INDEPENDENCE OF JUDICIARY IN KOSOVO
An analysis of Institutional and Individual Financial Independence

Prishtina, November 2012
This project has been supported by Kosovo Foundation for Open Society and this study does not necessarily represent the opinions of the Foundation.

Authors: Adem Gashi and Betim Musliu

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Note: The study was originally written in Albanian language and has been translated into English language.

ABOUT KLI

KLI, Kosovo Law Institute, is a non-governmental not for profit public policy organization, a think-tank specialized in the justice sector.

IKD
Entrance 22
Sylejman Vokshi Str.
Prishtina
T: +381 38 73 34 90
E: info@kli-ks.org
www.kli-ks.org

November 2012

Prishtina, Republic of Kosovo
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Interference on the independence of Judiciary is considered to be any action of the Executive or the Legislative that undermines the efficiency of the judiciary’s work, which could be as consequence of allocation of insufficient resources to the judiciary. (Office of the High Commissioner for Human Rights) Efficiency, impartiality and independence of the judiciary are not goals in themselves, rather represent the basic conditions in order to ensure that the rights and freedoms of individuals are promoted, implemented and protected by independent and impartial courts and judges within an adequate period of time. Lack of efficiency of Judicial branch in Kosovo has caused for most of the criticism to fall on this branch of governance and to have violation of human rights, which were concerns that were raised by the European Commission in the Progress Reports and the Feasibility Study. This analysis has been built on the spirit of addressing concerns on the lack of various resources that impact on the efficiency of the judiciary and considerations on the fulfillment of these requirements in relation to international and European standards like the United Nations Basic Principles on the Independence of the Judiciary, the Recommendation of the Committee of Ministers of the Council of Europe on Judges, the European Charter on the Statute of Judges, and other relevant documents.

Representatives of the executive and legislative continue to blame those leading the judiciary for the lack of efficiency at a time when they themselves draft laws and policies that contain significant deficiencies. Even the positive steps made in 2010 that advanced the independence of the judiciary were not supported with adequate financial, human and other resources. The process of re-appointment and appointment of all the judges itself was initiated without having a clear offer for the candidates, as the increase in salaries from an average of 500 Euros to 1,000 Euros per month for the judges, was only decided at the conclusion of this process. Consequently, the lack of interest from qualified and high quality candidates resulted in 98 vacant positions at the end of the process. Today, the judiciary continues to be an unattractive working environment, taking into consideration the poor physical working conditions like the insufficient office facilities, the lack of courtrooms, furniture, and other equipment. Furthermore, the courts have a small number and poor quality of support staff, as there is lack of policies that encourage citizens to build a career in the judiciary. For example, the judiciary for many years is not entitled to funds for the recruitment of interns, let alone to have access to mechanisms like the Government has, as: a) about 1 million Euros per year for the Brain Fund Scheme that serves for better salaries for people employed at position that require advanced skills, or b) about 250 scholarship beneficiaries of the “Young Cells Scheme” who have studied in EU countries.

The small budget of the state is not the source of the problem to fund adequately the Judiciary, rather this is more related to the underestimation that Executive branch and the Legislative branch make in relation to the Judicial branch. The large influence of the executive in the judiciary is made through the limited financial support, something which is made possible owing to the law and the practice that allows the intervention of the Government to propose the budget for the judiciary. The allocation of the budget for the judiciary is not based on a more advanced model with clear indicators, but rather it is done based on a simple calculation of a budget increase for a certain percentage annually. The budgetary support of 16-18 million Euro per year, of which 89% are
An analysis of the Institutional and Individual Financial Independence

operational expenses, does not represent support development of the judiciary, rather only ensures its survival. At no moment in time have the 10 million Euro of own revenues of the judiciary been taken into consideration, of which half are court fees. In reference to the budget, the Assembly continues to adopt everything that originates from the Government by not getting involved in more comprehensive consultations or to conduct in-depth analysis of the real needs, especially those of the judiciary. The core capital projects of the judicial reform in absence of support from the Kosovo budget are at the mercy of foreign donations. The influence of the Executive stretches beyond budget planning, where during the fiscal year the Ministry of Finance/Government has made arbitrary interventions like in the case of 2011, when it suspended from the judiciary two capital projects with a value of about 344 thousand Euros and from other categories about 447 thousand Euros. These actions of the Government represent a direct interference of the Executive which thus has a reducing effect on the efficiency of the judiciary.

In addition to the complicated relations with the other branches, the Judiciary has internal challenges also like the centralized budget in the Kosovo Judicial Council. The courts in certain cases face bureaucratic procedures in order to fulfill their needs and perform efficiently. Lack of proper managerial skills amongst the administrative staff of the judiciary has an effect on the planning and managing of the budget. For instance, in many occasions the courts do not make their requests through official channels, which results in not a satisfactory level of planning and realization of requests.

In addition to institutional conditions, the judges are continuously threatened in relation to the personal financial security. In 2012, almost two years after the standardization of the salaries of judges, the Government has adopted a Draft-law on the Salaries of Public Officials which was degrading the salaries of the representatives of the judiciary in relation to those of the representatives of the other branches. The Assembly sent back the degrading draft-law as it had raised a lot of concerns amongst the judges. Another aspect of financial security is the pension of 112 Euro per month for the judges, which has a difference of about 900 Euros per month compared to the salary of the judges. This financial insecurity represents a significant threat to the fair and impartial conduct of judges during their mandate. Problems related to retirement of judges have already been noticed, where one judge is suspected of presenting himself to be three years younger in order to defer retirement.

