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INDEPENDENCE, EFFICIENCY, ACCOUNTABILITY AND INTEGRITY OF THE PROSECUTORIAL AND JUDICIAL SYSTEM



(REPORT OF SYSTEMATIC MONITORING OF THE JUDICIAL COUNCIL
AND PROSECUTORIAL COUNCIL IN YEAR 2018)

Pristina, January 2019

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ABOUT KLI

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

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Abbreviations

AFK	Alliance for the Future of Kosovo
ACA	Anti Corruption Agency
EU	European Union
BC	Basic Court
KLI	Kosovo Law Institute
KPC	Kosovo Prosecutorial Council
KJC	Kosovo Judicial Council
CCRK	Criminal Code of the Republic of Kosovo
CPCRK	Criminal Procedure Code of the Republic of Kosovo
VL	Targeted cases for Visa Liberalization
MJ	Ministry of Justice
JPRU	Judicial Performance Review Unit
PPRU	Prosecutors Performance Review Unit
NGO	Non-Governmental Organization
AP	Appeal Prosecution
SPRK	Special Prosecution of the Republic of Kosovo
BP	Basic Prosecution
SP	State Prosecutor
RTV 21	Radio Television 21
RTK	Radio Television of Kosovo
KJCS	Kosovo Judicial Council Secretariat
KPCS	Kosovo Prosecutorial Council Secretariat
CSCE	Central System of Criminal Evidence
EVMS	Electronic Vehicle Management System
ICT	Information and Communication Technology
ICT/Simc	Information and Communication Technology/System for Informative management of cases
A.D.	Acting Duty
AI	Administrative Instructions
USAID	United States Agency for International Development
ODC	Office of the Disciplinary Counsel
CSPO	Chief State Prosecutor Office
NAO	National Audit Office
COCE	Central Office for Criminal Evidence

1. Executive summary

The Judicial and Prosecutorial Council during 2018, faced a lack of efficiency, accountability and integrity in the exercise of constitutional and legal responsibilities. The Kosovo Law Institute (KLI), as a result of the systematic monitoring of two councils, estimates that these institutions, powers and responsibilities defined with the Constitution and the laws have not been implemented in practice.

The Constitution and the applicable law stipulate that the KJC and KPC exercise their authority in relation with courts and prosecutions through control mechanisms such as performance evaluation of judges and prosecutors, court presidents and chief prosecutors, and through their disciplinary mechanisms in cases when they violate the Code of Ethics and Professional Conduct. Year 2018, as in previous years, has not made any progress in increasing the efficiency of these control mechanisms. On the other hand, during 2018, there have been many cases when judges, prosecutors, court presidents and certain chief prosecutors have been in violation of the principles and the Code of Ethics but none of them have been dismissed due to poor performance or due to disciplinary measures. The exception is KPC, which during this year through disciplinary measures has degraded a prosecutor from the Department of Serious Crimes to the General Department.

KJC and KPC laws define that councils every three years should conduct performance evaluation of all judges and prosecutors in the system. While KPC has fulfilled this obligation, by completing performance evaluation of 67 prosecutors or 1/3 of them that are in system, KJC did not manage to evaluate 1/3 of all current judges in 2018 also. KJC during this year based on legal obligations was supposed to evaluate at least 100 judges; however in 2018 they only evaluated the performance of 64 judges.

Year 2018 did not show any efficiency regarding to the adoption of secondary legislation in the KJC and KPC. On the contrary for this year there are only two regulations approved by the KJC, and only one regulation approved by the KPC. The two Councils have not yet reached 2018 to conclude the adoption of secondary legislation regarding the implementation of the basic laws adopted in 2011, which laws have now been repealed with the adoption of new laws of judiciary package.

Kosovo as a result of European Union (EU) requirements regarding meeting the criteria for visa liberalization during 2015 had supplemented and amended the package of judiciary laws. Among the EU requirements was that when adopting these laws, attention should be paid to the harmonization of the provisions of laws for the KJC, Courts with the laws for the KPC and the State Prosecutor.

While the EU had sought harmonization, co-operation and coordination between the Councils, the year 2018 marked the biggest clashes between them. Lack of concrete results in combating high-profile corruption and organized crime has served as a topic to bring mutual accusations to find the guilty of failures.

In one side, KPC and Chief State Prosecutor, all failures in representing and protecting high-profile indictments have addressed them to the judiciary, stressing that only indictments of

high-profile corruption are falling by judges. On the other hand, the KJC has reacted publicly, accusing the State Prosecutor that he is trying to attribute failures to the judiciary, attempts that, according to them, interfere in the independence of their work.

From systematic monitoring, KLI has found that there is a lack of debate among the members of the Councils, especially their debate and content contribution during meetings where policies, strategies, and relevant documents for adoption are dealt with. In this regard, the KJC is a more advanced step. While in the KJC meetings there is a more disputed debate among members, at KPC meetings during 2018, there are members who have never been heard. Their only contribution to these meetings is to raise their hands to vote for different points proposed in the Council. The characteristic of KPC meetings is the fact that the overwhelming majority of decisions are taken unanimously. KLI estimates that the fact that many members never speak and decisions are taken by unanimous votes proves that members of councils, especially the KPC, have been turned into voting machines.

The KLI during monitoring of the KJC found that the legal obligation was not fulfilled for the establishment of new branches of the Basic Court of Pristina in the Municipality of Fushe Kosovo and Obiliq. As defined in the law, their establishment would have an impact on the dismissal of the court with more loaded cases in country, in Pristina as well as will increase access to justice for the citizens of these municipalities.

Transparency with the public and civil society remains a challenge for the KJC and KPC. In over 50% of requests for access to public documents, the KLI did not receive a response from the judicial and prosecutorial system during 2018. A certain number of regulations and decisions adopted by the KJC and KPC have not yet been made public on the web nor during this year. In this regard KPC over 85% of approved decisions did not publish them on the Council's website.

KLI has found that the Councils continue with the same approach to decision making as well as the adoption of secondary legislation, by continuing violating the law. These actions of the Councils seriously affect the legality and legitimacy of the justice system in Kosovo.

In addition, the KLI estimates that positive legislation in Kosovo has provided full independence to the two Councils in exercising their functions and responsibilities. This independence has begun to be misused by the two councils, by implementing the law according to the individual interests of certain persons within the system, where for many concrete cases, the KLI has constantly raised concerns publicly.

The lack of will and integrity of both councils to fulfill with efficiency, integrity and professionally their constitutional and legal obligations is the worst message that these two council can convey to judges and prosecutors as well as to the general public. This approach transforms into the principle of work, the inefficiency, lack of accountability and impunity.

2. Methodology

In order to compile a more comprehensive and analytical report on the implementation of the Judicial Laws package, KLI has used mixed research methodology. The focus of the monitoring was the public meetings and activities of the Kosovo Judicial Council (KJC) and the Kosovo Prosecutorial Council (KPC). Also, KLI has monitors in all Courts, branches of Courts and Prosecutions of the Republic of Kosovo, which monitor with a special focus the handling of cases of corruption, other criminal cases, civil, administrative and economic cases. Moreover, KLI monitors are focused on the implementation of legal obligations by the judicial and prosecutorial functions as well as supporting staff. Monitoring focuses on daily performance of Courts and Prosecutions in law enforcement, policies and action plans, which are approved by the KJC and KPC. All monitoring findings are gathered at the KLI's Center in Pristina, in which legal analysts of the Institute, conduct legal and practical research with field data. This research methodology provides practical opportunities to identify problems and analyze all issues that are of interest in the service of law enforcement.

After identifying and analyzing problematic findings and issues in line with international law, standards and practices, the KLI has conducted deep interviews with all stakeholders of policymaking and laws for justice institutions and enforcers of these policies and laws. The interviews were conducted on the basis of indicators set as a result of monitoring, findings and evaluations by legal analysts of the KLI, who served to highlight real problems in the area of primary and secondary legislation as well as in their implementation in practice. The developed interviews are codified so that the issues and information that came from them are included in the report.

Also, in order to be as precise as possible in identifying problems and proposing recommendations for solving problems in the proper application of the law and proper functioning of the KJC and KPC, KLI has analyzed the legal basis and relevant domestic and international documents which are related to the independence and functioning of the Judicial and Prosecutorial Councils.

3. Approval of secondary legislation in the Kosovo Judicial Council

The KJC during 2018 has not shown any efficiency regarding the drafting of secondary legislation and the fulfillment of the obligations deriving from the applicable legislation for the judicial system in Kosovo. During 2018, the KJC adopted two regulations but no administrative instructions. Of these two regulations, the KJC has published only one of them.¹

The Law on the KJC and the Law on Courts have not been fully met. Below are the list of 7 regulations that have not been approved by the end of 2018, based on the obligations of the two above mentioned laws:

1. Regulation on Communication with the Public and Media.
2. Regulation on the Publication of Judgments.
3. Regulation on the Supreme Court about management, appointment of judges and appointment of colleges and chief persons of colleges.
4. Regulation on the Court of Appeal about the appointment of judges to the departments to ensure efficiency in handling cases, assigning heads of departments as needed and that ensures that each case is assigned to the colleges.
5. Regulation on Lay Judges.
6. Regulation on professional associates.

Also, based on regulation no. 03/2017 on the Procedure of Selection and Appointment of the Director of the KJCS, the KJC is also obliged to issue a regulation for evaluation, discipline and dismissal of the Director of the KJCS, a regulation not yet been issued by the KJC.

According to the KJC, it was impossible to adopt the regulations, because the Judicial Laws Package by the end of 2018 did not pass for approval in the Assembly of the Republic of Kosovo.²

¹ The KJC has not published the Regulation on the Use of Information Technology in the Judicial System, and has published Regulation (No. 01/2018) on the Central Criminal Record System of Kosovo (See link <http://gjyqesori-rks.org/GetDocument/9974>)

² "As you are aware, during 2018, the law package for the judiciary has been in the process at the Legislative Committee of the Assembly of Kosovo and after the end of the procedure at the end of the year it passed for approval in the Assembly. Thus the KJC has been unable to pass the regulations without the adoption of the new legislation. We inform you that the KJC has established working groups for the drafting of secondary acts deriving from the legislation. These groups have already begun the drafting of guidelines and other acts," said Servane Hoti, Senior Legal Officer at the KJC in an interview with KLI, Servane Hoti, Senior Officer at the KJC. 25 January 25, 2019.

3.1. Regulation No.01/2018 on the Central Criminal Record System of Kosovo

On 15 July 2015, Law 05 / L-033 on Amending and Supplementing the Law no. 03 / L-223 on KJC. Amendments to the KJC Law have incorporated new responsibilities for the Council in particular with regard to the **management of the central criminal records system**, where in this regard, it is defined also the obligation that KJC to issue regulations on the procedures and other rules regarding criminal evidence.

The KJC in the 203 meeting held on 2 May 2018 adopted Regulation No. 01/2018 on the Central Criminal Record System of Kosovo. Simultaneously, this regulation follows the Regulation on the Record Keeping for Sentenced Persons, which was into force since 10 April 2015.

The KLI estimates that the main achievement of this regulation is the fact that it has sufficiently empowered the respect of the **presumption of innocence**, which according to Article 31 paragraph 5 of the Constitution of the Republic of Kosovo is also a constitutional principle.

So far, in the criminal record certificate issued by the Courts, has also shown criminal proceedings that are ongoing, even at the investigative stage. This regulation, in terms of sentences, stipulates that "**only the final sentences that have not been paid off are marked on the criminal record**", and that in this certificate "**no information should be entered for any case or criminal procedure that is in progress near any court in Kosovo**".

a) Delay in issuing of Regulation on the Central Criminal Record System

KLI, during the systematic monitoring of the work of the KJC, found that the Council took more than thirty-three (33) months issuing Regulation no. 01/2018 on the Central Criminal Record System, while according to the legal obligation it should have been approved within six (6) months.

According to Law no. 05 / L-033 on Amending and Supplementing the Law no. 03 / L-223 on the KJC, the Council was obliged that within six (6) months from the entry into force of the law, to issue all the Regulations stipulated in the law. This obligation derives from Article 17 of the abovementioned law, which states:

“The Regulations set forth in this law, shall be issued within six (6) months, after the entry into force of this law”.

Despite this, the KLI found that there was a delay in issuing sublaws in general and of this Regulation in particular. According to the legal deadline, this Regulation should have been approved by the KJC until **15 January 2016**, and it was adopted on 2 May 2018, i.e. thirty-three (33) months after the entry into force of the law and over twenty-seven (27) months after the deadline provided for in Article 17, as noted above.

KLI expresses concern about such delays by the KJC. The adoption of this regulation did not have any obstacles, either procedural or material. It is not at all acceptable that a regulation should last over 34 months or close to 3 years, while it was a legal obligation that the same to

be approved within 6 months. It is clear that the new changes required an additional engagement of the KJC, for the exercise of these new responsibilities. Therefore, it was expected by the KJC to supplement secondary legislation based on the legal deadline, at least not expected to pass close to 3 years for a regulation with 24 articles.

b) The legal basis for issuing the regulation and the used legal terminology

The KLI notes that the KJC has referred to some constitutional provisions when adopting this regulation, which does not relate to the issue of criminal records. The KJC has already built such a practice, although with regard to the same issue, KLI has reacted to its monitoring report for the KJC in 2016.³

The KJC in this regulation has made another omission regarding the referral on a legal basis, and has added terms that are not foreseen in the basic law, in accordance with which this regulation should be.

- The Regulation was issued pursuant to Article 108 of the Constitution. KLI notes that Article 108 of the Constitution defines the authority of the KJC for the management of the judicial system, making clear the principle of the separation of powers. However, this article does not foresee legislative authority for the KJC. The KJC's right to issue sub-legal acts does not derive from the Constitution, but from the law, namely Article 4 of the Law on the KJC.
- Article 105 of the Criminal Code of the Republic of Kosovo and Article 491 of the Code of Criminal Procedure of the Republic of Kosovo are used as the legal basis for issuing this regulation. Referral to the CPCRK is correct as it determines that criminal records are kept by the competent public body (KJC). However, the fact that Article 105 of the Criminal Code of the Republic of Kosovo deals for the content and disclosure of data from the criminal record can not serve as a legal basis for issuing this regulation, but the regulation should be consistent with it.
- Article 12.3 of this regulation stipulates that "in cases when a sentence has been paid, data on sentence may be disclosed only to a court, prosecutor, police **or other bodies** as determined by law". As the main basis for criminal record data is the Criminal Code of the Republic of Kosovo, which, apart from the court, prosecution and police, does not allow access by any other body to this data. Namely, this article states that "in cases when the sentence has been paid, the data relating to that sentence may be disclosed only to the court, the prosecution and the police regarding the criminal proceedings against the person to whom the previous sentence was paid" . So in this case the term "**other bodies**" is improper in this part.
- The KJC has also determined in this regulation that the certificate on criminal records is issued in three (3) languages, respectively in Albanian, Serbian and English. In this case, based on Article five (5) of the Constitution of the Republic of Kosovo and the

³ "Efficiency, accountability and integrity of the Judicial System and Prosecutorial System: Analysis of the Implementation of Legal Obligations by the Judicial Council and Prosecutorial Council" KLI. 26 December 2016. Page 11 and 45 (See link <https://kli-ks.org/wp-content/uploads/2017/01/9.-Efficiency-Accountability-and-Integrity--KGJK-and-KPK-26.12.2016.pdf>)

Law on the Use of Languages, English is not recognized as an official language. There are also three other languages, which have the status of languages in use, where none of them KJC has taken into account, but has decided for the English language without any legal basis and reference.

Also, Article 23.1 of this Regulation stipulates that "three months from the day of entry into force of this regulation, the CSCRK Coordinator (Central System of Criminal Records of Kosovo) presents to the KJC for approval the plan for the implementation of this Regulation".

The KJC has failed to put this issue as a point of the agenda and to approve this plan, even seven (7) months after the adoption of this regulation. So it is only until 31 December 2018, the KJC has been delayed four (4) months in the implementation of this obligation that is envisaged by the regulation approved by members of the KJC itself.

c) **Unlawful restrictions on access to Criminal Record statistics**

For the purpose of research or statistical work, this regulation contains a special article, by which regulates access to these data, procedures and the legal deadline for their provision by judicial institutions.

KJC when drafting this regulation, seem to have confused the laws, respectively, instead of referring to the Law on Access to Public Documents instead of Article 14 of this Regulation, are referred to the Law on Protection of Personal Data.

Article 14 of this regulation stipulates:

“1. Statistical data from the CSCRK may be provided for research or statistical work purposes in accordance with the conditions provided for in the Law on Protection of Personal Data

2. The data referred to in paragraph 1 of this Article shall be provided on the basis of a written request, which shall include: **the purpose of the work and the nature of the data intended to be used**, the data requested by the person from the database, **the purpose** and the legal basis for the search of data, **the applicant's personal data** and the **applicant's signature**.

3. Required data are provided by the coordinator of the COGP **within a reasonable time**, as foreseen by the **Law on Protection of Personal Data”**

Exceptionally condition, that in the request should be mentioned "data required by the person from the database", all other definitions are unlawful.

The right of access to public documents is a Constitutional right. Article 41 of the Constitution stipulates that each person enjoys the right of access to public documents.

Documents held by public institutions and state power bodies are public, with the exception of informations that are limited by law due to privacy, business secrets, or classified security information.

Also, pursuant to Article 6 of the Law on Access to Public Documents, the data applicant may make the request in any way which enables the public institution to identify the document and that the applicant is not obliged to give reasons to have access to documents. "The applicant of any document has the right to remain anonymous to third parties", while "the formalities for the requests do not go beyond what is key to elaborate the request", states in paragraphs 4 and 6 of Article 6 of the Law on Access to Public Documents, which does not specify such criteria, which this regulation justifies precisely through this law. This law, in Article 9, stipulates that personal data collected may be used anonymously for historical, statistical and scientific purposes.

Likewise, KLI considers that terminology "**within a reasonable time as foreseen by the Law on Protection of Personal Data**" should not have been here for two reasons. The first reason is that the Law on Personal Data Protection does not define at all any deadline regarding the provision of the required official data.

The second reason is that this law has specified the deadline and has not left any possibility of arbitrariness, where it has determined that the institution's deadline for responding to the request for access to public documents is 7 days, with the possibility of extending under special conditions and another 15.

KLI considers it very disturbing the fact that the KJC through a sub-legal act violated the provisions of an important law such as the Law on Access to Public. Also, this violation is justified by inexistent provisions in the Law on Protection of Personal Data. The purpose of this law was to set the standard regarding the right for access to public documents, that in the present case, the statistical and anonymous data from the CSCRK are fully public documents, in terms of Articles 1.2 and 1.3 of the Law on Access to Public Documents. Setting such rules by sub legal acts without consulting the legal limits, apart from the fact that it the principle of juridical hierarchy, the same creates bad practices as well as great insecurity for researchers who need to use such data.

3.2. Regulation on the use of Information Technology in the Judicial System

The 208 KJC meeting held on 30 November 2018, approved the Regulation on the Use of Information Technology in the Judicial System, which has not yet been published on the website as it is obligated to do so by positive legislation.⁴

⁴ Regulation on Organization and Activity of the KJC in Article 31 paragraph 2 stipulates that "Regulations and amendments approved by the Council shall be published on the Council website".

At this meeting of the Council, Fatmir Rexhepi from the KJCS, said that this regulation is the basis that regulates the use of information technology, employee rights, access level, change in access and all other issues until the end of working relationship. Rexhepi said that this regulation obliges the KJC to undertake measures to ensure security as well as to organize training for the employees.

The KLI considers that the practice of non-publication of documents adopted by the KJC, and even more secondary legislation, is a bad practice of this institution, which has consistently proclaimed that the basic principle in its work is transparency in public.

4. Accountability in the judicial system and dhe control mechanisms

KLI during the process of monitoring the work of the KJC has found that the Council has approved the Annual Report of the Courts, approved the KJC Annual Report, assessed the performance of Judges, and conducted the process of recruitment of new Judges.

Legal obligations of the judicial system	Fulfilled	Not fulfilled
Annual Work Report of Courts	X	
Annual Work Report of the KJC	X	
Performance Evaluation of judges	X	
Reporting of the Court Presidents before the KJC		X
Recruitment of new Judges	X	
Transparency		X
Establishment of the branches of the Court in Fushe Kosova for the municipality of Fushe Kosova and the municipality of Obiliq; branch in Junik for the municipality of Junik; and branch in Shtime for the municipality in Shtime		X

However, the KJC has not yet fulfilled its legal obligation for Court Presidents to report every three months before Council members regarding their management and administration in practice. Lack of control and oversight in practice is also affecting the lack of accountability, efficiency and responsibility in the judicial system, which are affecting in the installation of impunity in practice.

