the administrative bodies for a new decision.

This interpretation of the law is in contradiction with the actual meaning of Article 43, paragraph 3 of the Law on Administrative Conflicts which provides that the court may establish itself the factual situation and based on that factual situation can issue a judgment on merits if any of the following requirements are met:

- if the annulment of the administrative act and repeated proceeding in the competent administrative body would cause any harm to the claimant, harm that is difficult to be repaired;
- if based in official documents or other evidences in the documents of the case it is clear that the factual situation differs from the situation ascertained in the administrative proceeding
- if the administrative act has been once annulled in the similar administrative conflict, whereas the competent administrative body hasn't acted according to the judgment"²⁹.

This means that judges never take into consideration in analyzing on case by case basis, if any of these specific conditions are met, regardless if the case is for the first or second time in court.

According to judges the administrative bodies rarely implement courts' decisions to re-decide on the matter according to the instructions provided by the court. Instead, in most of the cases

²⁸ Outcome form the focus group held with judges of the Supreme Court of Kosovo, the Administrative Department of the Basic Court in Pristina, the Ombudsperson, the Ministry of Justice and the Agency for Free Legal Aid, Kosovo Bar Association, civil society actors monitoring administrative justice in Kosovo on May 18, 2017.

²⁹ Article 43, paragraph 3, of LAC.

administrative bodies ignore court decisions and issue same decision as the first time. Therefore, parties are thereupon forced to file a new claim for the second time in court. According to the judges, only when the cases comes to court for the second time, the court can decide on the merits.

However, KLI has identified cases where even the Basic Court itself did not decide according to the decisions of the Supreme Court. On January 15, 2016 SIGKOS filed a claim at the Basic Court in Pristina. On October 10, 2014, the Court decided to reject the claim. The claimant complained against the decision at the Court of Appeal. The Court of Appeals rejected the claimant's complaint on June 11, 2015. The claimant has filed a request for extraordinary review of the decision at the Supreme Court. The latter, on 30 November 2015, rendered a Judgment whereby the request was accepted as grounded and the case was returned to the Basic Court for another review. On 14 March 2017, the Basic Court rendered a decision rejecting the request³⁰.

The time required for resolution of cases at the Court of Appeals, is not more than 6 months from the date the case is assigned to a judge. Whereas, the time period from the moment of the appeal being filed to the moment of being decided is approximately 9 months. In 2016 the Court of Appeals has received 436 new cases and has solved 426 cases. Based on the findings of KLI, by the end of 2016, 334 cases remain to be proceeded at the Court of Appeals.

According to the interview conducted with the only judge dealing with administrative matters at the Supreme Court, there are about 55 cases with a request for extraordinary review and protection of legality. Moreover, the Supreme Court needs no more than 3 months to decide on a case. Further, this court is already reviewing cases of 2017.

It is evident from all the interviews with judges that there are no monitoring mechanisms for the enforcement of court decisions. The monitoring is being done only NGOs and other institutions that monitor the work of the courts.

2. Interviews with claimants

During April KLI has conducted 11 interviews with parties/claimants who are subject to administrative proceedings at the administrative department. In all interviews with claimants, they complained regarding the length of court proceedings. Out of 11 interviewed claimants 5 of them have filed indictments at the court in 2015, four of them filed the indictments in 2014 whereas two of them in 2013. Court proceedings in these cases are still ongoing.

3. Analysis of court's final decisions

³⁰ Report on the monitoring of the court session in the case SIGKOS, 14 March 2017, at: <http://betimiperdrejtesi.com/sigkos-kerkon-gjykata-te-vendose-bazuar-ne-vendimin-e-gjykates-supreme/>.

In accordance with the Law on Access to Public Documents KLI has obtained 40 final decisions from the Administrative Department of the Basic Court in Pristina. Cases were randomly selected and are dated from 2014, 2015 and 2016. KLI has analyzed these cases and the results show that in most cases the court has decided in favor of the administrative bodies.

Out of forty (40) analyzed cases, nineteen (19) were in favor of administrative bodies, thirteen (13) were in favor of the claimant whilst in eight (8) cases the claimant withdrew the indictment. Table No.5 below presents administrative bodies that have been party to the proceedings and the court has decided in their favor.

Administrative Bodies	Number of cases
Ministry of Labour and Social Welfare	7
Tax Administration of Kosovo	2
Municipality of Peja	1
Independent Supervisory Council for Civil Service	3
Ministry of Education ,Science and Technology	1
Kosovo Judicial Institute	1
Kosovo Judicial Council	1
Kosovo Bar Association	1
TOTAL	19

Table 5 - Administrative bodies that have been party to the proceedings and the court has decided in their favor.