Finally, the Kosovo Law Institute (KLI) feels obliged to provide a sustainable solution and to go beyond the rhetorical request for increase of budget. Therefore, we suggest addressing immediately the following aspects:

1. **To ensure the institutional financial independence** – The approach of the Government so far, which is anathematizing the judiciary through allocation of insufficient resources, is the reason why we are seeking to cut out this interference channel so that the Judiciary delivers the budget proposal directly to the Assembly without the interference of the Government. In the meantime, until these legal changes occur, the Assembly should ensure to allocate sufficient resources, especially in relation to the reform in the justice system.

2. **To ensure the individual financial independence** – The Executive has to withdraw from policies that threaten the financial security of the judges. Consequently, salaries of judges have to be adequate to their profession and have to be guaranteed, laid down by laws and
there should be no reduction of these salaries during the mandate of the judges. Furthermore, there should be an urgent drafting of an adequate pension system for judges, where the pension should be as close as possible to the last salary of the judge during his/her mandate.

3. **To have larger advocacy for the concerns of the judiciary** – The Kosovo Judicial Council (KJC) should advocate much more regarding the concerns of the judicial system in relation to the other two branches. The conduct of the leaders of the judiciary should be in line with the powers and mandate that is guaranteed by the Constitution of the Republic of Kosovo. The arbitrary interventions of the Ministry of Finance which directly result in inefficiency and interfere on the independence of judiciary should be followed by immediate awareness raising activities at all levels and not let these actions pass unheard.
2. Introduction

The governance of the judiciary is the most criticized area in Kosovo, the work of which the citizens are the least happy with, there is a perception about large scale corruption, human rights are violated and the lack of transparency in the judiciary is constantly highlighted. Therefore, it remains to be the branch for which there is the least knowledge about. A lot of blame has been put on the judiciary for lack of efficiency and professionalism, even at times when it was the executive and legislative branches themselves who blocked the functioning of the KJC, by not allocating resources or have prolonged the adoption of vital laws for the judiciary.

Many officials of the Government and lawmakers at the Assembly highlight the need to keep the Judiciary under control as much as possible by the other branches and that the current support is sufficient but there is internal inefficiency due to lack of accountability by the judges. The judiciary system in Kosovo has functioned with judges that were receiving salaries many times lower than representatives in equivalent positions in other branches, many of judges had no legal experts, and judges worked and continue to work in unacceptable conditions, including lack of facilities to hold court sessions. Consequently, misunderstandings on the source of problems in the judicial system in Kosovo have a long history.

Due to one sided and unconditional dependency, the desecration of the Kosovo judiciary by the other branches has affected the quality of human resources employed in the judiciary, the efficiency of judiciary, and independence and impartiality of the judges. The Republic of Kosovo has to abandon oversimplification of problems that exist in the judiciary and analysis that are based on models of the past. State policies for the judiciary should take into consideration the concept of the separation of powers and composition and functioning of the executive and legislative branches in Kosovo.

2.1. Between independence and accountability

The concept of the separation of powers suggests establishment of checks and balances between the branches. In this sense it is impossible to think of branches functioning completely detached from one another and without interaction between each other. Democratic governance entails the building and maintenance of the independence of the branches but at the same time the existence of mechanisms for accountability.

In Kosovo, the independence building process of the judicial branch is exhibiting a slow pace mainly due to the fears of the political elite, especially the one that populates the executive, of loosing control over the judiciary. However, the independence of the judiciary is not an objective on its own

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1 According to a research conducted by UNDP Kosovo, only 17.8% of citizens are satisfied with the work of the courts, which is lower than the satisfaction with the work of legislative and executiv. The same research shows that 44.5% of the respondents think that the judiciary is corrupt. Public Pulse Poll: Fast Facts IV (Prishtina: UNDP Kosovo, May 2012). Also, Ombudsman Mr. Sami Kurteshi stated that judiciary is the main concern for violation of human rights. M. Brajshori, “Ekspertët ligjorë kryesorë të Kosovës kërkojnë përmirësime në sektorin gjyqësor” [“Lead legal experts in Kosovo are asking for improvements in the judicial sector”], Southeast European Times, 12 September 2012, see http://www.setimes.com/cocoon/setimes/xhtml/sq/features/setimes/features/2012/09/12/feature-01 (last retrieved 20 September 2012).

2 Until January 1, 2011, when certain articles on the salaries of the Law on Courts entered into force, the lowest salary was 393 Euros while the highest salary was received by the President of Supreme Court, which was 667 Euros.
but rather aims to guarantee that the rights and freedoms of individuals are realized, implemented and protected by independent and impartial judges.\(^3\) The importance of the right to equal treatment before the court and to a fair and public trial by a competent court, which is independent and impartial, is highlighted in all the international documents for the protection of human rights.\(^4\) Such a thing is even more important in cases when state authorities are parties to a process. The recommendation CM/Rec 2010/12 of the Committee of Ministers of the Council of Europe on Judges clearly highlights that the independence of the judges is protected by the independence of the judiciary as a whole.\(^5\)

The independence of the judiciary is perceived in various ways. Having in mind how complex this issue is, theorists but also international mechanisms like the United Nations or the Council of Europe find it difficult to agree on a single model which is standardized to every detail. However, until now general standards have been set which serve to guide the objectives and policies of different countries in relation to the independence of the judicial branch.\(^6\)

The independence of the judiciary which is ensured through the Constitution and other related laws in the Republic of Kosovo is not implemented, in many cases because of the bad practices in the implementation and also because of the way that three branches interpret these documents. Therefore, it is important to highlight that the increase or decrease of independence of the judiciary is subject to changes of political compositions in other branches of governance.\(^7\) Despite existence of the KJC, a body that has a decision making role over the management of the judiciary, the executive continues to be perceived as the main branch that ensures conditions for judiciary and the one that holds the judiciary accountable. This makes the mechanisms of judiciary and legislative branch almost completely invisible. Justice system reforms should be concerned about such a situation and there should be attempts to switch from a weak and politically dependant judiciary to an independent judiciary that has strong self-regulating mechanisms.