Moreover, despite the fact that by law, KJC was obliged to establish new branches in Fushe Kosova for the Municipality of Fushe Kosova and the Municipality of Obiliq, branch in Junik for the Municipality of Junik; and branch in Shtime for the Municipality of Shtime, such an obligation has not yet fulfilled.

Transparency, as will be analyzed below, remains a legal obligation not yet sufficiently fulfilled by the judicial system.

KLI has further analyzed the implementation of legal obligations based on indicators established in accordance with the legal obligations of the judicial system.

4.1. Annual Work Report of the KJC for the year 2017

Based on Article 4, paragraph 1.26 of Law No. 03 / L-223, KJC on 28 March 2018, approved the Annual Work Report of the KJC for 2017. This report is one of the most important documents, which reflects the one-year work of the KJC and the Courts, fulfilling a constitutional and legal obligation, at the same time informs the public on the work and activities developed to strengthen the judicial system in the country.

KLI considers that the Annual Work Report of the KJC for 2017 is relatively unclear and insufficient because it does not contain enough data on the activities developed by the Council, so much so that the data presented more are superficial-statistical rather than content. KLI considers that the content of the report should be complete, both by structure and content, so that the public are fully informed about the work of the judicial system in Kosovo.

The report ultimately reflects the work of the Council Committees, while there are other aspects of the work of the KJC that have not been presented. The part of the report that shows the work of the Council, highlights that they have held 26 meetings, rendered 379 decisions and adopted 10 regulations, 3 administrative instructions, 1 matrix and instructions. However, apart from these statistical data, nothing more is clarified as to what decisions have been issued and how those decisions have affected in improving the daily functioning of the judicial system. Moreover, it is evident the lack of an analysis of the work of the Council for 2017, especially for the following issues:

- What is the analysis regarding the factors and indicators that had (positive/negative) impact on the work of the judicial system during 2017?
- What were the challenges to the system during reporting and how they were treated by the Council?
- What restrictions were there (eg. budget) and what impact did it have on the work of the Council?
- How the obstacles were overcome and what were the lessons learned so that they are not repeated?
- What were the key concrete results and achievements?

KLI during the analysis of the report did not notice any concrete analysis regarding the work of the judicial system during 2017. The report is descriptive, about the competencies and activities of the KJC. On certain cases, the data presented is self-explanatory, such is the case of the Strategic Plan 2014-2019, where it states that over a half of the objectives are fulfilled

and there are still some to be completed, without giving any extra clarification as to what is in question so that the reader/public can be thoroughly informed.

In addition, the report does not provide sufficient information regarding the challenges raised by local and international organizations about the judicial system with a particular focus on:

- a) Obstacles that the court system faces,
- b) large number of backlog,
- c) Ineffective and inefficient treatment of corruption cases and organized crime etc.

Further, a number of legal authorizations listed below are not reflected in the report. KLI considers that the Council has not fully exercised its authority in matters such as:

- According to Article 49 of the Law on KJC, the Director of the Office of the Disciplinary Counsel (ODC) is obliged to report before the Council on the work of the ODC. However, the report does not present any information whether such reporting has taken place. The lack of coverage of this activity in the report creates the impression that the Council has not fulfilled this legal obligation. Moreover, regarding disciplinary issues, the Council, based on Article 39 of the Law on KJC, acts as a second instance and for this activity of the Council, the report does not provide data.

- According to Article 26 of the Law on KJC, the Council establishes the Assembly of Presidents of Courts and Supervisory Judges, as a supervisory body of council. However, the report does not provide any information about the work and activities of this body.

- Once a year court presidents are invited by the Council to report on the respective court. In the report this activity is not reflected.

- The report reflects the activities of the Judicial Performance Review Unit, but only shows a number of reports that this Unit has sent to the Council for review and approval. However, the report does not reflect the Council's activity with regard to these reports.

The KJC's reasoning regarding these findings is that the annual report reflects the work and results of the KJC, and is not an analysis that deals with addressing issues. Regarding untreated issues in the report, the KJC provided these informations but did not give the reasons why these issues were not mentioned in the Annual Work Report of the KJC for 2017.

"This is a report that reflects the work and results of the KJC, is not an analysis that deals with addressing issues. The Judicial Performance Evaluation Commission and the Performance Review Unit now Judicial Inspection Unit is dealing with this issue. The KJC issued a decision on the functionalization of the Assembly of Courts Presidents and Supervisory Judges at the end of December 2017. The Assembly held the first inaugural meeting in which it elected the president. The Assembly of Presidents of the Courts during

2018 held two meetings from which some recommendations were issued, which were forwarded for review to the KJC".⁵

4.2. Court work reports for 2017

The KJC Secretariat during 2018 published the Court Statistical Report for 2017⁶, the report reflects the work of the courts in Kosovo, except the Basic Court in Mitrovica, Branch Leposavic and Zupin Potok, due to their failure to function.

The published report reflects cases by type in each respective court, as well as an analysis regarding the load of judges with the cases, including judges' efficiency in solving serious and light cases, as well as the average of cases at national level.

According to the report published by the KJC Secretariat, it emerges that the Basic Courts and their Branches in all criminal, civil, administrative and economic areas had 317 judges throughout the country and 1441 supporting personnel, during 2017.

All Basic Courts in Kosovo had at work during 2017, 618,991 cases of all natures, of which they inherited from the previous years 399,127 cases, whereas only in 2017, the courts received at work 219,864 new cases. The Basic Courts during 2017 have resolved a total of 310,880 cases, and have remaining 307,984 unresolved cases.

The report shows that on average, a judge of Basic Court was loaded with 104.2 cases per month, while judges averaged resolved 115.6 cases per month, respectively 111 per cent of the orientation rate.

The report published by the Secretariat of the Council is public and all interested parties have access to it.

4.3. Evaluation performance of judges and disciplinary measures

The applicable law that regulates control and increase of accountability in the court system for judges has foreseen the performance evaluation mechanism for judges and the disciplinary mechanism of judges in cases when the same act in violation of the Code of Ethics and Professional Conduct for the Judge.

Article 11 of the Law on supplement Amendments of the Law on the KJC has defined the establishment of a Performance Evaluation Committee of Judges, which is composed of experienced judges in the Judicial System of Kosovo.

The KJC on 30 August 2016 has approved the Regulation no. 11/2016 for performance evaluation of judges. This regulation sets out the procedures and criteria of performance evaluation of judges of all levels in Kosovo. This Regulation is supplemented by Regulation

⁵ KLI interview via email with Mrs. Servane Hoti, Senior Officer at the KJC. 25 January, 2019.

⁶ Court Statistical Report - Annual 2017. (See link <http://www.gjyqesori-rks.org/GetDocument/7786>). (Last accessed on January 29, 2018).

02/2017, which is stipulated that this Committee will also have three reserve members, if members for objective reasons or because of conflict of interest can not participate in the work of the Commission.

The KJC also on 6 October 2016 established the Performance Evaluation Committee for Judges, which consists by 14 judges from all levels of the courts.

For 2018, the KJC has planned to do performance evaluation for 64 Judges.

This process was completed at the KJC, whereas at the meeting of 27 December 2018, the KJC issued a decision according to the method of case of 1/3 of judges, who during 2019 will be subject to the process of performance evaluation.

Also, the Performance Evaluation Committee at the KJC, during 2018, has evaluated 30 Judges who have applied for promotion.

Regarding disciplinary proceedings for judge during 2018, the KJC Disciplinary Committee inherited 2 cases from 2017, until it has received only 2 final reports from the Disciplinary Prosecutor Office.

In 2018, the KJC Disciplinary Committee and the KJC imposed the following disciplinary measures against judges:

Reduction of salary for 6 months 50% of monthly salary	2 decisions
Reduction of salary for 3 months 20% of monthly salary	1 decision
Release from disciplinary responsibility	1 decision
Total of disciplinary measures	3 decisions

The KJC did not comment on findings from KLI regarding the very small number of final reports that the ODC sends to the KJC, saying that it is not in their competence.

"Regarding the submission of disciplinary cases from the ODC to the KJC, we inform you that this is not in the KJC's mandate to comment because the ODC is a separate and independent body that serves the KJC. It is the responsibility of the ODC to assess whether a judge should be recommended in disciplinary proceedings, depending on the disciplinary investigation. The KJC has not yet received the final work report of the ODC for 2018 and for the moment we are not aware how much was the total number of submissions received in the ODC. From the current disciplinary practice and based on law, we inform you that the ODC recommends initiating disciplinary proceedings only in cases where there is a reasonable suspicion that a judge has committed improper conduct. The issue of disciplinary investigation is in the mandate of the ODC and that physical and legal persons have had the opportunity to file complaints to the ODC, which, following the conduct of proceedings in accordance with the applicable law, assess whether a complaint should be rejected or open

disciplinary investigation. We also inform you that the KJC has treated these cases within the legal deadline and that for each judge who has been found that have committed misconduct, the same ones are declared responsible and thus the judicial accountability has functioned "said Hoti from the KJC⁷.

On the other side, during a period from 1 January 2018 - 30 November 2018⁸ the ODC has received 205 cases against the holders of judicial functions. Likewise, the ODC has conducted a preliminary investigation for two reports of the KLI. The ODC has treated 274 cases against them. Following the conduct of disciplinary investigations, the ODC sent 2 cases for disciplinary proceedings to the Disciplinary Commission of the KJC, while 8 cases disciplinary investigations were closed without finding misconduct. Also, 174 cases were rejected after a preliminary disciplinary investigation.

Cases treated by the ODC	Cases sent to the KJC DC	Cases closed after disciplinary investigations	Cases rejected after preliminary investigation
274	2	8	174

KLI has systematically monitored the judicial and prosecutorial system since 2013, and in the framework of monitoring, continuously has addressed the performance of the Office of the Disciplinary Counsel. This office has never been supported for the real role it has had to increase accountability of judges and prosecutors. However, even within the work it has completed, there have been continuous complaints ofr the implementation of selective justice, that have compromised in public the functioning of this office.

During the drafting process of the Law on Disciplinary Responsibility of Judges and Prosecutors, KLI requested to analyse all modalities of the functioning of the ODC in order to find the best solution to increase accountability of judges and prosecutors. .

Finally, the Assembly of the Republic of Kosovo with the adoption of the Law on Disciplinary Responsibility of Judges and Prosecutors has decided to quit the ODC. Now under the new law, decision-making regarding the discipline of judges and prosecutors does not leave from the competences of the KJC and KPC, since disciplinary cases will in principle be initiated by the supervisor of a judge, the procedure that will be conducted within the KJC for judges and within the KPC for Prosecutors.

⁷ KLI interview via email with Mrs. Servane Hoti, Senior Officer at the KJC. 25 January, 2019.

⁸ KLI has requested access to the ODC statistics for December 2018. The ODC did not send the same, with the justification that they are busy working on the annual report of the ODC for 2018.

4.4. Reporting of the Presidents of the Courts before the Kosovo Judicial Council

Based KJC law, the Presidents of Basic Courts submit annually to the Council a report on the success of the implementation of the previous annual plan for case management. Also by law, the President of the Basic Court sends to the Council a quarterly written report that addresses the work of the court, identifies any problems that court faces, and proposes steps to address the problems.

The KJC has published the statistical work reports of the Courts for the first quarter of 2018, the first six months of 2018 and the nine-month period of 2018.

The Presidents of all Basic Courts and the President of the Court of Appeal on 1 March 2018 reported and protected the annual report for the year 2017 before the KJC. Verify.

All the Presidents of the Basic Courts have submitted before the KJC members 3 month working reports for the first quarter of this year. The Presidents of the Basic Court in Pristina, Prizren and Gjilan submitted this report on 30 May 2018, while the Presidents of the Basic Court in Ferizaj, Peja, Gjakova and Mitrovica⁹ on 20 July 2018.

But for the second and third quarters, the Presidents of the Basic Courts did not report and defend their quarterly reports before the KJC.

The KJC has said that it has consistently followed the work of the courts, as the latter have submitted their written work reports,¹⁰ but which according to the KLI monitoring, results that they have not been disclosed and defended before the Council.

4.5. Transparency and public accountability of the judicial system

The KJC continuously proclaims the increase of transparency and accountability in relation with the public and the media. The KJC has adopted regulations and strategies to increase transparency and accountability and facilitate cooperation with the public and the media.

During 2018, during the monitoring of the judicial system, the KLI has addressed 266 requests for access to public documents in the judicial system regarding the fulfillment of legal obligations, the provision of information, statistics and other available and permissible data under the Law on Access to public Documents.

Out of these 266 requests, KLI received positive answers from 146 of them, or 53.48%, in 102 of them, or 41.08%, the KLI did not receive any response, while in 18 requests the judicial institutions refused to provide the requested data, or at 5.81%.

⁹ Note: The Vice President of the Basic Court in Mitrovica, Ali Kutllovci, came to the KJC to present some information, as the report had not compiled at all. The same stated at the KJC meetings that he and the President of this Court, Nikola Kabasic, were not informed about the deadline for compiling this report. However, again, the KJC has decided to vote for this "report" and approved the same.

¹⁰ KLI interview via email with Mrs. Servane Hoti, Senior Officer at the KJC. 25 January, 2019.

Despite this, there are still decisions and regulations of 2018 approved by the KJC, which have not been made public on the KJC's official website.

Regarding the decisions, the overwhelming majority of them are not published in the Serbian language, as an official language in the Republic of Kosovo, which as a mother tongue has a number of judges in the judicial system of Kosovo. On the KJC official website is the certain part to download these decisions, but they do not open. So, decisions in Serbian-language appear to be listed and accessible, but practically can not be opened. This is even worse in terms of the decisions that the KJC has taken in 2017, where none of them is published in Serbian language, while there are still decisions since 2016 that are not published in Ser.lang.

Also, the KJC does not regularly invite media and civil society to their open meetings. In this regard, the KJC has not invited the media and civil society to its 202 meeting, where the election of the President of the Basic Court in Gjilan was also the subject of the agenda, a prolonged process in the Council. Despite the importance of this point and other points for the media and civil society, the KJC has completed this process away from the public eye.

The KJC had acted in the same way as for the 198th meeting. For this meeting, media and civil society were invited for 15 February, where the meeting was scheduled to begin at 13:30. On the other side, KJC without any warning had held this meeting at 10:00, without giving any reason to the public. Additionally, the KJC had not issued any press release from this meeting in order to inform public that what had happened at this meeting. The media have not been invited either for the 209th meeting of the KJC.

Non-implementation of the legal obligations and policies adopted by the KJC strengthens the findings of the KLI and assessments derived from international and local reports on the lack of will of the judicial system to be transparent and accountable before the public.

Despite these findings of the KLI, based on the systematic monitoring of the KJC, the officials of the KJC state that the main purpose of this institution is transparency, and that all decisions and regulations are published on the website:

"The KJC has as its main goal to increase transparency and normally respond to all requests and questions submitted by all citizens and various NGOs. When scheduling the meeting, the KJC publishes on the website the agenda and all media are invited to attend, only in certain cases when the meetings are closed. Currently all decisions and regulations of the KJC are published on the official website".¹¹

4.6. Advancement and transfer of Judges

The KJC, in 2018 with the aim of strengthening the Court of Appeal, has advanced 15 Judges in this Court.

¹¹ KLI interview via e-mail Ms. Servane Hoti, Senior Officer at the KJC. 25 January, 2019.

At the meeting of 15 February 2018, the KJC had decided to advance five (5) Judges to the Court of Appeal, while on 27 December 2018 it had decided to advance 10 Judges in this Court.

Regarding the transfer of Judges, the KJC during the meeting of 15 March 2018 has transferred within 12 months:

- Judge Milena Tomoviq from the Basic Court of Pristina to the Basic Court of Peja, Branch in Klina;
- Judge Boban Aleksiq from the Basic Court of Pristina to the Basic Court of Gjilan, Branch in Novoberde;
- Judge Servete Morina from the Basic Court of Ferizaj, Branch in Shterpce to the Basic Court of Prizren; and
- Judge Gordana Virijeвиq from the Basic Court in Pristina to the Basic Court in Mitrovica.

In order for the Basic Court of Pristina to be strengthened with judges who would treat cases of corruption, with particular targeted cases for visa liberalization, the KJC in its meeting held on 2 May 2018 made a decision by which it transferred five (5) Judges to the Basic Court of Pristina. For two (2) of these Judges, the KJC in its meeting held on 20 July 2018 revoked the decision, while for three (3) others at the meeting held on 24 October 2018 decided to extend the transfer for six (6) months.

KLI found that the KJC has pursued an unlawful practice repeatedly raised by the KLI, on the transfer of some judges, although despite the fact that some of them have been working in the General Department at the Court from where they came from, the same in the court where they were transferred have worked in the Serious Crimes Department.

The transfer of a Judge from the General Department to the Department for Serious Crimes can not be considered a transfer but an advance. The Law on Courts stipulates that the Department for Serious Crimes is of a higher level than the General Department.

Article 29.2.1 stipulates that "to exercise the function of a judge in the Serious Crimes Department of the Basic Court, the candidate must have at least three (3) years of experience as a judge in the General Department of the Basic Court and at least six (6) years of experience in the legal field including experience in the criminal field", a condition which is not mentioned for the Judges in the General Department.

Also, with regard to compensation, the Law on Courts in Article 29.1.7 defines special compensation for Judges in the Department for Serious Crimes, unlike them in the General Department. This article provides that "any Judge of the Basic Court shall receive a basic salary no less than seventy (70)% of the salary of the President of the Basic Court. The KJC will announce a plan for additional compensation which recognize the unique responsibility of judges who serve in the **Serious Crimes** Departments, Economic or Administrative Issues; but the amount of basic salary and additional compensation in no case shall not exceed ninety (90)% of the salary of the President of the Basic Court."

Regulation on Transfer and Assignment of Judges defines the term "transfer", which stipulates that "Transfer: means the movement of judges between the basic courts, within the respective court and the branches of the court **in horizontal lines of equivalent levels.**"

Likewise, Article 6.1 of this regulation stipulates that permanent transfer may be made by the General Department to the General Department of another Court or from the Department of Serious Crimes to the Department of Serious Crimes or the Department of Juveniles at another Court.

This article defines expressly that: "Permanent transfer means the transfer:

- 1) from the General Department of the Basic Court or a branch of the Basic Court to the General Department of another Basic Court or branch of another Basic Court,
- 2) From the Department for Serious Crimes or Department for Juvenile of a Basic Court to a Department for Serious Crimes or a Juvenile Department of another Basic Court. "

Article 8.1.2 of this Regulation stipulates that a Judge who is a candidate for permanent transfer must meet the following criteria: 1.2. to fulfill the requirements for a judge at the relevant level of the court and department as foreseen in Article 9, paragraph 4 of the Law S / L-032 on amending and supplementing the Law on Courts. This article stipulates that "in addition to the minimum qualifications, all candidates for appointment for judges for the purpose of appointment or promotion in the courts shall have the qualifications as follows: 4.1. to exercise the function of a judge in the Department for Serious Crimes or Juveniles in the Basic Court, the candidate must have at least three (3) years experience as a judge in the criminal field or prosecutor. "

Based on these findings, the KLI considers that the KJC should stop the promotion practice on behalf of the transfer, and the transfers between the courts to be realized at the same level of departments, and not from a lower department in a higher department.

4.7. Monitoring of meetings of the Judicial Council of Kosovo

From the period 1 January and 31 December, 2018, the KJC has held a total of 13 meetings that results that approximately has held one (1) meeting per month. During 2018, although the KJC had issued a decision on the meetings schedule of the KJC, KJC meetings were not held as planned. Based on this decision, the KJC has determined that till 30 November 2018, will hold a total of 19 meetings, which in practice appears to have held six (6) meetings less.

On the other side, exceptional cases are when the KJC has respected the date of the held meeting as defined in the decision on the meetings schedule of the KJC, which the KJC itself has approved.

During June and August, the KJC did not hold any meetings. This fact presents a violation of the Regulation on Organization and Activity of the KJC, respectively Article 38, which states that "*The Chairperson shall determine the annual plan for meetings of the Council. The council usually holds meetings once a month ...*". Based on the annual plan for the meetings

of the KJC, for June and August are determined to be held by 2 meetings, but none of them have been held.

4.8. Discussions of KJC members during approval of policies/publication of decisions

KLI has monitored in detail all KJC meetings, including the participation in discussion by all members of the Council. The findings show that there are certain members in the KJC who have never participated in the discussion on issues of interest for the judicial system. Unlike KPC (*where it will be elaborated below in the report*), at the KJC there is much greater involvement of members in discussion and decision-making. However, the KLI finds that there is a lack of substantive and professional debate to contribute to increase of quality in policy making and adoption of decisions in accordance with European law, practices and standards. During 2018, the KJC has issued 221 decisions, the voting of which in many cases it deals with unanimous votes, however there are cases in which the voting of the members is different, prove elements of the democracy of the Council.