In one case the claimant requested suspension of the case because it had been too long since the lawsuit was filed so they no longer had legal interest to proceed with the case. In this case, the claimant sued the Municipal Assembly of Gjilan - the Department of Education, for the selection of a candidate for the position of 'secretary' in a primary school. This complaint was filed on 28 February 2011 and was initially rejected by the Department of Complaints within the Municipality. Being dissatisfied with the rejection of the complaint, the claimant filed a second complaint on 8 April 2011 with the Independent Oversight Board for the Kosovo Civil Service, which partially approved the complained-on 11 May 2011, and took a decision to annul the vacancy. On 17 June 2011, the plaintiff then indicted the Municipal Assembly at the Municipal Court in Gjilan.

It took four years, for the Basic Court of Gjilan - the General Department to state on 12 June 2015 that it was not competent to deal with this case and sent the case to the Administrative Department in Pristina. On 13 November 2015, the claimant filed a lawsuit with the Basic Court of Pristina - Administrative Department. On 6 June 2016, the claimant informed the Court that he wanted to withdraw the lawsuit. Finally, on June 8, the Court issued a decision to suspend the case. In this particular case, it took 5 years and 5 months from the initial appeal to the final decision to resolve the case, respectively from 28 February 2011 to 8 June 2016.

In most of the EU countries, the time for resolution of cases is up to three months, for example to 112 days in Slovenia and 114 days in Sweden³¹.

V. Conclusion

The finding of this report shows that despite of a relatively good legal framework and mechanisms for administration of administrative justice, Kosovo citizens face lack of effective and efficient access to administrative justice.

The difficulties Administrative Department has with insufficient support staff, insufficient judges and case load are more than evident. However, KLI has found that judges have established a bad practice by sending every case they receive for review to administrative bodies, without assessing on case by case basis if any circumstances foreseen in paragraph 3 of Article 43 of the LAC have been met. If judges would analyses each case in the light of paragraph 3 of Article 43 of the LAC, at least in some of the cases, they would be able to decide on the merits and not send the case back for review to administrative bodies. This practice would provide not just effective legal remedies for the parties, but also would contribute as a “education” tool for the administrative bodies.

The report also confirms the fact that administrative bodies do not enforce court decisions, by ignoring the Law on Administrative Conflict and the Law on General Administrative Procedure, which obliges them to do so. On the other hand, the courts do not use mechanisms foreseen in the law (Article 68 of LAC) to monitor the implementation of their decisions by the administrative bodies.

While the most pressing concern is the so-called ping pong effect that administrative bodies and the courts create when dealing with cases, the KLI data also reveal that there is a need for major changes in the Law on Administrative Dispute, majority of court hearings get canceled and that judges, court staff and lawyers do not have proper expertise on administrative procedure.

³¹ According to the EU Table on the Results in Justice 2016: http://ec.europa.eu/justice/effective-justice/files/justice_scoreboard_2016_en.pdf.

All these issues could potentially be subject of specific monitoring by CSO's, judicial institutions and decision makers. This report is one of the very few serious initiatives concentrated to monitor the Administrative Justice. KLI has identified that there is need for additional similar monitoring and reports that contribute to the improvement of administrative justice in Kosovo.

VI. Recommendations

- All the relevant actor should start the discussion around the need for general reform of the administrative justice in Kosovo;
- The Ministry of Justice and the Ministry of Public Administration should initiate the amendment of the Law on Administrative Conflict with the aim of ensuring effective legal remedies and rights of individuals by:
 - Setting a clear mandate of the court and the obligation to ascertain all the facts of the case during the proceedings (on its own initiative) in order to render merit-based decisions in all the cases;
 - Setting a mandate for the court to impose fines for administrative bodies that do not enforce court decisions, in particular the head of the administrative body;
 - Including additional provisions that regulate every aspect of Administrative Dispute Procedure.
- Judges should implement Article 43 paragraph 3 of the current Law on Contested Procedure and review case by case if any of the circumstances set in this article have been met and decide the case on the merits;
- Courts should implement Article 68 of the current Law on Contested Procedure;
- The Academy of Justice should organize specialized trainings for judges of the Administrative Department and support staff;
- Kosovo Judicial Council should increase the number of judges and support staff (including legal advisers with experience on administrative, fiscal and customs) in the Administrative Department of the Basic Court in Prishtina;
- Kosovo Bar Association as part of their Continues Legal Education program should train advocates on Administrative Dispute procedure;
- The Kosovo Institute for Public Administration to organize trainings for Civil Servants regarding the implementation of the Law on General Administrative Procedure and the implementation of court decisions;
- Civil Society Organizations, Media and decision makers should monitor the administrative Justice in Kosovo and provide recommendations for improvement.