In various phases, influences in the judiciary take different forms.\(^8\) Despite the improvements in specific spheres, there are a number of areas like the limited financial support which represent an indirect but very strong political interference in the Kosovo’s judiciary. The greatest risk consists of


\(^5\) Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, 1098\(^{th}\) meeting of the Deputy of Ministers, Committee of Ministers of the Council of Europe, 17 November 2010 (Recommendation of the Council of Europe on Judges).


the fact that in countries where the judiciary is controlled by the executive or in which corruption is systematic the Judiciary Council can be turned into an obstacle and will not contribute to independence and accountability of the judiciary.\(^9\) The KJC should guide the reforms which will lead to a more independent judiciary.

### 2.2. Legal Framework

The budget proposal of the judiciary is drafted based on the Law on the KJC, which involves a different budget proposal model compared to the regular model. The Law on the KJC determined that "The Council shall, in consultation with the President Judges, prepare the annual operating budget of the Council and the courts. The Council shall submit the proposed budget directly to the Government as provided by law. If the Minister of Finance and Economy submits a budget for the Council and the courts that differs from that proposed by the Council, the Minister of Finance and Economy shall also submit to the Kosovo Assembly for its consideration the Council’s originally recommended budget and any comments thereon."\(^10\) In a way this method of budget allocation makes the judiciary dependant as it has left an open door for the Government to have its say on the budget of the judiciary, which in practical terms means great opportunity to have influence.

According to Article 27 of the Law on KJC, the Secretariat of KJC prepares a consolidated budget for the judiciary and administers the personnel and all other issues according to the instructions of the Council and its Commission for Budget, Finance and Personnel. The Secretariat based on the budgetary limitations and the instructions of the Council, ensures that the courts are properly supplied with necessary materials for the efficient and effective functioning of the courts.

Different from the KJC, which is obliged to forward its budget to the Assembly through the executive, the Office of the Disciplinary Counsel (ODC), an internal body of the KJC, has greater financial independence as the law requires that this body to deliver its budget proposal directly to the Assembly, without the interference of the Executive.\(^11\) The budget of the ODC includes the funding of the salaries of the personnel, director, disciplinary advisors, inspectors, administrative and support personnel, and other operational expenses of the ODC. Furthermore, the ODC is protected form the interventions of the KJC also, only that the Director of this office reports on annual basis before a joint session of the KJC and the Kosovo Prosecutorial Council (KPC) on activities and expenses incurred by the office.

Another aspect of the legal dependency of the judiciary on the executive is related to the supportive staff of the judicial administration. More than 1530 employees of the support staff of the KJC Secretariat, the ODC, the Court Performance Review Unit (CPRU) and of the Special Chamber of the Supreme Court of Kosovo are recruited based on the legal provisions of the Law on the Civil Service of the Republic of Kosovo\(^12\) and the regulations of the Government or the Ministry of Public Administration (MPA) as a reflection of the law. The Secretariat of the KJC in each step it takes in

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\(^10\) *Law on Kosovo Judicial Council*, Law number 03L/223, Article 15, Assembly of the Republic of Kosovo, 20 September 2010.

\(^11\) *Law on Kosovo Judicial Council*, Supra note 10, Article 49 on the Budget for Office of Disciplinary Counsel.

\(^12\) *Law on Civil Service of the Republic of Kosovo*, Law number 03/L-149, Assembly of the Republic of Kosovo, 25 June 2010.
relation to its personnel on the organising and structuring of the employees, has to consult with the MPA, as the competent ministry for civil servant.

2.3. Methodology

This research is a result of the need to conduct an in-depth study of the problem related to lack of efficiency in the judicial branch over the years, which constitutes a great concern for society as such a thing has caused for fundamental human rights to be violated, amongst which the right to a trial within a reasonable period of time by an independent and impartial court. Over the past years, there was a lot of discussion on the poor financing of the judiciary and the poor working conditions. However, there was lack of in-depth analyses which would go beyond the call for a larger budget by ensuring sustainable solution to this problem. It is particularly from these questions and needs that the structure of this paper has been build upon.

In order for the study to be as comprehensive as possible, KLI has analyzed the requests made by the European Commission related to the increase of efficiency in the judiciary, the legal framework of Kosovo on issues related to the financial independence of the judicial branch and of other budgetary organizations, the local and foreign legal literature was researched, international standards and conventions which are related to the financial independence and judicial resources have been taken into account, annual reports of relevant institutions, strategic documents of the country, other relevant documents of Kosovo institutions, and media reports and reports of local and international organizations. The international documents that have been taken into consideration have included documents like: the Universal Declaration of Human Rights of the General Assembly, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Basic Principles for the Independence of the Judiciary of the United Nations, the International Pact for Civil and Political Rights of the United Nations, the Recommendation CM/REC(2010) 12 of the Committee of Ministers of the Council of Europe for Members States on the Courts: independence, efficiency and responsibility, the Bangalore Principles for the Conduct of the Judiciary, the Universal Charter of Judges, and the European Charter on the Statute of Judges.