Regarding the lack of debate at the KJC, Council officials state that it is at the discretion of the Council members to take the floor and discuss for the agenda:

"It is entirely at the discretion of the KJC members to take the floor and discuss agenda, as well as the way of voting is their right and that this is completely a democratic way of discussion at the meeting and way of setting"¹².

¹² KLI interview via email with Mrs. Servane Hoti, Senior Officer at the KJC. 25 January, 2019.

Monitoring the discussions KJC members at the meetings of the KJC in 2018

KJC members	Monitored meetings of the Kosovo Judicial Council in 2018									
	19 January	1 March	15 March	2 May	30 May	12 September	24 October	30 November	27 December	Total
1. Nehat Idrizi	15 min, 10 sec	34 min, 25 sec	14 min	21 min, 1 sec	15 min, 3 sec	19 min, 57 sec	31 min, 2 sec	21 min, 24 sec	22 min, 50 sec	3 orë, 14 min, 52 sek
2. Makifete Saliuka	Absent	1 min, 59 sec	1 min, 50 sec	4 sec	5 min, 24 sec	10 min, 17 sec	4 min, 1 sec	5 min, 4 sec	3 min, 30 sec	32 min, 09 sec
3. Manushe Karaqi	40 sec	33 sec	Absent	39 sec	Passive	2 e 15 sec	23 sec	48 sec	Absent	5 min, 18 sec
4. Armend Berisha	2 min/50 sec	Passive	3 min, 45 sec	5 min, 42 sec	4 min, 54 sec	Absent	Absent	3 min, 57 sec	2 min, 39 sec	23 min, 47 sec
5. Skender Çoçaj	Passive	2 min, 56 sec	17 sec	1 min, 53 sec	50 sec	4 min, 22 sec	1 min, 50 sec	Passive	1 min, 26 sec	13 min. 34 sec
6. Muhamet Rexha	Absent	Passive	Passive	1 min, 28 sec	12 sec	3 min, 14 sec	4 min, 47 sec	6 min, 45 sec	3 min, 59 sec	20 min, 25 sec
7. Anita Prenaj-Krasniqi	Passive	Absent	Passive	Passive	1 min, 33 sec	2 min, 45 sec	1 min, 2 sec	Passive	28 sec	5 min, 48 sec
8. Gjimeshit Galushi	1 min, 20 sec	40 sec	3 sec	Passive	Passive	Passive	27 sec	1 sec	Passive	2 min, 31 sec
9. Nenad Laziq	1 min, 8 sec	Passive	Passive	Passive	Passive	50 sec	Absent	Passive	1 min	2 min, 58 sec
10. Cerim Fazliji	Passive	1 min, 43 sec	Passive	Passive	Passive	13 sec	Passive	1 min, 53 sec	Passive	3 min, 49 sec
11. Radojka Trifunoviq	Passive	Passive	Passive	Passive	Passive	36 sec	Passive	Absent	Passive	36 sec

Below is the summary of meetings that include decisions rendered:

- **The KJC held its first meeting in 2018, on 19 January 2018 or the 197 meeting.** During this meeting, KJC proposed to the President of the Republic of Kosovo judges Agim Maliqi, Rasim Rasimi and Ragip Namani for decree as Judge of Supreme Court, opened internal vacancy for 10 Judges at the Appeal Court, made a decision for reconfirmation of the decision for the salary of the Director of the KJCS and the Director of the RJPU, as well as established the Selection Committees for the President of the Basic Court in Gjilan as well as the Supervisory Judges for the Branch of Kamenica, Novoberde, Leposavic and Zubin Potok. All decisions from this meeting are published on the KJC's official website.
- **The KJC held its second meeting in 2018, on 15 February 2018, or the 198 meeting. The same meeting, as closed was continued also on 16 February 2018.** During this meeting, the KJC advanced to the Appeal Court Judges Afrim Shala, Lumni Sallauka, Valon Totaj, Delushe Halimi and Burim Shala, appointed Vice President of the Basic Court in Ferizaj Judge Sahit Krasniqi has approved the work report of the KJCS for 2017 and has established the Committee for the review of the decentralization process. In the continuation of this meeting on 16 February 2018, the KJC did not approve the resignation of the President of the Basic Court in Mitrovica, Nikola Kabasic¹³. All decisions from this meeting are published on the KJC's official website.
- **The KJC held its third meeting in 2018, on 1 March 2018 or the 199 meeting.** During this meeting, the President of the Supreme Court, the Appeal Court and the Presidents of the Basic Courts presented the reports of their Courts for 2017. Also in this meeting were reviewed two (2) reports of the RJPU as well as Judge Mevlide Shabani was assigned acting/duty of the President of the Basic Court in Gjilan. All decisions from this meeting are published on the KJC's official website.
- **The KJC held its fourth meeting in 2018, on 15 March, 2018, or the 200 meeting.** The KJC during this meeting proposed to the President the re-appointment of 41 Judges, has transferred Judge Milena Tomovic from the Basic Court of Pristina to the Basic Court of Peja, Branch in Klina, Judge Boban Aleksic from the Basic Court of Pristina to the Basic Court of Gjilan, branch in Novoberde, Judge Servete Morina from the Basic Court of Ferizaj-Branch in Sterpce to the Basic Court of Prizren and also transferred Judge Gordana Virijevic from the Basic Court in Prishtina to the Basic Court in Mitrovica. All decisions from this meeting are published on the KJC's official website.

¹³ KJC has changed without notice the schedule for holding the 15 February meeting, and the latter have not given any reasoning. The continuation on 16 February officially has been closed.

- **The KJC held its fifth meeting in 2018, on 30 March 2018, or 201 meeting.** The KJC in this meeting established the Selection Committee for candidates who have applied for promotion at the Appeal Court, approved the list with unique signs of classification of judicial documents of Kosovo and their deadlines, and appointed member Manushe Karaqi member of the Court of Honor at the Kosovo Dentists Association.

All decisions from this meeting are published on the KJC's official website.
- **The KJC held its sixth meeting for 201, on 17 April 2018, or the 202 meeting.** During this meeting, the KJC elected Ramiz Aziz as President of the Basic Court in Gjilan, established a Committee for the Recruitment of Judges in Basic Courts and rejected the request of the Mayor of Hani i Elezit, Mr. Refki Suma, for the establishment of a Basic Court in the municipality of Hani i Elezit¹⁴.

All decisions from this meeting are published on the KJC's official website.
- **The KJC held the seventh meeting for 2018 on 2 May 2018 or the 203 meeting.** The KJC during this meeting temporarily transferred five (5) Judges to the Basic Court of Pristina, approved the Regulation for the Central Criminal Record System, appointed Judge Aziz Shaqiri vice-president of the Basic Court in Gjilan and opened the vacancy for seven (7) Judges for the Special Chamber of the Supreme Court.

All decisions from this meeting are published on the KJC's official website.
- **The KJC held the eighth meeting for 2018, on 30 May 2018, or the 204 meeting.** During this meeting, for the first quarter of 2018, Presidents of the Basic Court of Prishtina, Prizren and Gjilan gave their reports. During this meeting, the KJC also approved the Work Plan for 2018, decided to terminate the contract according to the legal power for four (4) judges, and elected Sadri Krasniqi for the Supervising Judge at the Basic Court of Gjilan - Branch in Kamenica, Emine Salihu for the Basic Court in Gjilan - Branch in Novoberde and Bojana Trboljevac at the Basic Court of Mitrovica - Branch in Leposavic.

All decisions from this meeting are published on the KJC's official website.
- **The KJC held its ninth meeting for 2018, on 20 July 2018, or the 205 meeting.** In this meeting, before the members of the KJC the President of the Basic Court of Ferizaj, that of Gjakova, Peja and Mitrovica gave their reports, a vacancy was opened for the Supervisory Judge at the Basic Court of Mitrovica - Branch in Zubin Potok, decided to annul the decision for transferring two (2) Judges to the Basic Court of Prishtina and has decided that retired Judges and former Director of the ODC have the right to receive a retroactive amount in relation to the Government's decision to raise salaries.

All decisions from this meeting are published on the KJC's official website.

¹⁴ The KJC held this meeting without the media, as none of the media was informed. KLI when asked the KJC for why such a fact has happened, the same were reasoned that there was a technical error in this case.

- **The KJC held its tenth meeting for 2018, on 12 September, 2018, or the 206 meeting.** Among the most important decisions that KJC has issued during this meeting is the decision to compensate KJC members. Based on this decision, members of the KJC for the period 1 January 2018 till 31 August 2018 will retroactively receive the amount of 25% of their basic salary, based on the decision of Haradinaj Government's to raise salaries. From September, they will continue to receive 262.75 euros a month. During this meeting, the request made by the President of the Basic Court in Gjilan, Ramiz Azizi, for him to pass from the General Department to the Serious Crimes was approved, a vacancy was opened for two (2) judges of criminal field at the Supreme Court and one (1) Judge for the Appeal college for the Kosovo Property Agency.

All decisions from this meeting are published on the KJC's official website.
- **The KJC held its eleventh meeting for 2018, on 24 October 2018 or the 207 meeting.** During this meeting, the KJC approved the budget request for 2019, extended for six (6) months transfer at the Basic Court of Prishtina for four (4) judges, changed the organogram for judges, whereby 13 judges were removed from the organogram of the Basic Courts, six (6) of whom have been transferred to the Appeal Court, while seven (7) to the Special Chamber of the Supreme Court, discussed the agenda of the Ministry of Justice "Justice 2020" and established a working group for this agenda.

All decisions from this meeting are published on the KJC's official website .
- **The KJC held its twelfth meeting for 2018, on 30 November or 208 meeting:** During this meeting, the KJC approved the list of 37 judges for decree to the President of the Republic of Kosovo and opened a vacancy for 27 new judges . The KJC has also approved the operational plan on the establishment and functioning of the Central Criminal Record System of Kosovo and has adopted the Regulation on the Use of TIK in the Judicial System. During this meeting, the KJC has taken the decision to request from the president, judges and administrative staff of the Basic Court in Mitrovica not to be affected by political actions, has approved the resignation of a member of the KJC, Skender Cocaj from the position of a member of the Steering Council of the Academy of Justice, has requested from the President of the Supreme Court to establish the trial colleges in the special chamber as well as to request from the head of this chamber forming the Appellate Panel and has assigned the members of the Committee for the Damaged Compensation for Sentenced Persons or arrested without reason.

All decisions from this meeting are published on the KJC's official website.
- **The KJC held its thirteenth meeting for 2018, on 27 December, or the 209 meeting:** During this meeting, the KJC advanced ten judges at the Court of Appeal, made a decision for the lottery assignment of judges in 2019 will be subject to

performance evaluation and also appointed members of the assembly of presidents and supervisory judges from the ranks of supervisory judges.

Decisions from this meeting have not been published on the KJC's official website.

5. Approval of secondary legislation by the Kosovo Prosecutorial Council

KPC during 2018 has not shown any efficacy regarding the drafting of secondary legislation and the fulfillment of the obligations deriving from the applicable legislation on the prosecutorial system in Kosovo. KPC during this period has only adopted one regulation:

1. Regulation on the Use of Information and Communication Technology in the Prosecutorial System.

KPC during 2018 has approved administrative instructions for:

1. Management of non-financial assets of KPC;
2. Use of official vehicles of the Prosecutorial System;
3. Defining the norm rate for State Prosecutors.

There are also a number of regulations that derive as obligations from the Law on KPC and the Law on State Prosecutor, which KPC has not yet approved. The KPC has not yet adopted these regulations:

1. Regulation for Standardization regarding Discourse of Prosecutors;
2. Standard Operating Procedures regarding the Elimination of Conflict of Interest during the Exercise of Function by KPC Members;
3. Regulation on Rules and Procedures that Govern Complaints KPC decisions about permanent displacement or transfer against the will of prosecutors exceeding the six (6) month period.

New chairman of the KPC, Bahri Hyseni, said that disapproval of secondary legislation by the KPC does not have to do with the ineffectiveness of this institution, but that the obstacle was the fact that the Law on KPC has not yet been approved:

"Drafting of the sub-laws of the Kosovo Prosecutorial Council is a process which is related to the adoption of laws in the Assembly of Kosovo, in this case, the Council during 2018 with the Work Plan has had on the agenda the completion and amendment of the 8 regulations. All these regulations were based on the legal amendments of the prosecutorial system, respectively, the Law on Kosovo Prosecutorial Council. As you know, the Law on Kosovo Prosecutorial Council has not yet been approved by the Assembly of Kosovo.

This means that the disapproval of these regulations has not to do about the Council's ineffectiveness, but with the disapproval of laws by the Assembly. Some of these draft regulations have been drafted by the Commission on Normative Issues, based on the Draft Law on Kosovo Prosecutorial Council, which has not yet been approved, and we are waiting

the final draft of the law, so that these regulations will then be approved in the soonest possible deadline after the entry into force of this law. For your information, as far as the sub-laws are concerned, the Council has approved 28 regulations since 2015, which were subject to the laws adopted by the Assembly. Also regarding the adoption of sub-laws acts we have also been assessed by international partners "highlighted Hyseni¹⁵.

Hyseni confirmed the findings of the KLI regarding the number of regulations and administrative instructions that KPC approved during 2018¹⁶.

While the adoption of the abovementioned regulations is a legal requirement since 2011, when the Law on the KPC entered into force, in 2018, KPC has failed to meet these legal obligations.

5.1. Regulation on the Use of Information and Communication Technology in the KPC

KPC at the 150 meeting held on 30 April 2018 approved the Regulation on the Use of Information and Communication Technology in the Prosecutorial System. The purpose of this regulation is to determine the rules for the use of information and communication technology in the prosecutorial system.

This regulation sets out detailed rules regarding the use of equipment of information and communication technology, the use of information technology software, the use of internet services, the use of e-mail services and the management of information security.

Although this regulation is of a great importance, the KLI finds that there remains many unresolved issues.

KLI considers it quite worrying the general treatment of information security in the KPC as well as the fact of not defining rules regarding the discipline of employees in the prosecutorial system, that violate this regulation.

Initially, regarding the management of information security, this regulation does not contain concrete details and measures regarding the security of information within the prosecutorial system. The demand to the employees for the maximal care and disposal of the disc in the damaged apparatus are not enough standards to increase safety. Much less when in the prosecutorial system it is expected that all work to be done electronically, through the implementation of the ICT / SMIL project¹⁷.

On the other side, the KLI estimates it quite worrying the fact that this regulation has not properly regulated the issue of discipline of employees in the prosecutorial system, which does not comply with the obligations stipulated by this regulation. The most severe measure that this regulation has imposed to the persons, who do not comply with this regulation is the

¹⁵ KLI interview via email with Mr. Bahri Hyseni, Chairman of the KPC. 24 January, 2019.

¹⁶ Ibid.

¹⁷ The ICT / SMIL Project (Communication Information Technology) / SMIL (Case Management Information System) is a joint project between the KJC and KPC, supported by the Norwegian Embassy in Kosovo. This project aims digitization of work in all Courts and Prosecutions of the Republic of Kosovo.

partial prohibition and the complete prohibition of the use of the equipment and the computer system.

KLI considers that it should be taken into account the fact that by misuse of information technology equipment within the prosecutorial system may have enormous damage, while the sanction of prohibition of the use of equipment and computers is not a sanction which could prevent such actions. Also, with regard to the use of information and communication technology, there may be violations of the most varied nature and therefore, the KLI estimates that there should be a variety of disciplinary measures and to specify each measure for each case. This situation is worrying for the fact that despite the precise regulation of the use of information and communication technology in the prosecutorial system, it is difficult to expect implementation in practice without having accountability through adequate discipline of employees within the prosecutorial system.

6. Accountability and integrity in the prosecutorial system and control mechanisms

KLI during the systematic monitoring of the work of the KPC found that the Council failed to meet the basic obligations regarding the implementation of basic laws and basic regulations adopted by the Council itself. KLI found that the control and oversight mechanisms within the KPC, although established on paper, in practice are ineffective.

Lack of control and oversight in practice are affecting to have the lack of accountability, efficiency and responsibility in the prosecutorial system, which are affecting in the installation of the non-impunity culture.

Legal obligations of the prosecutorial system	Fulfilled	Not fulfilled	Deadline
Annual work report of the SP		X	Month march of the respective year
Annual work report of the KPC	X		Month march of the respective year
Performance evaluation of Prosecutors	X		1/3 of prosecutors within year
Appointment of the Director of the Prosecutor Performance Evaluation Unit	X		
Appointment of KPC member by civil society		X	1 january 2016
Reporting of Chief prosecutors before KPC		X	Every three months
Approval of the Work Plan of the SP for the year 2019		X	Month october of the respective year
Reporting before the public on the implementation of its objectives defined specifically and based on measurable indicators every six (6) months.		X	Every six months within the calendar year

KLI has analyzed the implementation of legal obligations based on indicators established in accordance with the legal obligations of the prosecutorial system.

6.1. Annual Work Report of the State Prosecutor for year 2017

Article 4 paragraph 1 item 12 of the Law on KPC stipulates that the KPC is obliged to prepare an annual report on the activities of the State Prosecutor.

Chief State Prosecutor Aleksander Lumezi, at the meeting of the KPC held on 30 May 2018, presented the Annual Work Report of the State Prosecutor for 2017.

In the report it is stated that the State Prosecutor (SP) during 2017 had at work a total of 185,772 criminal-reports cases (*cases from registers: PP, PPM, PPN, NJN, PPP, PA cases of AP and CSPO*) from which 129,531 have been inherited as unresolved cases from previous years. In the reporting period, SP has received at work a total of 56,241 criminal reports-cases from which prosecutors have resolved or proceeded to the competent bodies 71,230 of them 3 or 26.65% respectively 14,989 criminal reports- cases more than they have received.

At the end of the reporting period, 114,542 criminal reports-cases remained unresolved.

6.2. Annual Work Report of the Kosovo Prosecutorial Council for 2017

Article 4 paragraph 1 item 12 of the Law on KPC stipulates that KPC is obliged to prepare an annual report on activities of the State Prosecutor and expenses of the Council.

KPC on 29 December 2015 adopted Regulation No. 10/2015, on the organization and activity of the KPC. In Article 41 of this Regulation, the KPC has determined the obligation of approval and publication the Annual Work Report of the KPC till 31 March of the following year. This Article has obliged the Secretariat to support the Council in timely preparation of the project report for review and approval in the Council.

KPC at the 149 meeting, held on 27 March 2018, approved the annual report for the KPC.

This report, in addition to general information about the KPC, contains data regarding activities of the KPC, the KPCS, the PPRU and the data related to the budget of the prosecutorial system.

The report of the KPC is descriptive, not analytical, and does not address the problems and challenges with which the prosecutorial system faces.

The report does not address the challenges that have followed the prosecutorial system, much less their addressing. The PPRU reports are mentioned but do not show what their challenges in the reports were and are those problems been addressed by the KPC.

Regarding the non-fulfillment of the composition of the KPC with non-prosecutor members, the report of the KPC is sufficient to show the procedural steps undertaken in this regard, without giving a clear analysis of what has obstructed this process, where has remained unrepresented in this important institution civil society.

The KLI considers that such a report is of a formal character and does not achieve the purpose of the legal obligation to inform the public about the activity, efficiency, and effectiveness of the prosecutorial system during 2018.

The KPC according to the Law on Supplement Amendments of the Law on the KPC has defined the obligation of the Council to report before the public for the implementation of its objectives defined specifically and based on measurable indicators every six (6) months. Such an obligation has not been met by the KPC.

The lack of fulfillment of the obligations of the KPC proves the lack of will in practice of the Council and Secretariat to enforce the law and to find accountability in relation to the public. Lack of fulfillment of legal obligations strengthens the installed practice of impunity of the KPC leaders and responsible persons in the Secretariat.

The Chairman of the KPC, Bahri Hyseni, has neither denied nor proved the findings of the KLI regarding the Annual Report of the KPC. In an interview via e-mail, Hyseni stressed that based on the reports that the KPC adopts, 9 recommendations were adopted:

"The Council drafts and approves several types of reports that derive from its field of activity. These reports are the subject of treatment by the Permanent and Temporary Commissions of the Council, but as you know, these reports are approved in the Council. For your information, as a result of the analysis of these reports, 9 recommendations were adopted by the Council in order to increase the efficiency of the prosecutorial system in combating criminal offenses, in particular, 9 groups of characteristic criminal offenses"¹⁸.

6.3. Performance evaluation of prosecutors and disciplinary measures

The Law on Supplement Amendments of the Law on the KPC, in Article 14/B, defined the establishment of a Committee for Performance Evaluation of Prosecutors. KPC had planned that during 2018 to make a performance evaluation for 67 prosecutors, divided into five (5) groups within the evaluation process.