After the preliminary analysis of the documents, KLI has conducted interviews with more than 30 officials of relevant institutions in all three branches and with experts of the field of justice. This research was focused on the financing that is made by the Budget of the Republic of Kosovo, as KLI seeks to identify the sustainable model of financing for the judiciary where foreign donations would be positioned to finance secondary activities and not the financing of core judicial activities.
3. Institutional Financial Independence

Models for allocation of resources, financing and management of the judiciary vary from one country to the other, including also the countries within European Union. The most important documents on the independence of the judiciary highlight the fact that states need to allocate sufficient financial resources in order for the judiciary to accomplish its tasks in an efficient manner so that it can fulfill international standards on the upholding of human rights.

The Basic Principles for the Independence of the Judiciary clearly highlight that:

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

While the “Recommendation of the Committee of Ministers [of the Council of Europe] for member states on the judges: independence, efficiency and responsibilities,” has two articles that are related to this issue:

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

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

Consequently, interference on judiciary’s independence is considered to be any action of the Executive or the Legislative which undermines the efficiency of the judiciary’s work as a result of scarce resources allocated to the judiciary. Taking into consideration that in many countries including those of the European Union there is a discrepancy between needs of the courts and limited budgetary means, the budget is considered to be an effective method to control and influence the judiciary. In Kosovo, the limited budget of about 19 million Euros represents one of the main challenges for the judiciary. As it stands the agencies of the Executive have a large say on the allocation of the resources and in the administration of the judiciary in Kosovo, including but not limited to the Government and its two agencies the Ministry of Finance (MF) and MPA. Despite the large financial needs for supporting the reform and development activities of the judiciary in Kosovo, the budget and other resources allocated for this branch continue to serve only for survival and in no way for the development of the judiciary.

14 Basic Principles, Article 7.
15 Recommendation of the Council of Europe on Judges, Article 33.
16 Recommendation of the Council of Europe on Judges, Article 35.
3.1. Tensions in budget allocation

The budget of the judiciary is drafted by the KJC, submitted to the Government, and from there the original version and the revised version with comments by the Ministry of Finance are forwarded to the Assembly, which makes the final allocation. This method of the budget proposal is considered “more progressive than that of many other countries in the region.”

<table>
<thead>
<tr>
<th>Annual Revised Budget (‘000 Euros)</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Salaries and Wages</td>
<td>6,397</td>
<td>7,163</td>
<td>10,109</td>
<td>11,772</td>
</tr>
<tr>
<td>Goods and Services</td>
<td>4,254</td>
<td>3,793</td>
<td>3,794</td>
<td>4,120</td>
</tr>
<tr>
<td>Utility Expenditure</td>
<td>564</td>
<td>584</td>
<td>463</td>
<td>584</td>
</tr>
<tr>
<td>Subsidies and Transfers</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>250</td>
</tr>
<tr>
<td>Capital Expenditure</td>
<td>2,125</td>
<td>2,069</td>
<td>1,845</td>
<td>1,989</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td><strong>13,340</strong></td>
<td><strong>13,608</strong></td>
<td><strong>16,210</strong></td>
<td><strong>18,715</strong></td>
</tr>
<tr>
<td>Position</td>
<td>1,782</td>
<td>1,929</td>
<td>1,929</td>
<td>1,929</td>
</tr>
</tbody>
</table>

*Source: Department of Budget and Finance, KJC Secretariat and the MF*

From the table above we can notice that the budget of the Judiciary serves for operational expenditure, when in 2012, 89.4% of the budget covers this kind of spending, while only 2 million Euros or 10.6% serve for capital investments. Such a thing is quite disturbing when having in mind the great need for capital investments in the Judiciary due to the condition in which this system finds itself, something which will be considered further on, and due to the reform which the system is undergoing. In this situation, the Judiciary is extremely dependent on the support of the international community in order to improve its working conditions. The current judicial reform is not supported with additional budget, apart from the increase of the budget for salaries and wages in 2011, no other increase can be noticed.

The judiciary contributes to the Kosovo Budget with an average of 9 million Euros per year. If the Traffic Fines and Court Fines are excluded, then it means that the Judiciary during a three year period (2009-2011) from Court Fees and other revenues has collected 14.5 million Euros, which is about 33% of the total budget of the Judiciary for these three years.

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20 Judicial Reform Index for Kosovo (American Bar Association Rule of Law Initiative, October 2010), p. 52.
21 Current major needs are related to construction and reconstruction of buildings, buying equipments or improving the technology.
22 There are other thoughts as well, as Mr. Behar Selimi explains that this approach towards the judiciary has changed after the declaration of independence and lately the national support has increased. KLI interview with Mr. Behar Selimi, member of the Parliamentary Committee on the Legislation from PDK, September 2012.
23 In 2011, the articles of the new law that entered into force have standardized the salaries of the judges with those of the representatives in other branches of governance. Working document of the Commission Staff on Feasibility Study calls for increase of financial and human resources in order to support successful judicial reform. Working document f the Commission Staff accompanying the Communication of the Commimssion on Feasibility Study on Stabilization and Association Agreement between European Union and Kosovo (Brussels: European Commission, 10 October 2012).
24 Small portion of these funds are used to compensate those wrongfully convicted, but that is only a small portion. It would be good to consider the way municipalities use their own revenues. Operational costs of municipalities and a portion of the capital investments are covered by Government Grant. While the own revenues of municipalities serve to make capital investments and fulfill other needs. Also, the abovementioned calculations did not involve the construction of the Justice Palace, in which the Kosovo Government has invested.
Revenues of the Judiciary

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Traffic Fines</td>
<td>2,382,383</td>
<td>2,290,160</td>
<td>2,495,614</td>
</tr>
<tr>
<td>Court Fines</td>
<td>1,633,572</td>
<td>1,805,899</td>
<td>2,134,052</td>
</tr>
<tr>
<td>Court Fees</td>
<td>4,697,089</td>
<td>4,568,669</td>
<td>5,137,193</td>
</tr>
<tr>
<td>Court Fees – Special Chamber</td>
<td>0</td>
<td>18,920</td>
<td>21,391</td>
</tr>
<tr>
<td>Unspecified revenues</td>
<td>188</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Revenues from the tender</td>
<td>3,950</td>
<td>5,040</td>
<td>1,170</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>8,717,183</strong></td>
<td><strong>8,688,689</strong></td>
<td><strong>9,789,420</strong></td>
</tr>
</tbody>
</table>

*Source: Department for Budget and Finance, KJC Secretariat and the MF*

In Kosovo, no one can claim that the country’s small budget represents a problem for the financing of the Judiciary. In fact, the poor financing of the Kosovo Judiciary is more related with the underestimation from the Executive branch, as well as from Legislative branch towards the Judicial branch.

### 3.1.1. Judiciary – Executive Relations

The drafting of the budget for the Judiciary in practice is not in line with the independence which is proclaimed in the legal provisions, as the drafting of the budget is made through a top-bottom approach, with the MF in the role of the controlling authority of the whole process. Even though the KJC is required to draft the budget, the MF imposes limitations on the budget from the outset through circulars that specify the ceilings for each category of spending. Hence the KJC is unable to include projects or requests which exceed these ceilings because the software does not accept requests that exceed the set ceilings. In the following table we can notice that from 2009 up to 2013, the discrepancy between the requests of the judiciary and the budget allocations (after the mid-term review) is about 10 million Euro.

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th><strong>Total</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Requested budget</td>
<td>15,234</td>
<td>15,459</td>
<td>18,914</td>
<td>20,872</td>
<td>21,948</td>
<td>92,428</td>
</tr>
<tr>
<td>Approved budget</td>
<td>13,421</td>
<td>14,230</td>
<td>17,001</td>
<td>19,465</td>
<td>20,620*</td>
<td>84,736</td>
</tr>
<tr>
<td>Revised budget during the year</td>
<td>13,340</td>
<td>13,608</td>
<td>16,210</td>
<td>18,715</td>
<td>20,620*</td>
<td>82,493</td>
</tr>
<tr>
<td><strong>Requested – revised budget</strong></td>
<td><strong>1,895</strong></td>
<td><strong>1,851</strong></td>
<td><strong>2,705</strong></td>
<td><strong>2,157</strong></td>
<td><strong>1,328</strong></td>
<td><strong>9,935</strong></td>
</tr>
</tbody>
</table>

*Note: * As we are now in 2012 and the adoption or revision of the 2013 budget has not been made yet, this figure is based on the Budget Circular 2013/01 issued by the MF and the Mid-term Expenditure Framework 2013-2015. Source: Department of Budget and Finance, KJC Secretariat

At no point in time were the request of the judiciary supported and there have always been red lines by MF, irrespective of the minimal requests and the real needs for larger investments in the judiciary.

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25 KLI interview with Mr. Albert Avdiu, Director of KJC Secretariat, August 2012.
26 KLI interview with Mr. Enver Peci, KJC Chairperson, September 2012.
Number of Requested Position vs. Allocated

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requested</td>
<td>2,001</td>
<td>2,248</td>
<td>2,423</td>
<td>N/A</td>
</tr>
<tr>
<td>Allocated</td>
<td>1,782</td>
<td>1,929</td>
<td>1,929</td>
<td>1,929</td>
</tr>
</tbody>
</table>

Source: Department of Budget and Finance, KJC Secretariat

In Kosovo, the allocation of the budget for the judiciary is made according to a simple calculation of a budget increase for a certain percentage and not based on a more advanced model with clear indicators. In a way, this practice is mainly aimed at allowing the Judiciary to continue its work, but the exact expectations are not articulated as how the budget will impact on various aspects of efficiency, be that in the period required for solving cases, reduction of backlog cases, or any other aspect. The Executive foresees budget allocations based on the Mid-term Expenditure Framework 2013-2015 (MTEF) and the updated analyses of the Budget Directorate analysts in the MF. The descriptive analysis of the situation, needs, objectives and projects of the Judiciary presented in the MTEF has not been reflected also by an adequate budgetary allocation.27 Public finances, planning and drafting of financial analyses are areas of expertise of the MF. If it is put in the context of “agent-principal” problems, there is an asymmetry of information on financial issues between the MF and other institutions including the KJC, something which has been misused and has caused for various standards for different budget organizations. While there appears to be a problem to allocate funds for the Judiciary to hire interns or improve the physical infrastructure, on the other side the Government does not have a problem to quickly and easily allocate funds for governmental agencies without complicating their work.28 The issue of problematic procedures is of serious concern as the Judiciary is treated differently from governmental agencies.