During 2018, three (3) processes were conducted with 11 prosecutors (i.e. 33 prosecutors with permanent mandate), a process with 12 prosecutors, and another process with 21 prosecutors with initial mandate. Regarding the recent process, the planning was done that performance evaluation to be made for 22 prosecutors. However, at the meeting held on 24 December 2018, KPC has partially approved the report of the Performance Evaluation Committee. According to this decision, the KPC approved the report of this committee regarding 21 prosecutors, while it obligated the committee to make the performance re-evaluation for prosecutor Atnor Skoro¹⁹. So, in total, performance evaluation was done for 67 prosecutors, as far as it was planned to be done.

¹⁸ KLI interview via email with Mr. Bahri Hyseni, Chairman of the KPC. 24 January, 2019.

¹⁹ Decision 2064/2018. Kosovo Prosecutorial Council. December 24th, 2018. (See the link <http://kpk-rks.org/assets/cms/uploads/files/Legjislacioni/Vendimet%202018/Vendim%20Nr.2064.2018%20-%20Miratohet%20pjes%C3%ABrisht%20Raporti%20i%20Komisionit%20p%C3%ABr%20Vler%C3%ABsimi>)

Chairman of the KPC, Bahri Hyseni, states that KPC has given priority to this process. Regarding the lack of disciplinary procedures, Hyseni said that this did not happen because the KPC did not find violations of that nature to initiate disciplinary proceedings²⁰.

Regarding the disciplinary procedures for prosecutors during 2018, the Disciplinary Commission of the KPC received six (6) final reports from the ODC and a request for suspension, while three (3) final reports of the ODC were inherited since 2017.

During 2018, the KPC Disciplinary Committee issued the following disciplinary measures:

Cease of procedures	2 decisions
Suspension without salary	1 decision
Reduction on duty within prosecutorial system	1 decision
Rebuke by order for undertaking corrective actions	1 decision
Rebuke	1 decision
Refusal of the Final Report	1 decision
Total of disciplinary decisions	7 decisions

Regarding the disciplinary cases, the KPC as second instance during 2018 has received three (3) new cases, while has resolved 4 cases, in which it has taken these decisions:

Cease of procedure	1 decision
Approval of the measure of rebuke	1 decision
Refusal of the complaint of the ODC	2 decisions ²¹
Total of disciplinary measures	4 decisions

Consequently, the ODC for the period from 1 January till 30 November, 2018²², received 82 cases against the holders of prosecutorial functions. The ODC, during this time period treated 92 cases against the holders of prosecutorial functions, while 57 cases were rejected after a preliminary disciplinary investigation. Following the conduct of disciplinary investigations, the ODC sent six (6) cases for disciplinary proceedings to the Disciplinary Commission of the KPC.

Cases treated by the ODC	Cases sent in the DC of the KJC	Cases closed after disciplinary investigations	Cases rejected after preliminary investigation
92	6	29	57

[n%20e%20Performanc%C3%ABs%20p%C3%ABr%20nj%C3%ABzet%20e%20nj%C3%AB%20prokuror%C3%AB%20t%C3%AB%20shtetit%20me%20mandat%20fillistar.pdf](#)). (Last accessed on January 25th, 2019).

²⁰ KLI interview via email with Mr. Bahri Hyseni, Chairman of the KPC. January 24th, 2019.

²¹ In one of these two cases, KPC as a second instance left in force the decision on the rejection of the final report, while in the second case KPC as a second instance left in the force the decision on the imposition of the disciplinary measure "rebuke".

²² KLI has requested access to the ODC statistics for December 2018. The ODC did not send them the same, with the justification that they are busy working on the annual report of the ODC for 2018.

6.4. Reporting of Chief Prosecutors before the KPC

KPC on 29 December 2015 adopted the Regulation on the Internal Organization and Functioning of the State Prosecutor. Article 9 of this regulation defines the responsibilities of Chief Prosecutors in relation to the KPC. Article 9 point 1.4 of this regulation obliges the Chief Prosecutors to submit to the KPC on a quarterly basis a written report regarding work of the prosecution office, the difficulties and the proposal of measures related to the improvement of performance of the prosecution.

KLI during the monitoring of KPC meetings in 2018, found that in no meeting of the KPC, were not reviewed or discussed the working reports or the obligations of the Chief Prosecutors before the KPC.

There was also a lack of KPC initiative to request or invite Chief Prosecutors of Prosecutions to report before the KPC, failing to meet legal obligations to ensure accountability.

The lack of reporting of the Chief Prosecutors and non-fulfillment of legal obligations proves in practice the failure of the Kosovo Prosecutorial Council to exercise control and oversight in relation to Chief Prosecutors of respective Prosecutions in the effective management and administration of prosecutions, which in practice also affects in the lack of results and poor performance.

KPC Chair, Bahri Hyseni, states that this legal obligation has been fulfilled, as the chief prosecutors have submitted their periodical reports in writing.

"Based on Article 9, paragraph 1.4 of Regulation No.11 / 2015 on Internal Organization and function of the State Prosecutor, Chief Prosecutors of the prosecutions are obliged to submit a written report to the Council on a quarterly basis. This reporting was realized in accordance with this provision of the Regulation and every three months all Chief Prosecutors of the Prosecutions have sent to the Kosovo Prosecutorial Council their written reports for their activities"²³.

KLI also found that KPC did not fulfill its obligation to report every six (6) months before the public for the implementation of its objectives determined specifically and based on measurable indicators.

Regarding the obligation of KPC, KPC Chair, Bahri Hyseni, did not give a concrete answer. "The Council's activity extends not only to meetings held in front of the public, but also to the permanent and temporary commissions of the Council and other auxiliary bodies, so the implementation of the objectives defined by the Council has been treated with in these bodies, moreover in the meetings of the Council has reported the Working Group for monitoring and evaluation of the implementation of the Strategic Plan".²⁴

²³ KLI interview via email with Mr. Bahri Hyseni, Chairman of the KPC. January 24th, 2019.

²⁴ Ibid.

6.5. Public transparency and accountability of the prosecutorial system

KPC continuously proclaims the increase of transparency and accountability in relation to the public and the media. KPC has adopted regulations and strategies to increase transparency and accountability and to facilitate cooperation with the public and the media.

KLI during the monitoring of the prosecutorial system during 2018 has addressed to the prosecutorial system 108 requests for access to public documents regarding the fulfillment of legal obligations, provision of information, statistics and other available and permissible data according to the Law on Access to Public Documents.

Out of these 108 requests, KLI received positive answers in 42 of them, or 37.86%, in 55 of them, or 51.45%, KLI received no response, while in 11 requests, prosecutorial institutions have refused to provide the requested data, or at 10.67%.

Despite this, before 128 decisions that KPC has issued during the period of 1 January 2018 – 30 November 2018, KPC has published only 23 from or 14.87%, while number of unpublished decisions in Serbian language is even larger.

Also, KPC does not regularly invite the media and civil society to their open meetings. In this regard, KPC did not invite media and civil society to its 154 meeting. Despite the importance of the points that have been reviewed at this meeting, the KPC has kept them away from the public eye. Regarding this non-information, the KPC stated that it was only a technical misunderstanding. After the meeting, the KPC had issued a press release from this meeting.

The situation is even more worrying regarding meetings 147 and 155. For these meetings, the KPC did not inform the media or the civil society, did not publish the agenda and did not issue press release from these meetings. For all these, the KPC has not given any justification to the public.

The most discussed event during 2018 regarding the prosecutorial system was the resignation of the former prosecutor of the Special Prosecution of the Republic of Kosovo (SPRK), Elez Blakaj. Despite the importance that this issue had for the public, the KPC at its 156 meeting on 7 September 2018 decided to treat his resignation with closed doors, removing media and civil society from the KPC meeting on the occasion of the discussion for Blakaj's resignation. After the meeting with closed doors for this point, KPC did not tell that which was the decision of the KPC regarding Blakaj's resignation.

Chairman of the KPC, Blerim Isufaj, stated that during this meeting the KPC had only been notified for Blakaj's resignation, whereas in the press release of the KPC it was not mentioned at all that this point was reviewed. After that, in an official response of the KPC to the KLI, it was confirmed that during this meeting KPC had approved the resignation of former Special Prosecutor Elez Blakaj, and that they proposed to the President of the Republic of Kosovo the issuance of a decree for his release from duty.

On 14 June of this year, the KPC appointed on call prosecutors for communication with media. In this regard, for each prosecution, prosecutor responsible for communication with media was assigned. The KLI estimates that this decision is a positive step towards increasing

transparency, because such a practice has resulted successful, but still this decision alone is not enough to achieve the transparency of the prosecutorial system.

Non-implementation of the legal obligations and policies approved by the KPC strengthens the findings of the KLI and assessments derived from international and local reports regarding the lack of will of the prosecutorial system to be transparent and accountable before the public. Non-fulfillment of the obligations proves that the law in Kosovo does not apply same to all. KLI estimates that in cases where senior officials do not fulfill their obligations and responsibilities, the culture of impunity continues to be cultivated.

Despite the fact that in cases when the KLI did not receive or did not have access to public documents of the prosecutorial system, requests for access to public documents and information were made in accordance with the Law on Access to Public Documents and the Law on Protection of Personal Data, KPC Chair, Bahri Hyseni, in an response through e-mail, said the lack of responses has nothing to do with non-transparency, but carefully about non-influencing in investigative processes. KLI clarifies that it is not about KLI requests for confidential investigation cases, but for documents and information that are accessible by law, but which are not provided by the KPC. Regarding the non-publication of KPC decisions, KPC Cahir Bahri Hyseni has said that all decisions taken in the KPC meetings are public:

"... As regards of non-publication of Council decisions, the Council continuously takes care of the publication of adopted acts and has nothing to do with transparency as you know all Council decisions are taken at public meetings where present are representatives of media and civil society, who are interested to attend the Council meetings, for which we will inform you about the time of the meeting, for each meeting".²⁵

6.6. Advancement and transfer of Prosecutors

KPC during 2018 has advanced on duty a total 13 prosecutors:

1. In the SPRK are advanced 5 (five) prosecutors and all of them from BP Pristina;
2. In the BP Mitrovica are advanced 2 (two) prosecutors from this same prosecution;
3. In the BP Ferizaj are advanced 2 (two) prosecutors from this same prosecution;
4. In the BP Pristina is advanced 1 (one) prosecutor from this same prosecution;
5. In the CHSPO are advanced 3 (three) prosecutors, one from the Appeal Prosecution, one from the BP Ferizaj and one from the BP Gjilan.

Regarding the transfers, KPC during the meeting held on 23 February 2018 has taken the decision that the prosecutor of the Basic Prosecution in Ferizaj, Burim Qerkini, to transfer

²⁵ Ibid.

from the Department for Juveniles to the Serious Crimes Department, extend the of prosecutor Agron Qalaj for six (6) months as a prosecutor in the CHSPO, prosecutor Habibe Salihu to be transferred to the SPRK, Prosecutor Veton Shabani from the Basic Prosecution in Ferizaj from the General Department to be transferred to the Serious Crimes Department as well as Prosecutor Agim Kuka from the General Department to be transferred to the Department for Juveniles at the BP of Ferizaj. All these transfers have been made for a period of six (6) months.

At the meeting of 30 April 2018, KPC took a decision by which it transferred Prosecutor Naim Abazi from the General Department of Basic Prosecution in Prishtina to the Department for Serious Crimes of this Prosecution.

At the meeting held on 31 October 2018, KPC also transferred prosecutors Shkelzen Ibrahim and Rafet Halimi from the General Department of the Basic Prosecution in Pristina to the Serious Crimes Department of this prosecution.

As in the case of the KJC, the KLI estimates that the transfer of a prosecutor from the GD to the Serious Crime Department can not be considered a transfer but an advance.

The Law on State Prosecutor defines special criteria and compensation for Prosecutors of Serious Crimes, unlike Prosecutors of the General Department.

Unlike Prosecutors of the General Department of Basic Prosecutions, the Law on State Prosecutor defines that for exercising the function of a prosecutor in the Department of Serious Crimes in the Basic Prosecution, the candidate must have at least three (3) years of legal experience as a prosecutor or judge, which is not said for the Prosecutors of the GD.

Also, regarding compensation, the Law on State Prosecutor defines that each Prosecutor with a permanent mandate in the Basic Prosecution receives a salary not less than seventy percent (**70%**) of the salary of the Chief Prosecutor of the Basic Prosecution. The Council will issue a scheme for **additional compensation** that reflects the special responsibilities of the prosecutor that appears before the Department of Serious Crimes at the Basic Court.

Moreover, the advancement of prosecutors by the General Department to the Department of Serious Crimes also contradicts with Article 3 of the Regulation on the Transfer and Advancement of State Prosecutors, which stipulates the basic principles on which KPC should be guided during the process of transferring and advancing of prosecutors.

This article stipulates that career development of prosecutors, advancement and transfer should be based on objective criteria such as: professional skills, merit and professional experience, as well as career development, advancement and transfer should be based only according to the law and this regulation and with the consent of prosecutors.

The KLI on December 2016 published the analysis "Unlawful decisions of the KPC and bad practices of amending the Regulations by the KJC"²⁶, through which was proved that KPC violated the Law and Regulations adopted by KPC itself on the occasion of advancement of the Prosecutor Abdurrahim Islami from the Basic Prosecution of Pristina in SPRK.

Based on these findings, the KLI considers that the KPC should have in consideration that not to be confused "advancement" with "transfer" because of the only fact that the latter has certain time limit. The KPC should ensure that the transfer takes place within the same level of prosecution, and clearly understand that to pass from a lower department to a higher department, the competition institute must be respected.

Also, on February 2017, the KLI published the analysis "Unlawful decisions of the Chief State Prosecutor and KPC on the transfer of prosecutors to the SPRK", where it was pointed out that KPC also in the case of Prosecutor Syle Hoxha acted as in case of Prosecutor Abdurrahim Islami²⁷.

6.7. Monitoring meetings of the Kosovo Prosecutorial Council

KPC from 1 January, 2018 till 30 November, 2018 held total 14 meetings, which generally resulted that has hold approximately 1.2 meetings per month.

6.8. Discussions of KPC members when adopting policies/publishing decisions

KLI has monitored in detail all KPC meetings, including the participation in discussion by all members of the Council. The findings show that the lack of democracy is still present in the KPC. Of the 128 KPC decisions taken during 1 January, 2018 – 31 December, 2018, the overwhelming majority of them were taken unanimously. Regarding the discussion of KPC members, the findings are the same as in the previous reports.

As will be seen below, among the KPC members, there are members whose contribution in the discussion at KPC when making important decisions was zero. More concretely, in the KPC meetings, the public never heard their voices. The KLI expresses deep concern with this approach and lack of contribution by the Council members, who are being proved as mechanism that resemble in voting machines, which are directed by the Chairman of the KPC and the Chief State Prosecutor. In the following table is presented the contribution or non-contribution of the discussion of each member at each meeting monitored by the KLI.

However, the KPC Chair considers that members, who do not discuss at the KPC meetings, give their contribution to the KPC committees.

"Once again I re-highlight that the contribution of Council members is not in Council meetings, but in committees and assisting bodies. Therefore, for the members you mentioned,

²⁶ "Unlawful KPC decisions and bad practices of amending the regulations by the KJC". Kosovo Law Institute. 12 December, 2016. (See link <https://kli-ks.org/vendimet-e-kunderligjshme-te-kpk-se-dhe-praktikat-e-keqija-te-change-te-rregulloreve-nga-kgjk/>)

²⁷ "" Unlawful decisions of the Chief State Prosecutor and KPC on the transfer of prosecutors to the SPRK ". Kosovo Law Institute. 07 February 2016. (shih linkun <https://kli-ks.org/wp-content/uploads/2017/02/1.-Analize-e-shkurte-Vendimet-e-kunderligjshme-te-KPSH-dhe-KPK-07.02.2017-2.pdf>)

I inform you that the prosecutor Haxhi Sinanaj is a member of the Disciplinary Committee and member of several temporary committees.

In these committees, the engagement of Prosecutor Sinanaj is very important. Prosecutor Deshira Jusaj is a member of the Committee on Normative Issues and is also engaged in other Committees of the Council, while Prosecutor Bedrije Alshiqi is a member of the Committee for Performance Evaluation of Prosecutors, a committee that, has activity almost every day. Regarding the way of making decisions, I inform you that each point of agenda is treated in the Council committees, whereby the members of the Council give their contribution”.²⁸

Monitoring of discussions of the KPC members at KPC meetings in year 2018

Members of the KPC	Monitored meetings of the Kosovo Prosecutorial Council in year 2018									
	23 february	27 March	30 April	30 May	14 June	7 Septem ber	31 Octobe r	27 Novem ber	24 Decem ber	Total
1.Blerim Isufaj	6 min, 1 sec	7 min, 7 sec	4 min, 56 sec	7 min, 54 sec	8 min, 58 sec	12 min, 19 sec	7 min, 41 sec	10 min, 49 sec	8 min, 5 sec	1 hour, 14 min, 34 sec
2.Aleksander Lumezi	3 min, 42 sec	Passive	Passive	25 min, 15 sec	Passive	10 min, 15 sec	7 min, 9 sec	Passive	10 min, 1 sec	56 min, 22 sec
3.Bahri Hyseni	13 min, 6 sec	5 min, 18 sec	10 min, 9 sec	15 min, 15 sec	15 min, 7 sec	11 min, 30 sec	9 min, 52 sec	4 min, 29 sec	13 min, 35 sec	1 hour, 38 min, 21 sec
4.Bedrije Alshiqi	Passive	Passive	Passive	Passive	Passive	3 min, 47 sec	Passive	Passive	Passive	3 min
5.Haxhi Sinanaj	Absent	Passive	Passive	Passive	Passive	Passive	Passive	Passive	Passive	Passive
6.Dëshirë Jusaj	Passive	Passive	Passive	Passive	Passive	Passive	Passive	Passive	Passive	Passive
7.Arben Ismajli	3 min, 30 sec	Absent	Passive	55 sec	Passive	3 min, 16 sec	1 min, 54 sec	Passive	Passive	9 min, 35 sec
8.Zejnullah Gashi	1 min, 10 sec	4 min, 40 sec	Passive	17 sec	9 min, 20 sec	3 min, 20 sec	Passive	Passive	38 sec	19 min, 25 sec
9.Ikramije Bojaxhiu	7 min, 7 sec	Passive	Passive	Passive	Passive	Absent	3 min, 59 sec	Passive	Passive	11 min, 6 sec
10.Radica Miliq	14 min, 11 sec	Passive	Passive	12 sec	2 min	6 min	Passive	1 min	Passive	23 min, 23 sec

Below is a summary of the meetings that include the decisions taken:

- **KPC held its first meeting in 2018 on 29 January 2018, or the 146 meeting.** At the beginning of this meeting, the new member of KPC from the Appeal Prosecution, Bedrije Alshiqi, has given the oath as a member of KPC. Also, KPC during this

²⁸ KLI interview via e-mail with Mr. Bahri Hyseni, Chairman of the KPC. 24 January 2019.

meeting announced a vacancy for five (5) positions in the SPRK and has approved the Administrative Instruction for determining the orientation rate for State Prosecutors. No decision from this meeting has been published.

- **KPC held the second meeting in 2018 or the 147 meeting, held it with closed doors, and no agenda was published for this meeting.**

No decision from this meeting has been published.

- **KPC held its third meeting in 2018 on 23 February 2018, or the 148 meeting.**

KPC during this meeting approved the reports of Permanent Committees of KPC, the report of the National Coordinator for Combating Economic Crimes for the period September-December 2017, Annual Report for 2017 of the Supervisory Committee on the Implementation of the Strategic and Action Plan in Combating corruption and economic crimes as well as the 2017 report of the inter-institutional tracking mechanism for harmonizing statistics on characteristic criminal offenses. KPC during this meeting has taken the decision that the Prosecutor of the Basic Prosecution in Ferizaj, Burim Qerkini, to pass from the Department for Juveniles to the Serious Crimes Department, Prosecutor Agron Qalaj to extend his mandate for six (6) months as a prosecutor in CHSPO, Prosecutor Habibe Salihu to be transferred to the SPRK, Prosecutor Veton Shabani from the Basic Prosecution in Ferizaj from the General Department to be transferred to the Serious Crimes Department and Prosecutor Agim Kuka from the General Department to be transferred to the Department for Juveniles at the Basic Prosecution in Ferizaj. All these transfers have been made for a period of six (6) months. KPC in this meeting has announced a vacancy for advancement in the Office of the Chief State Prosecutor for the Basic Prosecution in Mitrovica, Pristina and Ferizaj. Also, KPC during this meeting approved the proposal of the Chief Prosecutor of the Basic Prosecution in Pristina, Imer Beka, for appointing the heads of departments, where as Prosecutor Kujtim Munishi was appointed as Head of the Serious Crime Department in the Basic Prosecution of Prishtina, Prosecutor Ruhan Salihu was appointed as head of the Department for Juveniles, while Prosecutor Fatmir Behrami was appointed Head of the General Department.