The governmental authorities for the development of policies, strategies and laws in Kosovo are not consistent in their analysis related to the judiciary and rule of law. The MTEF clearly highlights that one of the four pillars of priority for the Kosovo Government is Good Governance and Strengthening Rule of Law.29 However, the Action Plan of the Economic Vision of Kosovo, a strategic plan for the current governing coalition, was developed without direct consultation with the judiciary stakeholders and has not included the issue of the judiciary as one of the main pillars. Consequently, the phrase rule of law is not mentioned anywhere, while in the forty eight pages of the document the judiciary is mentioned only in one of the activities.30 Despite that the European Commission gives particular importance to the efficient and independent functioning of the judiciary by relating it to the economy, the executive of the country minimizes the importance of the judiciary by not including it in the category of pillars which are vital for addressing the challenges of the country. Furthermore, the Government has failed to evaluate the financial implications for the additional engagement of the Judiciary, as illustrated by the following cases.

The process of verification of candidates for positions of judge is the most important process in the appointment of judges, as this includes the verification of the

27 Five objectives of the Judiciary presented in the MTEF seem to be unachievable due to the low budget that was allocated for this branch. By analyzing the allocated and the planned budget for judiciary from 2010 to 2015, we observe that the only substantial budgetary increase that has occurred is in the category of salaries which is a reflection of the increase of judges’ salaries in 2011. Mid-term Expenditure Framework (Pristina: Ministry of Finance, April 2012), p. 172.

28 One of the latest decisions is allocation of additional 300 thousand Euros for the Office and Cabinet of the Prime Minister. Decision number 09/94, Government of the Republic of Kosovo, 10 October 2012.

29 Supra note 27, p. 7.

An analysis of the Institutional and Individual Financial Independence

candidate’s file including their past, previous experience, property, and their reputation in society. For the process of re-appointment and appointment of judges and prosecutors conducted in 2009 and 2010, the Independent Judicial and Prosecutorial Commission (IJPC) was established, which had received and vetted the applications of all the candidates in this process. From 2011, with the closure of the IJPC, the applications for judges and prosecutors started to be vetted by locals, specifically the Office for Judicial Evaluation and Vetting (OJEV). For the work of the IJPC, the European Commission and the United States of America had allocated about 5.5 million Euro,\(^{31}\) while for the OJEV despite the minimal request of 161 thousand Euros, there was no specific fund allocated from the Kosovo Budget for making this office operational.\(^{32}\) This has caused for the KJC to seek donations from the Norwegian Embassy, and latter on to use the funds foreseen for the salaries of Judges that were still not appointed to pay the employees of the OJEV. Having in mind the importance of the process, as no judge can be appointed without undergoing the vetting process, the lack of funds for the OJEV represented a considerable risk, as it slowed the process of appointment of judges and has delayed justice in the country.

There are certain cases when laws are adopted without the analysis of the financial costs.\(^{33}\) Such a case is the Special Chamber at the Supreme Court, where it can be clearly seen that the Government drafts and the Assembly adopts laws without making a calculation of the financial implications. On the 1\(^{st}\) of January 2012, the Law on the Special Chamber of the Supreme Court of Kosovo has entered into force, which requires that 12 judges to be citizens of Kosovo.\(^{34}\) However, in the budget of 2012 there were no sufficient funds allocated as there were salaries foreseen for 7 judges only. Consequently, the KJC was compelled to use other funds to cover the requirements of the Special Chamber.

The lack of consistency in the Government policies has caused for a legal discrepancy in the issue of the ODC budget, which is an independent authority which serves the KJC and the KPC. The Law on the KJC and the Law on the KPC, adopted on the same day by the Assembly, have different requirements as the former states that the budget of the ODC should be submitted directly to the Assembly\(^{35}\) while the latter states that it should be submitted to the MF.\(^{36}\)

For 2012, the ODC had requested a budget of 292,651 Euros, which included 28 positions. This budget was cut-down to 211,833 Euros and only 20 positions by the MF and as such was adopted by the Assembly of the Republic of Kosovo. Such an interference of the MF is against the Law on the KJC. This illegal interference of the

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\(^{32}\) The request for funds for the OJEV has not made it to any budgetary hearing session. KLI interview with Mr. Enver Peci, KJC Chairperson, September 2012.

\(^{33}\) KLI interview with Mr. Ramadan Avdiu, Deputy Minister of Finance, August 2012.

\(^{34}\) *Law number 04/L-033, on the Special Chamber of the Supreme Court of Kosovo on Privatization Agency related matters, Article 3 on Composition, Organization and Appointment, Assembly of the Republic of Kosovo, 31 August 2011.*

\(^{35}\) *Law on Kosovo Judicial Council, Supra note 10, Article 49, “Budget for the Office of Disciplinary Counsel”.*

MF has resulted in insufficient inspector and legal officer positions in the ODC, which has an impact on the efficiency and independence of this institution to handle disciplinary procedures against prosecutors and judges.\textsuperscript{37}

In addition to the inadequate treatment during the preparation of the budget, the MF has an influence in the judiciary budget during the whole year. These influences are made in arbitrary ways including proposals for reduction of funds during the budget revision at the mid-term review, or the withdrawal of funds without proper consultation with the judiciary. The constant requirements of the MF for the suspension of capital projects and the reduction of funds for goods and services or utility expenditure, represent a direct interference of the executive in decreasing the efficiency of judiciary.

During 2011, despite a minimal budget allocated to the judiciary, “the Ministry of Finance – Department of the Treasury has suspended (reduced) two projects, that of Security Equipment and Video Surveillance at the sum of 100 thousand Euros, and that of the Construction of the Court building in Shtetpce at the sum of 244 thousand Euros.”\textsuperscript{38} In addition to the suspension of these key capital investments, the judiciary was requested to reduce firstly 247 thousand Euros and later 200 thousand Euros from the category of goods and services and utility expenditure,\textsuperscript{39} in accordance with the decisions of the Government of the Republic of Kosovo.\textsuperscript{40} Consequently, the government reductions have lowered during the year the financial resources for capital investments by about 15.7% while the expenditure for goods and services and utility expenditure by about 9.5%.

Such reductions, which come at any time and in any form, represent a negative impact that the government is having on the judicial system of the country. The constant uncertainty of the judiciary in relation to the financial and human resources in the judiciary is a disruption on the checks and balances of the powers in this country, by placing the Executive in a superior position compared to the Judiciary.

\subsection*{3.1.2. Judiciary - Legislative Relations}

As far as the issue of the budget and resources for the judiciary is concerned, the Assembly of the Republic of Kosovo adopts the proposals that are forwarded by the Government without any hesitation. It is quite disconcerting when taking into consideration that the MF by benefiting from the asymmetry of information does not inform the Assembly on all the actions accurately.\textsuperscript{41} The Budget and Finance Commission of the Assembly considers the budget of the Judiciary to have the same level of importance like the 30 Independent Institutions. Such a treatment of the Judiciary reflects the inappropriate approach and the lack of serious commitment of the Assembly bodies towards the degrading working conditions in the judicial system of the country.

\textsuperscript{37} KLI interview with Mr. Zef Prendrecaj, Director at the Office of Disciplinary Counsel, October 2012.
\textsuperscript{38} \textit{Supra note 19}, p. 10 -11.
\textsuperscript{39} \textit{Supra note 19}, p. 11.
\textsuperscript{40} One of the decisions is \textit{Decision 04/26}, Government of the Republic of Kosovo, 27 July 2011.
\textsuperscript{41} This is a conclusion of the KLI as the Chairperson of the Parliamentary Committee on Budget and Finance in the interview with KLI has stated that Ministry of Finance has not informed the Assembly that during 2011 has requested suspension of the projects of the Kosovo Judicial Council or any other institution. KLI interview with Ms. Safete Hadërgjonaj, Chairperson of the Assembly Commission on Budget and Finance, September 2012.
The lack of knowledge in the Assembly on the real financial needs for the implementation of reform in the justice system can be noticed on the issue of vacant positions in the judiciary.

The perception of the Budget and Finance Commission that the Judiciary makes unreasonable requests as it does not efficiently utilize the existing budget based on the non-filling of 180 job positions, is not a sustainable argument. This conclusion of the Budget and Finance Commission fails to take into consideration the processes through which the Judiciary is going through, including but not limited to process of recruitment of about 100 judges, 25 of them are positions reserved for minorities which is more difficult to find suitable candidates, a process which takes longer than any other recruitment processes. While finally the positions of civil servants have not been filled as the adoption of the final structure according to the new Law on the Courts is being expected.

The Assembly has failed to play the right role in holding the judiciary accountable, by creating the opportunity for the Government to continue to be seen as an authority to which the Judiciary should be accountable to. The Legislation Commission finds itself at crossroad, whether to get involved or not in the supervision of judiciary. Despite certain activities in this Parliamentary Commission, there is lack of such engagements that would enable the braking of the accountability chain of the Judiciary from the Government to the Assembly. There is lack of debate in the Kosovo Assembly on the judicial reform or the poor financing of the judiciary. In the following, one of the seldom cases is presented of when the issue of judiciary’s financing was raised.

The MP Albulenda Haxhiu, member of the Legislation Commission, had raised the issue of the financial dependence of the judiciary on the executive, where the budget and the Government interventions allow neither the proper functioning nor the reform of the justice system. The Minister of Finance, despite the arbitrary reductions of the judiciary which have been made in 2011, has reported in the Assembly that the judiciary has sufficient funding. Such rhetoric in the treatment of the judiciary only contributes to the misunderstanding that the other two branches display of the judicial branch.

At a moment when the financial resources are so important for the efficient functioning of the judiciary, the influence of executive on judiciary can be exercised through financial matters. The Government and the Legislative have a wrong approach in the drafting of the Judiciary’s budget, mainly because of the working conditions that do not even remotely resemble those in the other branches.

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42 KLI interview with Ms. Safete Hadërgjonaj, Chairperson of the Assembly Commission on Budget and Finance, September 2012.
43 The Assembly has no clear picture about the situation of the judiciary in Kosovo. KLI interview with Ms. Albulena Haxhiu and Mr. Behar Selimi, members at the Commission on Legislation, August-September 2012.
44 Transcript of the meeting of the Assembly of the Republic of Kosovo, held on 17 November 2011, p. 83-86.
45 According to Ms. Albulena Haxhiu, the current budget formulation model “does not guarantee independence and impartiality, hence, there is a tendency to control the justice institutions and the Assembly is showing to be almost inexistent and without any power to make changes in the budget submitted by the Government, as the governing coalition has the required votes in the Assembly.” According to Mr. Behar Selimi, judiciary is independent in many aspects but the financial aspect still creates dependency and could be a channel for interference. KLI interviews with Ms. Albulena Haxhiu and Mr. Behar Selimi, members of the Parliamentary Commission on Legislation, September 2012.
3.1.3. Courts - KJC Relations

The planning of the judiciary’s budget is centralized at the KJC Secretariat. Until recently, the courts expected the KJC Secretariat to handle all of their needs, whilst they planned only the number of staff and some other operational expenses by increasing them year on year by a certain percentage.46 Such planning practice comes as a result of the fact the KJC Secretariat manages the budget of the judiciary. In the planning for 2012 made in the previous year, the Court Presidents and Administrators have gone beyond the classical planning and management of resources by presenting requests for capital investments as well.47 The request of the courts for decentralization of budget planning and management is ever increasing. Furthermore, during 2012 the Association of Judges with the support of the United Nations Development Programme (UNDP) organized five regional meetings with judges where the different requirements of the judges were discussed, including the resources that they are missing.48 These initiatives represent a positive step towards the decentralization of finances in the future from the Secretariat to the courts.