No decision from this meeting has been published.

- **The KPC's fourth meeting in 2018, held on 27 March 2018 or the 149 meeting.**

During this meeting, reports for 2017 were presented by the Director of KPCS, Lavdim Krasniqi, and the chairman of the Committee on Budget and Finance, Zejnullah Gashi. Also, at this meeting KPC also opened a competition for the selection of the director of the PPRU.

No decision from this meeting has been published.

KPC's sixth meeting in 2018, held on 30 prill 2018 or the 150 meeting. during this meeting KPC approved regulation on use of information and communication technology in the prosecutorial system as well as transfered for term six (6) months

prosecutor Naim Abazi from the General Department to the Serious Crimes Department in the Basic Prosecution of Pristina.

Only four (4) decisions were published from this meeting.

- **KPC's seventh meeting in 2018, held on 4 maj 2018 or the 151 meeting.** In this meeting as point of the agenda was only the review of a case by the Disciplinary Committee, also the meeting was held closed.
No decision from this meeting has been published.
- **KPC's seventh meeting in 2018, held on 30 May, 2018, or the 152 meeting.** During this meeting, before KPC members was presented the report of the National Coordinator on Combating Economic Crime for January-March 2018, the report on the oversight of the Strategic Plan and Action Plan for Combating Corruption and Economic Crimes, and the report of inter-institutional tracking mechanism for harmonization of statistics on characteristic criminal offenses, reports that have been approved by KPC members. During this meeting, Chief State Prosecutor Aleksander Lumezi has presented the report of the State Prosecutor for 2017. At this meeting, KPC took a decision to announce the competition for 5 positions in SPRK.
Only four (4) decisions were published from this meeting.
- **KPC's eighth meeting in 2018, held on 14 June 2018 or 153 meeting.** KPC during this meeting appointed prosecutors responsible for media communication, elected Valon Jupa director of the PPRU and approved the budget request for 2019, which request previously was presented by the chairman of the Budget and Finance Committee, Zejnullah Gashi.
Only four (4) decisions were published from this meeting.
- **KPC's ninth meeting in 2018, held on 26 July, 2018, or the 154 meeting.** KPC held this meeting with closed doors and the agenda was not published. In a response for KLI from KPC it was stated that the reason why the media were not invited at this meeting was due to a misunderstanding and technical error. During this meeting KPC approved the Administrative Instruction on the management of non-financial assets of the KPC as the administrative instruction for the use of official vehicles of the prosecutorial system. In this meeting was approved the report of the commission for performance evaluation, according to which, 11 prosecutors were evaluated for the performance. At the end of this meeting, has also reported the group for monitoring the implementation of the strategic plan activities for the period January-June 2018.
Only two (2) decisions were published from this meeting.
- **KPC's tenth meeting in 2018 or the 155 meeting, held with closed doors, and for this meeting was not published the agenda.**
No decision from this meeting has been published.

- **KPC's eleventh meeting in 2018 held on 7 September 2018 or 156 meeting.** KPC during this meeting has approved the resignation of former prosecutor of the SPRK, Elez Blakaj, for which point the discussions were held with closed doors. The KPC during this meeting has reviewed and approved the Report of the Supervisory Committee on the implementation of the Strategic Plan for Combating Corruption and Economic Crimes for the period January-June 2018, has approved reports from the Permanent Committee of the Council for the period January-June 2018, and has reviewed the Report on the second performance evaluation of 12 prosecutors with an initial mandate. Also during this meeting KPC has announced a vacancy for the recruitment of 10 new prosecutors and has announced a vacancy for the selection of a KPC member from the civil society.

No decision from this meeting has been published.

- **KPC's twelfth meeting in 2018, held on 31 October, 2018, or the 157 meeting.** During this meeting, before KPC members has reported the National Coordinator for Combating Economic Crimes for the period April-June 2018. KPC in this meeting has transferred two (2) prosecutors from the General Department to the Department for Serious Crimes at the Basic Court of Pristina as well as approved the report of the performance evaluation committee for the performance evaluation of 12 prosecutors. At this meeting, was reviewed the report of the commission for review of the suitability of candidates nominated by the ranks of civil society for KPC members. The report noted that out of three (3) candidates that applied, only two (2) of them meet the criteria, and therefore the vacancy for the selection of the KPC member from the civil society has failed for the time third.

Only four (4) decisions were published from this meeting.

- **KPC's thirteenth meeting in 2018 held on 27 November 2018 or the 158 meeting.** During this meeting, Director of the KPCS, Lavdim Krasniqi, before KPC members presented the report of the inter-institutional tracking mechanism for the harmonization of statistics on characteristic criminal offenses for the period January-September 2018. KPC during this meeting announced an internal vacancy for a prosecutor at the Department of Juveniles in the Basic Prosecution of Peja, while the Chair Blerim Isufaj informed KPC members regarding the signed memorandums as well as has informed about the implementation of the electronic system for case management.

No decision from this meeting has been published.

- **KPC's fourteenth meeting in 2018 held on 24 December 2018 or the 159 meeting.** During this meeting, an open the call for nominations for the new Chair of the KPC, was made has reported the National Coordinator for Combating Economic Crimes, Shqipdon Fazliu, for the period July-September 2018, was approved the Code of Ethics for Prosecutors and by the Chief Prosecutor of the Appeal Prosecution in Pristina, Haxhi Dërguti, was presented the report of the Supervisory Committee on the

Implementation of the Strategic Plan and Action Plan for Combating Corruption and Economic Crimes for the period January-September 20108.

Of the seven (7) decisions taken at this meeting, five (5) of them were published on the official website of the KPC.

7. Specific findings of the KLI monitoring for the KJC and the KPC

The KLI in this part of the report presents the specific findings of systematic monitoring for the KJC and KPC, which were overwhelmed during 2018. For all these specific findings, KLI has reported on a regular basis to the public via the portal "Oath for Justice" and through the publication of quick reactions in the form of press releases.²⁹ Following, separate findings have been divided into issues, within which specific cases have been elaborated which compose concern for transparency, inadequate management, legal violations and accountability within the judicial and prosecutorial system.

7.1. Political impacts on the prosecutorial system

One of the most concerning problems in the justice system in Kosovo continues to be the political interference and the influence of group of interest in the judicial and prosecutorial system. The KLI has for decades repeatedly raised its voice for the independence of the judiciary and prosecutorial power, for which it has offered findings, assessments and recommendations on how to address the solution of this problem. Following are raised some of the problematic issues that are directly related to political interferences, executive interferences, and the interferences of the Chief State Prosecutor Aleksander Lumezi, on the individual independence of prosecutors and prosecutorial and judicial system.

7.1.1. Political influence to the Chief Prosecutor in the veterans and pronto case

The State Prosecutor, according to the Constitution, has legal responsibility for the prosecution of persons suspected that have committed a criminal offense. This is the body that has the main mandate to combat criminality, independently, impartially and fairly³⁰.

Elez Blakaj, a prosecutor at SPRK, on 13 August, 2018, offered resignation from duty³¹. On 16 August 2018, through a letter posted on social network "Facebook", he informed the

²⁹ *Note:* KLI as a result of systematic monitoring of the KJC and the KPC and in general of justice system, institutions and agencies that enforce the law, prepares daily reports, which are published on the specialized portal for the filed of rule of law "Oath for Justice" (www.betimiperdrejtesi.com) as well as on the website of the organization publishes quick reactions through the communication form for media (www.kli-ks.org). All reporting for the KJC and KPC are accessible in these two information windows for the rule of law in the Republic of Kosovo.

³⁰ Constitution of the Republic of Kosovo. Article 109

³¹ "Cause of threats gives resignation special prsecutorl, Elez Blakaj". Koha.net. 15 August 2018. (Shih linkun <https://www.koha.net/arberi/111200/per-shkak-te-kercenimeve-jep-doreheqje-prokurori-special-elez-blakaj/>) . (Last accessed on 22 january 2018).

public opinion that on 11 July 2018, had filed an indictment for the case known as "Veterans" in the Office of the Chief Prosecutor of the SPRK, Reshat Millaku³².

After the first letter, there were numerous reactions, including accusations against the personality and professionalism of Prosecutor Blakaj, which prompted him to submit another letter on 20 August 2018, appearing in the role of the whistleblower. Prosecutor Blakaj, this time, publicly exposed the threats and pressures he had since the time he began treating the case of "Veterans"³³.

Blakaj, in an interview with the "Oath for Justice," stated that in any investigation of high profile, Chief Prosecutor Aleksander Lumezi demanded clarification, even when high profile persons were simply invited in the capacity of witnesses. Blakaj's resignation and the reasons for this resignation caused numerous reactions to the public, including reactions from civil society, local and international institutions³⁴. Blakaj's resignation and the reasons for this resignation caused numerous reactions to the public, including reactions from civil society, local and international institutions.

The KLI considers that the resignation of the prosecutor Blakaj, has proved the security situation and functioning of the prosecutorial system, in which are influenced policies and group of interest which disable independent investigations³⁵.

The American Embassy in Kosovo assessed Blakaj's resignation as discouraging³⁶. American Ambassador in Kosovo, Greg Delawie, had called it a sad day when Blakaj had resigned³⁷. At the same time, Delawie, in a lecture before law students, said that in the case of

³² "Special prosecutor Elez Blakaj, in his resignation, confirms that from 11 July submitted raised indictment to the special Chief prosecutor, Reshat Millaku". Oath for Justice. 16 August 2018. (Shih linkun <https://betimiperdrejtesi.com/prokurori-special-elez-blakaj-ne-doreheqjen-e-tij-konfirmon-se-nga-11-korrikuaktakuzen-e-ngritur-ia-ka-dorezuar-kryeprokurorit-special-reshat-millaku/>). (Last accessed on 22 January 2018).

³³ "Speaks Elez Blakaj, says that he was threatened by veterans, mentions the pression of the Chief Prosecutor Aleksander Lumezi for KLA veterans and case "Pronto". Oath for Justice. 20 August 2018. <https://betimiperdrejtesi.com/fletelez-blakaj-thote-se-kishte-kercenime-nga-veteranet-permend-presionin-e-kryeprokurori-aleksander-lumezi-perveteranet-e-uck-se-dhe-rastin-pronto/>. (Last accessed on 22 January 2018).

³⁴ "What does Blakaj say about the threats of Chief Prosecutor Lumezi, Primeminister Haradinaj and others? (Video)". Oath for Justice. 12 September 2018. (Shih linkun <https://betimiperdrejtesi.com/cfare-thote-blakaj-per-kercenimetnga-kryeprokurori-lumezi-kryeministri-haradinaj-dhe-te-tjeret-video/>). (Last accessed on 22 January 2018).

³⁵ "Political interferences in the politicized prosecutorial system, alarm for need of vetting in the police, prosecutions and courts". Kosovo Law Institute. 30 August 2018. Page 4 (See link <http://kli-ks.org/nderhyrjet-politike-nesistemine-politizuar-prokurorial-alarm-per-nevojen-e-vetingut-ne-polici-prokurori-dhe-gjykata/>). (Last accessed on 22 January 2018).

³⁶ "American embassy for the resignation of Special Prosecutor: Very discouraging case". KlanKosova.tv. 15 August 2018. (Shih linkun <http://klankosova.tv/ambasada-amerikane-per-doreheqjen-e-prokurorit-special-rast-shumedekurajues/>). (Last accessed on 22 January 2018).

³⁷ "Reaction of the American Ambassador Greg Delawie on social network Facebook". 15 August 2018. (See link <https://www.facebook.com/kosovo.usembassy/posts/2663396183686520>). (Last time accessed on 22 January 2018).

"Veterans", which had been investigated by Blakaj, there had been threats within the justice system and from abroad³⁸.

Even the European Union Office in Kosovo, had expressed its concern about the interventions in the justice system following Blakaj's resignation. "The statements of some politicians and prosecutors in Kosovo risk the main principles of the rule of law. Moreover, they send discouraging signals to all legal officials that treat sensitive and important cases"³⁹.

KPC on 22 August 2018, through a press release, stated that this institution is engaging that the State Prosecutor to act as independent and impartial. In this statement, the KPC, although called upon to protect and ensure the independence of the prosecutorial system, also said that this body would have no compromise on any prosecutor in case of failure to perform their duties⁴⁰.

Association of the prosecutors, headed by Chief Prosecutor of the AP, Haxhi Derguti, who is called to protect the interests of prosecutors, did not defend the prosecutor Blakaj, on the contrary. "So far, no prosecutor of the prosecutorial system of Kosovo, including former prosecutor Blakaj, did not express any concern either as a threat or as an influence on his independent and impartial work by anyone. Therefore, public statements for allegedly threats and influences within the prosecutorial system are to cover his personal interests or anyone else, "was said in this reaction"⁴¹.

Also, the CSPO emphasized that this Office had never received information that Prosecutor Blakaj had ever been threatened regarding the "Veterans" case⁴². Moreover, Chief State Prosecutor Aleksander Lumezi, in an interview for the "Gazeta Express" portal, called Blakaj, an unprofessional prosecutor, a coward, a failed prosecutor and a low profile prosecutor⁴³. Such a statement by Chief Prosecutor Lumezi was contradictory for the fact that several days earlier he had given positive assessments to Prosecutor Blakaj, saying that he "was not withdrawn because of the threat, because he was a prosecutor who was determined and

³⁸ "American ambassador said that KLA didn't have more than 15 thousand soldiers, said that had pression and fear against the prosecutor Blakaj". Oath for Justice. 31 August 2018. (See link <https://betimiperdrejtesi.com/ambasadoriamerikan-thote-se-uck-ja-skishte-me-shume-se-15-mije-ushtare-thote-se-pati-presion-dhe-frikesim-ndaj-prokuroritblakaj/>) . (Last time accessed on 22 january 2018).

³⁹ "Reaction of the EU office in Pristina for case Blakaj". 22 August 2018. (See link <https://www.facebook.com/610960288923231/posts/statement-by-the-eu-office-in-kosovoeu-specialrepresentativethe-eu-is-closely-f/2059258884093357/>) . (Last time accessed on 22 january 2018).

⁴⁰ "KPC discusses with close doors resignation of former prosecutor of the SPRK, Elez Blakaj". Oath for Justice. 7 september 2018. (See link <https://betimiperdrejtesi.com/kpk-e-diskuton-me-dyer-te-mbyllura-doreheqjen-e-ishprokurorit-te-psrk-se-elez-blakaj/>) . (Last time accessed on 22 janar 2018).

⁴¹ "Association of the Prosecutors: Blakaj didn't express any threat". Evropaelire.org. 23 August 2018. (See link <https://www.evropaelire.org/a/29449560.html>) . (Last time accessed on 22 january 2018).

⁴² "Chief State Prosecutor tells about threats against resigned prosecutor, Elez Blakaj". Koha.net. 15 August 2018. (See link <https://www.koha.net/arberi/111282/kryeprokurori-i-shtetit-tregon-per-kercenimet-ndajprokurorit-te-dorehequr-elez-blakaj/>) . (Last time accessed on 22 january 2018).

⁴³ "Exclusive, speaks Aleksander Lumezi: Elez Blakaj is coward, failed and unprofessional prosecutor". Gazetaexpress.com. 20 August 2018. (See link <https://www.gazetaexpress.com/lajme/ekskluzive-flet-aleksanderlumezi-elez-blakaj-eshte-frikacak-prokuror-i-deshtuar-dhe-joprofesional-568679/?archive=1>) . (Last time accessed on 22 january 2018).

uncorrupted and courageous.⁴⁴ "So, after Blakaj showed the reasons for resignation, also Lumezi's attitude changed.

Offensive language was also used by Kosovo Prime Minister Ramush Haradinaj. In an interview for the "Interactive" show, he called former Prosecutor Blakaj, "chicken thief and coward." He also said that "a refugee in Stankovec and Blace can not estimate the exact number of veterans" for which Blakaj had conducted intensive investigations for several months⁴⁵.

In Blakaj's interview given to "Oath for Justice", among others, he had said that Haradinaj's co-operation with the prosecution was unacceptable, as according to him, the request for the prosecutor to report to the prime minister about the investigations is inconsistent with the constitutional regulation of Kosovo, which divides the powers⁴⁶.

The spirit of threats to Blakaj had gone too far. Thus, MP of the AAK, Shkumbin Demalijaj, in an interview at the public television RTK, called Blakaj "criminal", "deserter", "thief", "idiot" and "hooligan". He had said that if the state does not prosecute Blakaj to judge him in Kosovo, according to him for the "blackmail" that he has made to the opinion, then he will follow him privately⁴⁷.

Despite such statements, the State Prosecutor did not see it reasonable to investigate public accusations of MP Demalijaj against prosecutor Blakaj. Only after the reaction of civil society and with 11 days delay, the Basic Prosecution in Pristina had decided to react. According to request of this prosecution, after the hearing of 28 September, 2018, the Basic Court in Pristina had ordered 30 days of detention to Demalijaj⁴⁸. Following the appeal to this decision, the Appeal Court on 4 October 2018 replaced the detention order with house arrest⁴⁹. The veteran indictment was formally raised in court by Special Prosecutor Afrim Shefkiu.

⁴⁴ "Still without initiating investigations, Lumezi said that Blakaj did not escape from threats". Gazetaexpress.com. 16 August 2018. (See link <https://www.gazetaexpress.com/lajme/ende-pa-nisur-hetimet-lumezi-thote-se-blakaj-nuk-iku-ngakercenimet-567639/?archive=1>) . (Last time accessed on 22 January 2018).

⁴⁵ "Haradinaj calls Blakaj thief and coward - "can not assess veterans, the refugee in Bllace". Koha.net. 21 August 2018. (See link <https://www.koha.net/video/112385/haradinaj-e-quan-blakajn-hajn-e-pishpirik-smund-veleresoje-veteranet-i-ikuri-ne-bllace/>) . (Last time accessed on 22 January 2018).

⁴⁶ "How did Prime Minister Haradinaj intervene in the investigations of prosecutor Elez Blakaj? (Video)". Oath for Justice. 12 september 2018. (See link <https://betimiperdrejtesi.com/si-nderhyri-kryeministri-haradinaj-ne-hetimet-e-prokuroritelez-blakaj-video/>) . (Last time accessed on 22 January 2018).

⁴⁷ "Demalijaj threatens Elez Blakaj: He is deserter, thief, idiot, hooligan..., I will deal privately with him". Telegrafi.com. 17 september 2018. (See link <https://telegrafi.com/demalijaj-sulmon-rende-elez-blakajn-ai-eshtedezertor-hajn-idiot-rrugac-do-te-merrem-privatisht-me-te/>) . (Last time accessed on 22 January 2018).

⁴⁸ "One month detention also against the deputy Shkumbin Demalijaj". Oath for Justice. 28 September 2018. (See link <https://betimiperdrejtesi.com/nje-muaj-paraburgim-edhe-ndaj-deputetit-shkumbin-demalijaj/>) . (Last time accessed on 22 January 2018).

⁴⁹ "Deputy Shkumbin Demalijaj released from detention, house arrest measure is set". Oath for Justice. 4 October 2018. (Shih linkun <https://betimiperdrejtesi.com/deputeti-shkumbin-demalijaj-lirohhet-nga-paraburgimicaktohet-masa-e-arrestit-shtepiak/>) . (Last time accessed on 22 January 2018).

Then, this indictment was returned to the SPRK for improvement and clarification⁵⁰. The completed indictment was sent to the Court by the SPRK on 7 December 2018⁵¹.

7.1.2. Treatment of the KJC and KPC as “departments” of the MoJ

Minister of Justice, Abelard Tahiri, on behalf of the cooperation with the KJC and KPC, has exceeded his powers in the meetings he has developed with both councils. Furthermore, Minister Tahiri has also presented at a closed meeting between the KJC and KPC, a treatment that has already been explained in the following pages of this report.

During the meetings with the employees of the judicial and prosecutorial administration, when the latter had entered on the strike, the Minister of Justice, Abelard Tahiri, was present, together with the chairman of the KJC, Nehat Idrizi⁵². With both chairpersons, Tahiri had held a meeting in the Basic Court of Pristina⁵³, they had the meeting with Specialized Prosecutor from the Specialized Prosecutor Office, Jack Smith⁵⁴, who had been together in the inauguration of the implementation of the ICT / SMIL⁵⁵ project as well as in many other meetings, and it was created the perception whether the Ministry of Justice is part of the judicial system and not executive, or vice versa, that the KJC and KPC are part of the MoJ.

Even in the case of a debate on veteran’s indictment, Minister Tahiri promised that this indictment would not remain in the drawer of the prosecution. He had said that will do this as long as his powers allow him⁵⁶.

In a television interview on Radio Television of Kosovo, Tahiri had qualified these meetings as normal, for the fact that he is Minister of Justice⁵⁷.

⁵⁰ “*Indictment of veterans is returned to the Special Prosecution for improvement and clarification*”. Oath for Justice. 10 October 2018 (See link <https://betimiperdrejtesi.com/aktakuza-e-veteraneve-i-kthehet-prokurorise-speciale-per-permiresim-dhe-qartesim/>). (Last time accessed on 22 January 2018).

⁵¹ “*Special Prosecution submits to the Court completed indictment in case of “Veterans”*”. Oath for Justice. 07 December 2018. (See link <https://betimiperdrejtesi.com/prokuroria-speciale-e-dorezon-ne-gjykate-aktakuzen-e-plotesuar-ne-rastin-e-veteraneve/>). (Last time accessed on 22 January 2018).

⁵² “*Minister of Justice and chairman of the KJC require the termination of the strike, syndicalist say that it will continue* (Video)”. Oath for Justice. 10 July 2018. (See link <https://betimiperdrejtesi.com/ministri-i-drejtisesi-dhe-kryesuesi-i-kgjk-se-kerkojne-nderprerjen-e-greves-sindikalistet-thone-se-ajo-do-te-vazhdoje/>). (Last time accessed on 22 January 2018).

⁵³ “*Tahiri: Independence of the judiciary, mainstay of democratic statebuilding*”. Telegrafi.com. 3 November 2017. (see link <https://telegrafi.com/tahiri-pavaresia-e-gjyqesorit-shtylle-e-shtetndertimit-demokratik/>). (Last time accessed on 22 January 2018).

⁵⁴ “*Minister Tahiri met the Specialized Prosecutor, Jack Smith*”. Indeksonline.com. 30 October 2018. (see link <https://indeksonline.net/ministri-tahiri-takoi-prokurorin-e-specializuar-jack-smith/>). (Last time accessed on 22 January 2018).

⁵⁵ “*Joint communication of the KJC, KPC and norwegian embassy in pristina*”. KJC. 21 November 2018. (see link <http://www.gjyqesori-rks.org/sq/kjc/event/index/1755>). (Last time accessed on 22 January 2018).

⁵⁶ “*Tahiri promises that indictment on veterans will not remain in the drawer, vetting is necessary*”. Koha.net. 21 August 2018. (see link <https://www.koha.net/arberi/112483/tahiri-premton-se-aktakuza-per-veteranet-sdo-te-mbetet-ne-sirtar-vettingun-e-quant-te-domosdoshem/>). (Last time accessed on 22 January 2018).

⁵⁷ “*10 minutes*”. RTK. 28 March 2018. (See link https://web.facebook.com/rtklivecom/videos/10155952694023859/UzpfSTExODY4MzMwMTA6MTAyMTU4ODE3NzgzMzU4MjA/?q=ehat%20miftaraj%20besart%20galica%20abelard%20tahiri&epa=SEARCH_BOX). (Last time accessed on 22 January 2018).

KLI sees this "cooperation" as very concerning. Co-operation between the KJC and KPC on the one side and the MoJ on the other side should be in the areas in which these institutions should coordinate the agenda, such as legislative initiatives, working groups or areas that have to do with drafting of policies in the justice sector, where the Ministry of Justice is competent.

The Constitution of Kosovo clearly makes the division of powers, legislative, executive and judicial. Judicial power is independent of two other powers and this independence must be protected.

Members of the Assembly of Kosovo, the Government or even the Minister of Justice, Abelard Tahiri, should take into account the powers they have and should not undertake actions that violate the independence of the judicial and prosecutorial system. Moreover, both the legislature and the executive should avoid situations that can be perceived to the public as the interference on the independence of the judicial and prosecutorial system.

On the other side, both the KJC and KPC should be careful and avoid such meetings in order to avoid eventual impact and to avoid creating public opinion that the executive system has an impact on the judiciary. Typical example of this is the promise of Minister Tahiri that the indictment against veterans will not remain in the drawer of the prosecution, insomuch powers allow him. The Minister of Justice should have in consideration that based on the Constitution of the Republic of Kosovo and the applicable laws, it does not even have a single power in this aspect. Moreover, such a statement KLI in public can easily be perceived as interference in the work of the judiciary, despite the fact that Tahiri had said this was not his purpose.

7.2. Councils fight for excusing their failures to the public in fighting corruption

Fight against corruption continues to be the highest state priority, including the KJC and KPC, which have prepared strategies and action plans⁵⁸ for treating corruption cases with absolute priority. Despite advanced legal framework that Kosovo has and the adoption of policies to combat corruption, the results in practice show that the high profile of corruption continues to be amnestied, by not yet reaching any final verdict with an effective jail sentence. In this regard, during these years, there have been investigative procedures, raised indictments and court proceedings that have been developed for corruption cases, including high profile. For the latter, all the cases so far have failed. For the failure of these cases, there have been mutual charges of the judiciary and the prosecution, that who of them carries the blame for the amnesty that is done to a high profile of corruption. Following are some of the problematic issues of the fight of two Councils to throw the ball for failures in fighting corruption.

⁵⁸ *Note:* KLI from 2013, as result of systematic monitoring of the judicial and prosecutorial system in treating corruption cases, has offered, assessments and concrete recommendations also has two Councils in drafting Action Plans for treating with absolute priority of corruption cases.

7.2.1. Conflict KJC-KPC regarding failures in fighting corruption

During 2018, both councils have thrown mutual accusations about the failure of the justice system in fighting corruption. More concretely, in that who is guilty regarding failure of high profile indictments. Regarding this issue, the State Prosecutor, Aleksander Lumezi himself, and the National Coordinator for Combating Economic Crimes, Shqipdon Fazliu, have been the subject of investigation by the ODC. The latter, within a very short time, had closed investigations in these cases.

Before the conflict started with regard to the failed indictments of high-profile corruption, the KJC Chair, Nehat Idrizi, who at the meeting held on 1 March 2018 stated that prosecutors are leaving to us "hot potato" in the hands. Idrizi issued this statement while reviewing the annual work report of the Basic Court in Gjakova. In this report, it appeared that some cases were prescribed. However, according to the deputy chairman of this court, Nikolle Komani, this came because the prosecution itself was the one that had raised the prescribed indictments, while the court from which he comes from only issued a ruling on relative prescription of the case, since the same were prescribed in the prosecution. Idrizi further said that if the courts are guilty, must accept the guilt, on the contrary to tell to the prosecution that for these cases the fault is at you⁵⁹.

But the conflict was intensified at the meeting held on 30 May 2018 in the KPC, in which Chief State Prosecutor Aleksander Lumezi, found courts guilty that they are not passing indictments that involve important people, which are accused for corruption criminal offenses. During his reporting, Chief Prosecutor Lumezi stated that in the case of corruption cases that do not go to the courts, according to him, are only happening when it comes to important names.

"It is not true what is reported in the media that most of our indictments are dismissed in the court. In 89.15% of the cases, these indictments go to the Court and the same receive punitive verdicts. However, this situation is not same in cases of corruption. But this is a big question mark. Why do people who have no name and surname are sentenced by the Court and the indictments are confirmed. While those indictments where important people are involved with names and surnames, they do not go to court. However, we do not comment the court decisions even when we disagree with them, except when we exercise legal remedies," said Chief Prosecutor Lumezi⁶⁰.

Also, the National Coordinator for Combating Economic Crime, Shqipdon Fazliu, on the "Click" emission on RTV21, on the same day stated that the indictments are dismissed from the State Prosecutor only when it comes to persons who are of high profile.

⁵⁹ "Chairman of the KJC: Prosecutors are leaving to our hand "hot potato". Oath for Justice. 01 March 2018. (See link <https://betimiperdrejtesi.com/kryesuesi-i-kgjk-se-prokuroret-po-na-e-lene-ne-dore-pataten-e-nxehte/>) . (Last accessed on 22 January 2018).

⁶⁰ "Chief prosecutor Lumezi says that courts are dismissing indictments when it comes to important people". Oath for Justice. 30 May 2018. (See link <https://betimiperdrejtesi.com/kryeprokurori-lumezi-thote-se-gjykatat-po-i-hedhin-poshte-aktakuzat-kur-behet-fjale-per-njerez-te-rendesishem/>) . (Last accessed on 22 January 2018).

Regarding these statements, the KJC, five days later, on 4 June 2018, held an extraordinary meeting in which the statements of the State Prosecutor called interference in the judicial system. The KJC Chair, Nehat Idrizi, and the President of the Supreme Court, Enver Peci, considered these statements as interference in their work, while the President of the Appeal Court, Hasan Shala, said that the own failures of the State Prosecutor, is trying to attribute it to the judiciary⁶¹.

The ODC on 4 June in a response to the "Oath for Justice" said that it was not informed about these accusations and counteraccusations⁶². But four days later, the ODC through an e-mail informed KLI that the disciplinary investigation against Chief State Prosecutor Aleksander Lumezi and the National Coordinator for Combating Economic Crimes Shqipdon Fazliu was closed.

"The Office of the Disciplinary Counsel (ODC) has ex officio assessed the allegations raised by the " Oath for Justice "claiming that, Chief Prosecutor Aleksander Lumezi, at the Kosovo Prosecutorial Council (KPC) meeting, held on 30 May 2018 , "has blamed the courts for not passing indictments involving important people who are accused for criminal offense of corruption". Also, the ODC has assessed claims that the National Coordinator for Combating Economic Crime Shqipdon Fazliu, on the "Click" tv show, stated that: "The indictments are dismissed from the State Prosecutor only when it comes to persons who are high-profile". Regarding the abovementioned allegations for the Chief State Prosecutor Aleksander Lumezi, the ODC found that his discussion at the Kosovo Prosecutorial Council meeting of 30 May 2018 was in the capacity of member of the Kosovo Prosecutorial Council. Since his discussion was in the capacity of a member of the Prosecutorial Council, the ODC does not have the legal mandate to investigate raised allegations of potential misconduct in the specific case. While, regarding the abovementioned allegations of the National Coordinator for Combating Economic Crime Shqipdon Fazliu, the ODC found that Prosecutor Fazliu on the tv show did not mention the names of the judges who set the cases, did not mention the hierarchy and name of the court but, has simply expressed professional opinion about an important issue for the rule of law and order in Kosovo. Pursuant to Article 35 of the Law on the Kosovo Prosecutorial Council, the ODC assessed the allegations raised regarding this issue however, for now there is no sufficient legal basis and sufficient basis to open a disciplinary case on this issue " it was stated in the written answer of the ODC.

KLI based on the systematic monitoring of the ODC for many years now, notes that the ODC has favored this case by making selective treatment of the same cases for different persons. Initially, there are rare cases when the ODC starts and closes the investigation within 4 days, as in the case of Chief State Prosecutor Aleksander Lumezi, and National Coordinator for Combating Economic Crimes, Shqipdon Fazliu. On the other side, due to the interviews he

⁶¹ "Statements of the Chief State Prosecutor for dismissal of corruption indictments, heads of judiciary call them interference in this system (Video)". Oath for Justice. 04 June 2018. Betimi <https://betimiperdrejtesi.com/deklaratat-e-prokurorit-te-shtetit-per-hudhje-te-aktakuzave-te-korrupsionit-kreret-e-gjyqesorit-i-quajne-nderhyrje-ne-kete-sistem/> . (Last time accessed on 22 January 2018).

⁶² "State Prosecution and the KJC in "fight", ODC says that has no information on what is happening". Oath for Justice. 04 June 2018. (See link <https://betimiperdrejtesi.com/prokuroria-e-shtetit-dhe-kgjk-ne-lufte-zpd-thote-se-ska-informacion-se-cfare-po-ndodhe/>) . (Last time accessed on 22 January 2018).

had given to a particular media where he criticized the judicial power, the ODC had sent to the KPC Disciplinary Committee, the Chief Prosecutor of the Basic Prosecution Office in Pristina, Imer Beka. Against Beka, the KPC Disciplinary Committee had imposed the disciplinary measure "reprimand".

Consequently, KLI sees it as very concerning the "ping-pong" game between the prosecutorial and judicial system regarding their failure to fight high-profile corruption. In this respect, both systems must contribute. But it is generally recognized that in the case when a prosecutor sends to the Court an indictment with convincing evidence against the accused, the Court has it extremely difficult to avoid the right decision. Also, the State Prosecutor has in disposition the regular remedies and extraordinary legal remedies if he is not satisfied with the decision of the Court. Also it is a duty of the State Prosecutor, which if it proves that the courts are dismissing the indictments, in cases when, as the Chief State Prosecutor Lumez says, it is about big names, to investigate and send certain judges before justice, as "Unlawful issuance of court decisions" based on the Criminal Code of the Republic of Kosovo is a criminal offense. Thus, this relation should work, and the State Prosecutor in any form is not allowed to comment court judgments, because this consists a violation of the Code of Ethics.

7.2.2. Tendency of the Councils to fight corruption with recommendations

KJC, KPC, Presidents of Courts, Chief Prosecutors and the Minister of Justice on 22 March, 2018 held a joint meeting, where they discussed further steps in the fight against corruption, as the last criterion for visa liberalization.

This meeting came a day after the Assembly of the Republic of Kosovo had ratified the International Agreement on Defining of a Border Line with Montenegro, or as it was publicly known, the Demarcation with Montenegro.

During this meeting six recommendations were given for further steps in fighting corruption. "1. To hold regular monthly meetings in this composition, 2. To have coordination between Prosecutions and the Courts, 3. Not to postpone the sessions over 10 days, 4. To increase the number of judges in the Basic Court of Pristina, 5. Limiting judges for their participation in training and 6. Increasing transparency in relation to the media and civil society".

During this meeting, the media and civil society were excluded, with the justification that in the meeting will be discussed about the data which are not public. But, unlike the media and civil society, the Minister of Justice, Abelard Tahiri also attended the meeting.

However, KLI has continuously monitored these recommendations, if the same are implemented in practice. KLI has found that the recommendation that corruption hearings should not be postponed more than 10 days, is violated by the Courts of the Republic of Kosovo since the first day when these recommendations should be implemented. Also, the recommendation for regular meetings of this format was never implemented, since the meeting in this composition was no longer held.

7.3. Mismanagement by the Judicial Council and the Prosecutorial Council

During 2018, both councils have continued to face serious problems in proper administration to enforce their legal obligations. KLI has highlighted some of the most problematic issues faced by the Councils, by making decisions that violate their integrity as institutions.

7.3.1. Members of the KJC decide to be compensated retroactively

KJC on 12 September has issued a decision to amend and supplement the decision of the KJC on the compensation scheme, ie the salary of KJC members.

According to this decision, KJC judge members will be compensated by 262.75 euros per month, while non-judges members of the KJC will receive the equivalent salary of the Judge of the General Department of the Basic Court.

Based on point 3 of this decision of the KJC on 12 September, "the decision of 27 December 2017, no. 368/2017, shall apply retroactively from 1 January 2018 until 31 August 2018 ". The decision of 27 December 2017 stipulated that the salary of the KJC members will be 25% of the basic salary that they have as Judges, whereas for non-judges members was the equivalent salary with the judge in the General Department of the Basic Court.

Exceptionally, the KJC Chair, which based on the Law on KJC accepts the equivalent salary of the President of the Supreme Court, the amount that members of the KJC have received retrospectively based on this decision, was quite high.

Judges of the Supreme Court and members of the KJC, Muhamet Rexha, Manushe Karaqi and Cerim Fazliji, who based on the decision of the Haradinaj Government on increase of salary receive 2655 euros, based on this decision they have received also 5310 euros. Makifete Saliuka and Nenad Laziq, who are Judges of the Appeal Court who receive a salary in the amount of 2389 Euros, based on this decision have also received 4778 Euros. KJC member Skender Cocaj, who as a judge in the Serious Crimes Department receives a salary of 2150 euros, based on this decision have received also 4300 euros. While, members of the KJC, Judges in the General Department, Anita Prenaj-Krasniqi, Armend Berisha and Gjimshit Galushi, who receive as a salary 1672 euros, have received also 3344 euros⁶³.

This compensation that members of the KJC have received retroactively from January until August 2018, is 25% of their basic salary, that this period affects the time when salaries have begun to be executed based on the decision of the Haradinaj Government's to increase salaries.

This decision was approved at the KJC on 27 December 2017, respectively one day before the Minister of Justice, Abelard Tahiri, stated that the decision of the Haradinaj Government to increase salaries will be implemented also in relation to Judges and Prosecutors. After increasing salaries in line with the decision of the Government of Haradinaj, the KJC considered it necessary to change this decision, as the amount of 25% of the changed

⁶³ *Clarification:* Calculation was made based on the decision of the Government of Haradinaj dated 20 December 2017, Law on Courts, Law on State Prosecutor and the decision of the KJC. Therefore, we consider that in the minimum values this calculation may not be precise.

circumstances now reaches a very high value. Director of the KJC Secretariat Shkelzen Maliqi has stated that the circumstances now have changed and 25% is a very large sum. The KJC member, Armend Berisha, was also of the same opinion. However, some of the other KJC members did not agree to change this decision. At least 400 Euros should be monthly extras of KJC members, has requested the member of this council, Manushe Karaqi, regardless monthly salary that they receive as a judge:

"At least 400, otherwise it does not work," Karaqi stated, at the meeting of Friday of the KJC.

Due to these disagreements, the KJC had postponed this decision until the next meeting, but as a point of the agenda it was not until the meeting of 12 September, when it was decided that the compensation for 8 months, KPC members to take retroactively on the basis of the unlawful decision of the Government of Haradinaj. On 12 September, regarding this issue was a debate with the KJC members. Initially, there was a uncertainty among the members whether or not the KJC had voted for these extras at the meeting held on 27 December of last year. KJC Chair Nehat Idrizi, said at its meeting, The KJC had only discussed this issue but no decisions were taken, however, members of the KJC, Makifete Saliuka and Skender Cocaj, insisted that the council has already decided once on this issue that the additions to be 25% of the basic salary.

"I personally feel sorry that we are in this situation. We took a decision; the way the record is held is another matter. Let the person who has kept the record respond. We can not say that we did not take a decision," said the member of the council, Makifete Saliuka, who at the 199th meeting of 1 March of this year voted for the approval of records from this meeting without giving any remarks.

The same opinion as Saliuka had also Skender Cocaj, who said that the council once decided on this issue and that decision should be executed, but according to him, if they want to change that decision then they can discuss again. The answer to this is whether this issue was voted or not, was given by the Director of the KJC Secretariat, Shkelzen Maliqi, who said that from the previous discussion, was that the demand for increased additions to be applied but as he said, there was not raise of hand by members of the KJC. Despite the decision that additions for KJC members should be 25% of the basic salary, Chairman of the KJC Nehat Idrizi said there have been serious reactions from international partners and therefore Idrizi proposes to go with the same practice as the Kosovo Prosecutorial Council (KPC), where the extras are set at a sum of 262 euros for the members.

As very high the salary for the KJC members was also called by USAID representative John Ferry, who said that at the time the decision was made for extras from 25% of salary, the salaries of the judges were smaller, before the raise that was made on December of last year. USAID's representative, John Ferry, said that the KJC should follow the practice of the KJC with fixed salaries to its members, and if decided to continue with the extras of 25 % of the current salary of judges, Ferry said the international reaction would be negative.

The implementation of the decision and the payment of extras by 25% of the salary was requested by KJC member Anita Prenaj-Krasniqi, who said that even on the occasion of the increase of salaries by the prime minister there have been reactions, but the same said that she does not know which is the reason now to give up on the decision that they have taken. Prenaj-Krasniqi said that this decision should be applied as was applied in relation with the Chairman of the KPC, Nehat Idrizi. The latter asked that the debate should not be personalized, adding that he received a salary as stipulated by the law, and not compensation. Discussing the issue of extras, member Saliuka said that it is not important for her how much she is paid, but as she said, does not understand why the credibility of the KJC is being languished in this case because of these extras when, as said, powers are equal. Also, Saliuka said that it "it comes to the head" corruption and the mafia any time it is spoken about politics and politicians:

"Why does nobody turn their head towards executive and the legislative that are paid far more than us. How much do MPs earn for sessions and commissions. I'm sorry, why are you turning the head towards us. The judiciary is less affected by corruption. How many times you spoke about politics and politicians, it comes to my head corruption and mafia. We are oppressed and twisted power as now with the law on salaries. We have become guilty for all the negative phenomena in this society. As power we are idle," said Saliuka in her speech.

After this discussion, KJC member, Muhamet Rexha, proposed that from January until August to take extras from 25% of the basic salary and from September to continue with the fixed salary. Thus, with seven votes pro, with an abstention from Manushe Karaqi and one vote against made by Anita Prenaj-Krasniqi, it was decided that council members receive extras from 25% of the basic salary, retroactively from January until August of this year, while from September extras will be from 262 euros.

However, do the members of the KJC have the right for this compensation, after the adoption of the Law on Prevention of Conflict of Interest in the Exercise of Public Functions.

Regarding this law, KLI on May 2018, published a short legal analysis "The law prohibits" the flight of supermen "with many leading positions and prohibits the great benefits of public officials from supplements".⁶⁴

KLI considers that one of the biggest problems, and consequently the biggest benefits for public officials, are supplements for the work they do within regular working hours.

"The practice of paying supplements for public officials has been interrupted by the Law on Prevention of Conflict of Interest during Exercising Public Function. The practice of supplements is explicitly prohibited in Article 13, paragraph 2 of this law, which stipulates that "a senior official, in the capacity of a member of the mentioned bodies in this paragraph, has no right for payment reward, other than the right to compensation for travel expenses and

⁶⁴ "Law prohibits "flying of supermen" in many leading positions and prohibits big benefits of public officials from extras". KLI. May 2018. (see link <https://kli-ks.org/ligji-ndalon-fluturimin-e-supermeneve-me-shume-pozita-drejtuese-dhe-ndalon-perfitimet-e-medha-te-zyrtareve-publike-nga-shtesat-2/>). (Last accessed on 22 January 2018).

other related expenses. "In order to elaborate this situation, KLI brings an example of extras to the Judicial Council and the Prosecutorial Council.

KLI systematically monitors the justice system and findings prove that most of the members of the Kosovo Judicial Council and Kosovo Prosecutorial Council, apart from the basic salary they they receive as judge or prosecutor delegated by the relevant court and prosecution according to legal rules and procedures, based on internal rules approved by the Judicial Council and Kosovo Prosecutorial Council, before the entry into force of this law, receive extra compensation for the work they do as members of two councils. Such a practice contradicts the spirit and purpose of the law on conflict of interest.

In this regard, it is necessary that the Councils, other public institutions and the Anti-Corruption Agency take urgent measures to clarify these situations and take urgent action to prevent actions that could potentially enter the criminal sphere. The problem of paying supplements to public officials has already been clarified by law and the Anti-Corruption Agency should notify the institutions of the new provisions of this law and require that public officials to enforce the law regarding the payment of extras "it is said in the analysis of the KLI⁶⁵.

7.3.2. Irregularities in the KJC and KPC evidenced by the General Auditor

National Audit Office (NAO) has published the audit report for the KJC for 2017, where various irregularities were found.

According to the NAO, the KJC has weak controls on asset management and non-function of the "E-asset" system, a fact which hampers the management and control of available assets, and increases the risk of loss and abuse of assets. The NAO found that the KJC had inadequate controls on the compensation of members in the Council and the Committees.

"Article 3 of the U/A for the compensation of members of the KJC and the Committees stipulates that the participation within a day at Council meetings is 70 euros, while in the Committees is 50 Euros. In cases when participation is needed in the two meetings within a day then the payment is made only for the Council meeting in the amount of 70 euros. From the testing of retroactive payments of commission members to a assigned panel by the decision of the Council, for which their participation is evidenced during the hearings, in a case that was not assigned by a decision member of the commission but was compensated in amount 250 euros, and for more the payment for March as a member of the committee was not justified.

Also, in one case we noticed that members of the KJC and the committees that participated within the day at different meetings and were paid for the two meetings. Members of the KJC and the committees have been compensated more in amount of 250 euros (each 50 euros). For both cases, the KJC took measures and remedies for the two members of the committees

⁶⁵ "Law prohibits "flying of supermen" with many leading positions and prohibits big benefits of public officials from extras". KLI. May 2018. (see link <https://kli-ks.org/ligji-ndalon-fluturimin-e-supermeneve-me-shume-pozita-drejtuese-dhe-ndalon-perfitimet-e-medha-te-zyrtareve-publike-nga-shtesat-2/>). (Last time accessed on 22 January 2018).

were returned to the budget in 2018. Inadequate controls on the compensation of members in council and committees increase the risk that such payments, except that they are not in line with the regulatory requirements, can also damage the budget. The KJC Chair and the Director of the KJCS should ensure that all expenses related to compensation of meetings of members in council and commissions are documented and in accordance with the AI in force", says the NAO report.

The NAO has found that the practice of covering vacant positions with acting duty on the allowed time limit happened in three cases: Senior Official at the Criminal Record Unit at KJCS, Director of the Central Evidence Office, Certifying Officer at the Basic Court in Gjilan and the Head for Budget and Finance in the Court. According to the NAO, the practice of covering key positions with AD for long periods of time, unless it is incompatible with the legislation in force, risks that positions to be managed by persons who are not meet the necessary criteria in the lack of open vacancy. This can negatively affect in the performance of the organization in general.

The NAO recommends that the KJC Chair, the KJCS Director and the heads of the respective courts, should ensure the development of recruitment procedures, so that these posts be filled by regular contracts. The duration of the function as A.D, according to the NAO, shall not be longer than the defined legal period. This office has found that the Court of Appeal has exceeded the allowed number of judges in the Serious Crimes Department. The NAO emphasizes that exceeding number of judges increases the risk to benefit more judges than they are assigned by decision and loading the KJC budget. The NAO has also found a violation regarding contracts called "Special Services Agreements".

"According to article 12 point 4 of LSC no.03L / 149, appointments of a fixed term for a shorter period than six months will be made on the basis of contracts called" Special Services Agreement "which are subject to the Law on Obligations and for which a simplified recruitment procedure is implemented. We have identified that the Basic Court in Pristina had signed a special service agreement with an employee for the "Security Guard" position for a period of six months, continuing for another six months. The fee for these services was made from the category of goods and services (code 13420) to €291 per month. The contract for special services is linked to a common position and not for experts in the relevant fields and for the same no simplified recruitment procedure has been developed. Coverage of common and long-term positions over the deadline set by inadequate procedures represents avoidance of defined legal provisions, limits competition and increases the risk that services are not realistic to the needs of the KJC and that the planned budget for this category not to be spent according to the intended purpose. Chairman of the KJC, Director of the KJCS and Presidents of the relevant courts, should ensure that for special service agreements are used only for certain purposes, are planned properly and made in accordance with the legal requirements in force, as was stated in the report of the NAO for the KJC.

Also, the NAO noted that the current level of treatment of recommendations is not satisfactory because the KJC has not followed any formal process to review and monitor the

manner of implementing the recommendations and identifying obstacles for action in their full address.

“Lack of an effective monitoring of the implementation of the recommendations has resulted in continued weaknesses in the fields of wages and extras, subsidies, and asset management. The KJC Chair, KJCS Director and the Presidents of the relevant courts should ensure that the action plan is reviewed, analyzing the causes of unimplemented recommendations, setting a new deadline and accountability mechanisms to all persons responsible in charge of implementing the recommendations. Initial focus should be the areas of greatest importance. The implementation of this plan should be monitored constantly, "states this report.

Finally, the NAO emphasizes that in the KJC there is a lack of an Audit Committee, and that the lack of this committee results in non-review of reports that increases the risk that management is not informed to take adequate measures on raised issues. The NAO recommends that the Chairman of the KJC and the Director of the KJCS to ensure the establishment of this Committee⁶⁶.

The NAO has found various irregularities in the KPC. The NAO found that KPC did not apply the criteria for announcing vacancies, increasing the risk of recruiting persons who did not meet the required criteria in certain positions.

"Regulation No.21 / 2012 on career advancement of civil servants, stipulates that the promotion notice is first made within the institution unit and if in the vacancy apply less than three candidates that meet the criteria, the personnel unit announces a vacancy at the institution level. During the audit we have identified that in three internal vacancies for staff advancement for leading positions, such as: *Head of Budget, Finance and General Services, Leader of Human Resources, Leader of Procurement*, did not make the announcement first within the respective unit, but throughout the Secretariat of the Prosecutorial Council. The Director of KPCS should make continuous efforts that the development of the procedures for advancement and recruitment to comply with the regulatory requirements in force, "stated in the report published by the NAO.

Regarding capital investments, it is stated in the report that the budget during 2017 was executed only 15%. According to the NAO, this was because there were no regular budget analysis on timely completion of capital projects and due to delays in the initiation of procurement requirements and procedures related to projects such as "Case Management Information System (CMIS) co-financing with the Norwegian Government and the "Electronic System on Vehicle Management ESVM".

The risk of this, according to the NAO, is that inadequate planning of project implementation, has impacted the non-achievement of the organization's objectives with expenditure trends

⁶⁶ “The auditor say that the KJC had no control on the compensation of members in the Council and the Commissions”. Oath for Justice. 05 July 2018. (See link <https://betimiperdrejtesi.com/auditori-thote-se-kgjk-ja-ska-pasur-kontroll-ne-kompensimin-e-anetareve-ne-keshill-dhe-komisione/>) . (Last time accessed on 22 January 2018).

for capital projects. The NAO recommends to the Director of the KPC Secretariat to ensure that to a budget planning made a comprehensive assessment of potential resources (financial assets) and determine the practical options for improving the execution of the budget in capital investments. Article 30 of LSCS No. 03 / L-149 stipulates that in the case of holding a vacant position in the civil service, the Acting Duty (A.D) can not be appointed longer than three (3) months.

During the audit, the NAO has identified that three positions are covered by Acting Duty (AD) exceeding the allowed time limit for holding positions. Cases are: *The Office manager for Public Relations* at the Office of the Chief State Prosecutor is covered by AD from 03.02.2017 (KPC once announced the competition), *Head of Department for Information Technology* in the KPC Secretariat is covered by AD from Dt. 04.04.2017 (KPC has announced three times the competition), as well as *Head of Transport Office* in the KPC Secretariat is covered by A.D. from dt. 04/04/2017.

According to the NAO, the practice of covering key positions with A.D for long periods of time, unless it is incompatible with the legislation in force, risks the positions to be managed by persons who do not meet the necessary criteria. This, according to her, may negatively affect in the performance of the organization in general.

In this regard, the Director of the KJC Secretariat is recommended to make continuous efforts to develop recruitment procedures to fulfill these positions with regular contracts. Duration in position as A.D to be not longer than the prescribed legal period.

Another finding of the NAO is that KPC did not apply the criteria for announcing vacancies, increasing the risk that in certain positions would be recruited persons who did not meet the necessary criteria.

"The Regulation No.21/2012 on career advancement of civil servants, stipulates that the announcement for advancement shall first be made within the unit of institution and if less than three candidates meeting the criteria apply in vacancy, the personnel unit announces the vacancy at the institution level. During the audit we have identified that in the three internal announcements for staff advancement for leading positions, as: *Head of Budget, Finance and General Services, Leader on Human Resources and Procurement Leader*, no announcement was made first within the respective unit, but throughout the Secretariat of the Prosecutorial Council.

The Director of the KPCS should make continuous efforts that development of the procedures for advancement and recruitment to comply with the regulatory requirements in force", says the report published by the NAO. It states that the KPC did not establish a committee on asset assessment as a regulatory requirement. According to the NAO, this affects that the asset of the KPC be overestimated, and this may result in incomplete and inaccurate presentation of the assets.

Finally, the report states that the KPC has made progress in implementing the recommendations, but the failure to fully implement all the recommendations has affected that some deficiencies are repeated from last year. This was mainly emphasized in processing shift payment and covering positions with acting duty.

"Full non-implementation of the recommendations increases the risk of continued presence of the same shortcomings, which may affect in the weaknesses in financial management and controls. The KPCS Director should ensure that a revised action plan is implemented to address the remaining recommendations. This plan should set reasonable time limits for the implementation of the recommendations made by the PA with the responsible identified staff. Progress towards the plan should be systematically monitored by the management to ensure full implementation of the recommendations", concludes the NAO's report on KPC⁶⁷.

The KLI estimates that in order to have a better financial management within the KJC, KPC, Courts and Prosecutions, both councils should treat with the greatest seriousness the audit reports. It is incomprehensible that either the KJC or KPC did not discuss in any of their meetings during 2018 regarding these findings of the NAO. Moreover, the same did not clarify anything to the public whether the recommendations of the NAO were treated and whether any measure have been taken to avoid them.

7.3.3. The strike of administration employees of the courts and prosecutions

The Haradinaj Government's decision to raise salaries and its implementation in relation to judges and prosecutors had raised great dissatisfaction to the employees of court administration and prosecutions.

Employees of the courts and prosecutions administration in the country, from 4 until 11 July, entered in general strike, demanding the realization of three requests, namely the raise of salaries for 100%, with the Law on Salaries to have realistic and dignified estimates for employees of the courts and prosecutions and the last requirement was to regulate the status of these employees. During the strike, hundreds of court hearings had failed to be held as a result of this trade union action. During the time of the strike, hundreds of hearings failed to be held as a result of this scandalous act. Only at the Basic Court in Pristina, over 100 hearings failed to be held daily as a result of the strike, the same consequences were seen in other courts in the Republic of Kosovo. Only cases of detention, domestic violence and cases targeted for visa liberalisation were sexcluded from the strike.

On 11 July, an agreement was reached to end the strike. Such an agreement was reached after a meeting that representatives of the strike council had with representatives of the Kosovo Judicial Council, the Prosecutorial Council, the Presidents of Basic Courts and Chief Prosecutors of Basic Prosecutions, the Minister of Justice, Abelard Tahiri also participated.

⁶⁷ "National Audit Office says that KPC did not apply criterias for announcing vacancies" Oath for Justice. 02 July 2018. (See link <https://betimiperdrejtesi.com/zyra-kombetare-e-auditimit-thote-se-kpk-ja-nuk-aplikoi-kriteret-per-shpalljen-e-konkurseve/>) . (Last time accessed on 22 January 2018).

KJC Chair, Nehat Idrizi, said that an agreement with the Trade Union of the Judiciary was reached and that only the requests that are plausible can be met⁶⁸.

However a few days later, it was made evident that the request of court and prosecutorial administration for a 100% increase in salary was sufficed with a supplementary about of 50 euros⁶⁹.

7.3.4. Failure of the KPC to elect a member from civil society

KPC for the third consecutive year has failed to elect its member of the civil society.

Unlike the other two times, since the beginning of 2017, where they had not applied at least three people to this position, as provided by law, at the meeting held on 31 October 2018 announced that this time three (3) candidates have applied.

But this vacancy has failed, because of the 3 candidates that applied for this position, only 2 of them met the formal criteria to continue the procedure.

After that, KPC Chair, Blerim Isufaj, has informed that the vacancy in this form can not continue anymore, as we do not have three candidates who meet the formal criteria. The same added that in one of the next meetings will re-announce the vacancy for KPC members.

However, despite this promise, KPC has surrendered following the 3 past attempts, and has not made the fourth attempt to elect a KPC member from civil society. This is because in none of the next meetings, the vacancy for KPC members from the civil society has not been re-announced. Regarding this fact, the KPC has not given any reasoning.

Since January 2016, when the KPC has started its activities with a new composition, the same has not managed to have the full members to its composition.

KPC on 14 August 2017 announced the vacancy for the position of civil society member, which was open until 29 August 2017. However, no candidate applied for this vacancy.

Therefore, as a consequence, KPC rendered a decision to reannounce the vacancy in question, where according to the Coomitte for review of suitability of the nominated candidates, did not manage to appoint a representative from civil society for the second time because no candidate was nominated whom fulfilled the citreia foreseen by the law.

Prosecutor Jusaj, at the meeting held on 23 November 2017, announced that during the period when re-announced vacancy was open, only the candidate Naim Osmani was nominated⁷⁰.

⁶⁸ "Agreement reached, administrative employees of courts and prosecutions suspend the strike (Video)". Oath for Justice. 11 July 2018. (See link <https://betimiperdrejtesi.com/arrihet-marreveshja-punetoret-administrative-te-gjykatave-dhe-prokurorive-e-pezullojne-greven/>) . (Last time accessed on 22 January 2018).

⁶⁹ "From the request for 100% increase of salary, administrative employees of courts and prosecutions suffice with an extra from 50 euro". Oath for Justice. 26 July 2018. (See link <https://betimiperdrejtesi.com/nga-kerkesaper-rritje-page-100-punetoret-administrative-te-gjykatave-dhe-prokurorive-mjaftohen-me-nje-shtese-prej-50-euro/>) . (Last time accessed on 22 January 2018).

Newly elected KPC Chair, Bahri Hyseni, stated that the KPC has consistently encouraged civil society to send their nominees for KPC members from civil society but nominations were missing:

"According to Article 3, paragraph 2.3 of Law No. 05 / L-035 on Amending and Supplementing the Law No.03 / L-224 on Kosovo Prosecutorial Council, the Council is responsible for announcing the public vacancy for the election of a member of the Council from the Civil Society. After the vacancy procedure has been conducted, the Council sends to the Assembly of Kosovo a list of at least 3 candidates that have met the legal criteria. Since 2016, the Council has consistently made public announcements for interested candidates from civil society for a member of the Council, but consistently in our announcements have applied 2 or 3 candidates and this has made it impossible the continuation of the process in the Assembly of Kosovo. In cases when we had 3 candidates, one of them did not meet the legal conditions, therefore based on the Law No. 05 / L-035 on Amending and Supplementing the Law No.03 / L-224 on Kosovo Prosecutorial Council, the list should have at least 3 candidates. It is worth mentioning that the Council has consistently encouraged civil society to send their nominees for a member of the Council from the civil society"said Hyseni⁷¹.

7.3.5. Resistance of Judge Veli Kryeziu to implement the decision of the KJC

The KJC on 2 May 2018 issued a decision by which has temporarily transferred five judges to the Basic Court of Pristina. Among them was Judge of the Basic Court in Gjilan, Veli Kryeziu. But despite this decision of the KJC, which obliged Judge Kryeziu that for the next 6 months to work as a judge at the Basic Court of Pristina, the same did not accept to work there.

At the meeting held on 20 July 2018, item on the agenda was the revocation of the decision on the transfer of judge Veli Kryeziu. This request came from the President of the Basic Court in Pristina, Aferdita Bytyci, with reasoning that Judge Kryeziu was not present at work in the court which she leads. During the meeting in question, KJC Chair, Nehat Idrizi stated that Judge Kryeziu has justified this issue with the fact that he had health problems.

But from a research done by the "Oath for Justice," it turns out that health problems were not the reason why Judge Kryeziu did not implement the decision of the KJC.

President Bytyci told "Oath for Justice" that Judge Kryeziu was accommodated in the office and handed over the cases but the same had admitted to be only a member of the judges, not the Presiding judge. But although the law does not foresee such an opportunity, the president

⁷⁰ "Fails again election of the KPC member from civil society, the vacancy is announced for the fourth time". Oath for Justice. 31 October 2018. (See link <https://betimiperdrejtesi.com/perseri-deshton-zgjedhja-e-anetarit-te-kpk-se-nga-shoqeria-civile-shpallet-konkursi-per-here-te-katert/>) . (Last time accessed on 22 January 2018).

⁷¹ KLI interview through e-mail with Mr. Bahri Hyseni, Chairman of the KPC. 24 January 2019.

of the Basic Court in Gjilan, Ramiz Azizi says that there was previously an agreement that judge Kryeziu be only a member of the judges, and not be loaded with cases.

"Judge Veli Kryeziu worked in minor offenses. He was professionally unable to work on serious crimes cases. We had different agreement. We have agreed that he will only work as a member of the panel, but when he went in Pristina, they gave him cases to resolve, and he is withdrawn back in Gjilan. But since then and until today, he didn't stop his job as a judge at the Basic Court in Gjilan", stated Chairman Azizi for the " Oath for Justice".

Meanwhile, the judge himself, Veli Kryeziu mentions two versions of why he did not appear at the Basic Court of Pristina, and none has to do with the version given to the KJC that he did not appear at work for health reasons. Kryeziu initially mentions the reason that he was given cases of year 2000, and then says that the agreement was that the same be only a member, but not the presiding judge.

"I did not go to work in Pristina because we did not agree with the president. We went for the "LV" cases but she charges the cases from year 2000 to me. The agreement at the beginning was that I be just a member of the panel. The Council has made a decision that I go only as a member of the panel. When I went there they gave me cases and I refused to take them. The president told me that "I decided in this court". After saying so, I made the request for withdraw", said judge Veli Kryeziu for " Oath for Justice".

However, unlike what judge Veli Kryeziu states, KJC decision No. 130/2018 does not mention that Judge Kryeziu is transferred to work only as a member of the Panel.

"Mr. Veli Kryeziu, a judge at the Basic Court Gjilan, is temporarily transferred from Basic Court Gjilan to the Basic Court Pristina, Serious Crimes Department. The transfer duration for judge Kryeziu from the Basic Court Gjilan to the Basic Court Pristina, is six (6) months with the possibility of extension. The decision enters into force on 2 May 2018 "it is stated in the provision of this decision. Even in the reasoning of this decision, such fact is not mentioned.

Moreover, in the reasoning of this decision it is stated that the President of the Basic Court in Gjilan, Ramiz Azizi and the judge himself Veli Kryeziu have agreed to this transfer. "As a result, the President of the Basic Court Gjilan was consulted together with the judges of this court, and after consulting them, with the consent of the judge has sent to the KJC the proposal for temporary transfer of Judge Mr. Veli Kryeziu, from the Basic Court Gjilan to the Basic Court in Pristina, Serious Crimes Department" is stated in the reasoning of this decision.

On the other side, KJC Regulation No.15 / 2016 on the Transfer and Appointment of Judges does not foresee the possibility for a judge to be transferred and the same not to resolve cases, but only to participate as a member of the trial Panel.

Article 4.1 of this regulation stipulates that temporary transfer means the transfer made by the KJC with the approval of the president of respective court for a reasonable period of time in order to assist the court in cases when the other court has insufficient number of judges for review of court cases.

While, Article 5 of this regulation stipulates: "In cases when the KJC determines that a court has insufficient number of judges to efficiently manage and resolve cases, it may transfer a judge from one court to another for a reasonable period with the consent of the judge and the approval of the president of the court. Temporary transfer for up to twelve months is considered reasonable. Temporary transfer should be made on the basis of the court's load with the general aim of improving efficiency, equal allocation of workload among courts, and creating opportunities to ensure resolving cases in time".

Contacted by "Oath for Justice", KJC Chair, Nehat Idrizi continued to defend the position that judge Veli Kryeziu did not go to Basic Court of Pristina Basic for health reasons, by not declaring whether against this judge will be initiated any disciplinary procedure for non-implementation of the decision of the KJC.

"Apart from those reasons, he has also mentioned health reasons. As far as further measures are concerned we will see. I can not declare now. I'm on vacation "was Idrizi's pronouncement for "Oath for Justice"⁷².

On the same day when judge Veli Kryeziu was transferred to the Basic Court of Pristina, in this court was transferred Judge Tomislav Petkovic from the Basic Court of Mitrovica. On the same day when the decision on transfer of Judge Kryeziu was revoked, the decision was also revoked against Tomislav Petkovic, because the latter did not appear at the Court. KJC and Judge Petkovic have not given clarification that why was not implemented the decision of the KJC⁷³.

7.3.6. 16 months effort to elect the President of the Basic Court in Gjilan

At the meeting held on 17 April 2018, the KJC elected Ramiz Aziz, President of the Basic Court in Gjilan. The KJC has developed this process without the presence of the media and civil society, because the latter were not invited by the KJC. According to the press release of the KJC, Azizi received the affirmative majority of the votes of the members of this council, by not showing that which was the exact number of votes that Azizi had received. The other

⁷² "The agreement not to resolve cases, the reason why judge Veli Kryeziu did not implement the decision of the KJC". Oath for Justice. 24 July 2018. (See link <https://betimiperdrejtesi.com/marreveshja-qe-te-mos-zgjidh-lende-arsyeja-pse-gjyqtari-veli-kryeziu-nuk-zbatoi-vendimin-e-kgjk-se/>) . (Last time accessed on 22 January 2018).

⁷³ "Judges transferred to Pristina do not appear at work, the decision to transfer them is revoked". Oath for Justice. 20 July 2018. (See link <https://betimiperdrejtesi.com/gjyqtaret-e-transferuar-ne-prishtine-nuk-paraqiten-ne-pune-revokohet-vendimi-per-transferimin-e-tyre/>) . (Last time accessed on 22 January 2018).

judges of this court have been in the race for this position, Zyhdi Haziri, Agim Ademi, Aziz Shaqiri, Veli Kryeziu and Naser Maliqi⁷⁴.

The election of the President of the Basic Court in Gjilan has preceded a 16 month challenge at the KJC⁷⁵. The election of the president failed twice at the KJC, because none of the candidates had received the affirmative majority of votes to be elected in this position, that caused the vacancy to be announced for the third time. At the meeting of 13 January 2017, as an item on the agenda was the selection of the President of the Basic Court in Gjilan. There were four candidates in the race for this position, where the KJC had voted for each one separately, as the Regulation on the Selection of Presidents of Courts had not yet been amended. Candidate Zyhdi Haziri, received 4 votes pro, and 5 abstentions, Naser Maliqi 2 votes pro, 4 against and 3 abstentions, Aziz Shaqiri 2 votes pro, 4 against and 3 abstentions, while 1 vote pro, 3 against and 6 abstentions received candidate Veli Kryeziu. Thus, since none of the candidates won the affirmative votes for the position of the President of the Basic Court in Gjilan, it was necessary to re-announce the vacancy. Due to this created situation, KJC appointed judge Afrim Shala as A.D President of this Basic Court in Gjilan.

The procedure for the second time, since the announcement of the vacancy till the voting at the KJC, lasted over nine months. At the meeting of 18 October of last year, KJC as an item on the agenda had again the selection of the president of the Basic Court in Gjilan. In the race for this position, were a total of eight candidates, where the voting process was conducted in three rounds. In the first round of the total of eight candidates, Ramiz Azizi and Zyhdi Haziri had received an equal number of votes, respectively each of them by five votes. Between these two candidates, was also held the second round, which again resulted with equal number of votes of the members of the KJC. Even the third round did not bring any changes, and as a result this process failed also the second time⁷⁶.

Until 20 February 2018, the position of the President of the Basic Court in Gjilan was exercised by Judge Afrim Shala. However, by decree of President Hashim Thaci, Shala was advanced as a judge at the Court of Appeal. For this reason, the Basic Court in Gjilan had remained without the a.d. of the president, since at the moment when the KJC had proposed Shala for advance, he had not assigned an other a.d. of president of this court. From 20 February until 1 March, the Basic Court in Gjilan remained only with the deputy acting duty

⁷⁴ “*Ramiz Azizi is elected president of the Basic Court in Gjilan*”. Oath for Justice. 17 April 2018. (see link <https://betimiperdrejtesi.com/ramiz-azizi-zgjidhet-kryetar-i-gjykates-themelore-ne-gjilan/>) . (Last time accessed on 22 January 2018).

⁷⁵ “*Basic Court in Gjilan for 15 months without president, KJC announces vacancy for the third time*”. Oath for Justice. 13 March 2018. (See link <https://betimiperdrejtesi.com/gjykata-themelore-ne-gjilan-per-15-muaj-pa-kryetar-kgjk-ja-shpall-konkurs-per-here-te-trete/>) . (Last time accessed on 22 January 2018).

⁷⁶ “*Fails the election of the president of the Basic Court in Gjilan, re-announce the vacancy*”. Oath for Justice. 18 October 2018. (See link <https://betimiperdrejtesi.com/desh-ton-zgjedhja-e-kryetarit-te-gjykates-themelore-ne-gjilan-rishpallet-konkursi/>) . (Last time accessed on 22 January 2018).

of the president of court, a position that was exercised by Judge Agim Ademi⁷⁷. On 1 March, the KJC appointed for a.d. of the president of this court, Judge Mevlude Shabani.

7.3.7. Tensions in the KJC regarding the Special Chamber of the Supreme Court

At the meeting held on 30 November 2018, at the KJC was reviewed the request of the President of the Supreme Court, Enver Peci, for the functioning of the Special Chamber of the Supreme Court.

Since June 2018, when the European Union Rule of Law Mission in Kosovo (EULEX) has completed its mandate, the Special Chamber has been passive, although around 22,000 cases are unresolved.

The President of the Supreme Court, Enver Peci, requested an opinion or support from the KJC to form the trial panels at the Special Chamber of the Supreme Court as well as to authorize the President of the Special Chamber to establish a Complaints Commission. However, review of this request has been permeated with controversy among KJC members. Initially, members Makifete Saliuka and Muhamet Rexha have supported the functioning of the Special Chamber of the Supreme Court, saying that its work is of particular importance, as there are about 22,000 unfinished cases. Rexha added that for the functionalization of these colleges, there is no legal obstacle.

Thereafter, the KJC member, also a judge at the Special Chamber of the Supreme Court, asked whether the KJC has a mandate to take this decision, if the law is not approved.

"Without wishing to contradict anyone, I am interested if we are able to make this decision without entry of law in force, so "by wish", said Karaqi.

Member Makifete Saliuka replied to Karaqi, saying that what is logical is also legitimate, and that there is no legal obstacle to form colleges. Functioning of trial panels at the Special Chamber of the Supreme Court was also opposed it by the other member of the KJC, Cerim Fazliji, who is also a judge of the Special Chamber. But, immediate was reaction of the member Muhamet Rexha:

"We are used to waiting. But you are not guilty. Guilty are we as KJC, since you wuld of not had the courage to stay without working, considering that you have 22,000 unresolved cases. KJC does not form colleges, dear colleague, but the law that does that. We will only suggest to your president, to act. But it seems that you prefer to carry on like this, in that case, carry on. That is another matter. You want to stay, carry on. However if it were up to me, I would send you all home" said Rexha.

"Yes why not. Why do you not agree, 13 judges are all "was short response of member Karaqi. Disagreement of the member Cerim Fazliji that he disagrees with this attitude,

⁷⁷ "Basic Court in Gjilan remain only with deputy acting duty of President". Oath for Justice. 25 February 2018. (See link <https://betimiperdrejtesi.com/gjykata-themelore-ne-gjilan-mbetet-vetem-me-zevendes-ushtrues-te-detyres-se-kryetarit/>) . (Last time accessed on 22 January 2018).

Rexha responded with the words "you can disagree, mister, but you don't have the right. Continue, but you are nowhere".

Following the tensions raised, Chair Nehat Idrizi asked international partners who were in the meeting if the same had any advice about this issue. John Ferry from USAID has said this is a simple administrative matter.

The controversy between Rexha and Karaqi continued during the voting of this point. "You said to us many bad words so I have no will to vote. Neither against nor abstention" was the expression of Manushe Karaqi, who during the voting did not raise the hand at all, not even to abstain.

While Muhamet Rexha told Karaqi to be careful what she is talking about, since he did not say bad words to anyone.

Finally, the KJC with 6 votes in pro and 4 against decided to approve the request of the President of the Supreme Court, Enver Peci, to form trial panels at the Special Chamber of the Supreme Court and to seek from the president of this Chamber to form a college for complaint.

However, the KLI estimates it extremely concerning the fact that after the end of the EULEX mandate, the Special Chamber of the Supreme Court was passive. This is due to the fact that in the formation of trial panels, as it has been verified that there is no problem now, the same laws were also on June 2018. Such negligence has led to the paralysis of the Special Chamber of the Supreme Court, violations of legal deadlines and, in particular, violations of citizens' rights.

7.3.8. Challenges of the KJC with the President of the Basic Court in Mitrovica

The KJC on 31 October 2017 had elected Nikola Kabasic as President of the Basic Court in Mitrovica.

Election of Kabashiq at the head of the Basic Court in Mitrovica was another step towards the implementation of the Brussels Agreement on Justice, reached on 10 February 2017. Article 13 of this agreement stipulates that the President of the Basic Court of Mitrovica will be from the Serb community from Mitrovica⁷⁸.

But, still without reaching three months, the KJC faced the resignation of President Kabashic. In his letter of 14 February 2018, Kabashic mentioned that this is done only for personal reasons.

Two days later, the KJC had announced through a press release that they did not accept the resignation of president Kabasic.

⁷⁸ "Nikolla Kabashiq elected president of th Basic Courte of Mitrovica". Oath for Justice. 31 October 2017. (See link <https://betimiperdrejtesi.com/nikolla-kabashiq-zgjidhet-kryetar-i-gjykates-themelore-te-mitrovices/>) . (Last time accessed on 22 January 2018).

"The Chairman and the KJC from 14 february 2018 have held constant contact with President Kabasic, judges and support staff of the Basic Court of Mitrovica in order to find a more appropriate solution and which is of interest for the functioning of the Court in Mitrovica. On the same day and continuously, the KJC has received in writing and in other forms requests from judges, support staff and judicial system partners that emphasize that the request for resignation of president Kabasic should be treated carefully and the same should not be accepted as such, "it was stated in the notification of the KJC⁷⁹.

But, the KJC again faced President Nikola Kabasic. On November 2018, Kabasic sent a letter to the institutional and international representatives, which contained messages and political demands, adding also the visit that Kabasic made to the President of the Republic of Serbia Alexander Vucic.

Through a reaction, KLI has requested from the KJC to undertake legal actions in relation to the President of the Basic Court of Mitrovica. KLI has expressed concern regarding the actions of holders of judicial functions in the Basic Court of Mitrovica in the Republic of Kosovo. KLI considers that the President of the Basic Court in Mitrovica has taken actions that contradict the principles and values promoted by the Constitution and the positive laws of the Republic of Kosovo.

"Among other things, the letter of the President of the Court sent to institutional and international representatives, contains messages and political demands that seriously violate the independence and integrity of the judiciary in the Republic of Kosovo. Unfortunately, these actions together with the visit of the President of the Court to the President of another state have produced consequences that can only be recuperated through the exercise of competencies and responsibilities by the KJC, including the undertaking of all legal measures in this case "it was stated in the KLI reaction.

In this regard, KLI has requested from the KJC to exercise the constitutional and legal powers and responsibilities in order to maintain the independence of the judiciary in the Republic of Kosovo⁸⁰.

At the meeting held on 30 November 2018, the KJC sent a letter to the President of the Basic Court in Mitrovica, Nikola Kabasic, to the Judges of this Court and the administrative staff of the Court to leave from behaviors that could result with violation of the Code of Ethics⁸¹.

⁷⁹ "The KJC does not accept the resignation of the President of the Basic Court in Mitrovica". Oath for Justice. 16 February 2018. (See link <https://betimiperdrejtesi.com/kgjk-ja-nuk-e-pranon-doreheqjen-e-kryetarit-te-gjykates-themelore-ne-mitrovice/>) . (Last time accessed on 22 January 2018).

⁸⁰ "The KLI requests from the KJC to undertake legal actions for the President of the Basic Court of Mitrovica". KLI. 30 November 2018. (See link <https://kli-ks.org/ikd-kerkon-nga-kgjk-ndermarrjen-e-veprimeve-ligjore-per-kryetarin-e-gjykates-themelore-te-mitrovices/>) . (Last time accessed on 22 January 2018).

⁸¹ "KJC requests from the the President of the Basic Court in Mitrovica not to be affected by political actions". Oath for Justice. 30 November 2018. (see link <https://betimiperdrejtesi.com/kgjk-kerkon-nga-kryetari-i->

7.3.9. KJC votes for the non-existent report of the Basic Court in Mitrovica

At the KJC meeting held on 20 July 2018, item on the agenda was the reporting of the President of the Basic Court in Mitrovica for the first quarter of 2018. Instead of President Nikola Kabasic, Vice President of this Court, Mr Ali Kutllovci presented before the KJC. Kutllovci had said he had received some data, but that the Court where he is vice president did not compile the report for the first quarter of 2018, for what he was also invited by the KJC to report.

"The president of the court and I did not know that we will report. We did not know about the deadline for compiling the report. I told to some of my employees, issue some data and I came here to present the report, as President Nikola Kabasic is on vacation. But you know the situation in our court" stated Kutllovci.

Despite this, he has generally mentioned the challenges that court faces, where he comes. However, although at the KJC he did not bring the compiled report, the KJC issued a decision by which it approved this "report".

"1: Work Report is approved of the I-st quarter of the Basic Court Mitrovica for 2018. 2: The KJC Secretariat is authorized to publish the report on the website of the KJC. 3: The decision enters into force on 20 July 2018, "stated in the decision of the KJC.no.157/2018 of the KJC⁸².

gjkates-themelore-ne-mitrovice-qe-te-mos-ndikohet-nga-veprimet-politike/). (Last time accessed on 22 January 2018).

⁸² "KJC, No. 157/2018". KJC. 20 July 2018. (See link <http://gjyqesori-rks.org/GetDocument/11438>). (Last time accessed on 22 January 2018).

8. Recommendations

Recommendation for the Minister of Justice

1. The Minister of Justice should develop the cooperation with the KJC and KPC to the extent that his powers require cooperation with these two councils. The Minister of Justice, regardless of the goals it may have, should understand that the KJC and KPC are independent and sensitive institutions, especially in relation to executive power, therefore as such should treat and respect them in order to avoid situations when joint public appearances create the opinion that politics interferes in the independence of the judicial and prosecutorial system.

Recommendation for the KJC and KPC:

1. KJC and KPC, especially their chairpersons, should avoid groundless meetings with the Minister of Justice and any other senior official of other powers, in order to preserve their credibility and independence and not further undermine confidence of the public in these two institutions.
2. KJC and KPC to stop accusations and counter-accusations of failure of the judicial and prosecutorial system in the fight against corruption, but to fulfill their constitutional and legal obligations in terms of control and oversight of courts and prosecution offices through internal mechanisms.
3. KJC and KPC, to take measures to avoid conflict of interest in accordance with the provisions of the Law on Prevention of Conflict of Interest.

Recommendations for the KJC:

1. KJC to show increased efficiency in meeting legal obligations, especially the adoption of secondary legislation. Also, the KLI recommends that after the entry into force of the new KJC Law and the new Law on Courts, the KJC should adopt an action plan and set deadlines for the adoption of secondary legislation.
2. KLI recommends to the KJC that with maximal dedication to address the recommendations derived by the report of the National Audit Office.
3. KLI recommends to the KJC that when issuing sub-legal acts, it is sufficient to refer only to the legal basis and only in those cases when such authority has been transferred by law and not to refer to the Constitutional provisions if there is no legal basis for such a thing.
4. KJC will review the Regulation on the Central Criminal Record System of Kosovo in the sense of its compliance with the CCRK and the area of access to the statistics of the Central Criminal Record System of the Republic of Kosovo.
5. KJC to publish the Regulation on the Use of Information Technology in the Judicial System.
6. KJC to publish all decisions issued by the KJC. Also, the KJC should respect the two languages, and all decisions should also be published in the Serbian language.
7. KJC to increase transparency in general, respectively to respect the Law on Access to Public Documents, to invite the media and civil society at every public meeting. The

KLI recommends to the KJC that during the approval of the work report of courts and work report of the KJC for 2018, to address the following issues:

- a. Which were the challenges of the system during the reporting year and how were they treated by the Council?
 - b. Make a comprehensive analysis regarding the factors and indicators that had an impact (Positive/Negative) on the work of the KJC during 2018.
 - c. Which were the restrictions (eg. budget) and what impact they had on the work of the council?
 - d. How the obstacles were overcome and what it is intended to not be repeated in the future?
 - e. How the obstacles were overcome and what it is intended to not be repeated in the future?
8. KJC, namely the Performance Evaluation Committee of the KJC, pay particular attention to the performance evaluation process, in such a way that its purpose is achieved through this process, and not that this process is performed only formally .
 9. Following the adoption of the new Law on Disciplinary Responsibility of Judges and Prosecutors, the KJC to take care that all disciplinary measures required by law to be made public.
 10. KLI recommends to the KJC to fulfill the legal obligation and to invite the Presidents of the Courts to report before the KJC regarding the administration and management of the respective courts.
 11. KJC should make clear the difference between transfer and advancement, and not to advance various judges on behalf of the transfer.
 12. KLI recommends to the KJC, within the statutory deadline, to establish new branches foreseen by the new Law on Courts and not to follow the practice so far that the Law on Courts has already been repealed, but that no new branches of courts were never established in Fushe Kosove and Obiliq.
 13. KLI recommends to the KJC members to play an active role in the meetings of the Council during the process of policy making and decision-making in the Council.

Recommendations for the KPC:

1. KLI recommends to the KPC to show increased efficiency in the fulfillment of legal obligations, including the adoption of secondary legislation
2. KLI recommends to the KPC and the Office of the Chief State Prosecutor that the annual report of the State Prosecutor to review and approve it within the legal deadline.
3. KLI recommends to the KPC that with a maximal dedication to address the recommendations from the report of the National Audit Office.
4. KLI recommends to the KPC the implementation in practice of the Public Communication Regulation and to hold responsible all officials who do not implement it.
5. KPC to publish all sub-legal acts of the KPC, also by respecting the two languages.
6. KLI recommends to the KPC that on the occasion of drafting the annual report of the KPC for 2018, do not make an exclusively describing report, but to be an analytical report that addresses the problems and challenges that KPC had during the 2018.

7. KPC, respectively Performance Evaluation Commission in the KPC, to carry out this process with care, professionalism and maximum commitment, so that this process to achieve its purpose, and not that this process is only formally completed.
8. KLI recommends to the KPC to report before the public on the implementation of its objectives stipulated specifically and based on measurable indicators every six (6) months.
9. KLI recommends to the KPC to call the Chief Prosecutors of all prosecutions to report regarding the management and administration of the respective prosecutions.
10. KLI recommends to the KPC members to have an active role during the exercise of their functions, through participation in discussion and debate during the process of policy making and decision-making in the KPC.
11. KPC to make it clear the difference between advancement and transfer, and do not make unlawful advancements on behalf of the transfer.