The courts often feel powerless to win over support for their requests due to the limitations that are applied by the Executive and the Legislative.49 KLI has observed that the court Administrators during informal discussions presents various needs of their courts, which would help in the improvement of conditions and increase of efficiency.50 However, the KLI was able to secure only a limited number of requests which have been delivered in an official manner to the KJC Secretariat. This comes also as a result of the lack of managerial skills amongst the court personnel.51 The lack of official communication on the requests of the courts to the Secretariat is a deficiency which obviously hinders better planning and healthier communication between the courts and the KJC.

Recent KJC activities are increasing the trust of the judges that this authority is representing their interests in a more appropriate manner. Furthermore, the administrative staff as well values the work of KJC, as recently it has congratulated for the proper running of the court transformation process. As for the involvement of the KJC in the preservation of the judiciary’s independence, in particular with the financial aspect, the case of the Draft-law on the Salaries of Senior Public Official can be highlighted.

On the 17th of July 2012, the KJC reacted against the Draft-law on the Salaries of Senior Public Officials, as this draft-law had foreseen lower remuneration for the representatives of the judicial branch in comparison to the representatives of the Executive and Legislative branches. On the same day the Association of Judges and

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46 On most of the cases the budget planning involves an increase by 5% on annual basis. The budgetary planning for courts involves these categories: Travel costs, Communication costs, Purchase of the furniture, Utilities, Services, Fuel, Capital Investments, etc. KLI interview with Court Administrators, July-September 2012.
47 For the first time, this year a court has requested construction of a new building, which suggests that there is advancement in this aspect. KLI interview with Mr. Albert Avdiun, Director of KJC Secretariat, July 2012.
48 KLI interview with MS. Biljana Rexhiq, President of the Association of Judges in Kosovo, August 2012. In the past, KJC Secretariat through USAID support has organized regional training activities on the budgetary issues with the Presidents of the Courts.
49 This is also related to the lack of trust that KJC conducts adequate advocacy activities to represent the concerns of the judiciary. KLI interviews with Court Presidents and Administrators, July-September 2012. Also, KLI interview with Ms. Ariana Qosaj-Mustafa, Legal Advisor to the President of the Republic of Kosovo, August 2012.
50 KLI interviews with Court Administrators, July-September 2012.
51 One of the most challenging issues related to the court staff is lack of knowledge and managerial skills too draft and plan the budget. KLI interview with Ms. Ariana Qosaj-Mustafa, Legal Advisor to the President of the Republic of Kosovo, August 2012.
the Kosovo Law Institute reacted on this draft-law. On the other side, the KPC had reacted two weeks later. Consequently, on the 11th of October 2012, during the first review of this Draft-law, most of the members of the Assembly adopted the request of the Kosovo Government to withdraw that draft-law.

Regardless of the current increase in trust of judges in KJC, in the future the selection of the members of the KJC is seen as an issue of great concern as eight out of thirteen members of the KJC are selected by the Assembly, which is in conflict with the European standards, specifically the recommendations of the Venice Commission. Consequently, the need arises for the judges to elect themselves the majority of the members of the KJC so that there is better representation and to avoid influences that can come from the current composition model.

3.2. Need for resources to ensure efficiency

This part of the report considers the various resources including the supportive staff, buildings, office equipment, information technology, and the security of the judiciary in Kosovo. During the whole post-war period there has been lack of funding for the judiciary. In 2011 there was an increase of 19.5% of the budget, but such a thing is only the result of the salary increase for the judges, while all other aspects continue to remain underfunded. The same has occurred in 2012, where the budget for capital investments was reduced by 9% while the total budget had increased by 14.5%, as this increase has gone mainly to covering for the Salaries and Wages and Subsidies. In the report of 2011, the Ombudsperson Institution (OI) contains a part on the “Discrimination of the judiciary and by the judiciary”, by considering as an issue of great concern the “physical conditions and the unsuitable and dysfunctional facilities” of the judiciary. It is the resources in particular that represent the source of other problems which result in extended periods of time to solve cases, and the lack of professionalism in the judiciary related also to elements of misuse of office.

3.2.1. Buildings, equipment and technology

So far there has been no quantitative research, guided and supported by concrete figures, on the current state and real needs for working facilities for judges and the supportive staff. However, the insufficient physical space can be determined from observations and individual interviews. The lack of will of Executive and Legislative to improve the working conditions of the Judiciary is best seen in the cases of the KJC.

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52 “IKD: Ekzekutivi po e zhvlerëson pushtetin gjyqësor” [“KLI: The Executive is degrading the Judiciary”], Koha Ditore, page 6, 18 July 2012.
53 Supra note 23, p. 9.
54 Supra note 20, p. 3. Also, KLI interview with Ms. Ariana Qosaj Mustafa, Legal Advisor to the President of the Republic of Kosovo, August 2012.
55 Supra note 27. Budgetary allocations do not correspond with the goals of judiciary, including here those goals presented in MTEF, as one of the main issues is improvement of the physical infrastructure of the courts, however, for 2012 there is decrease of budget for capital investments while there is 1.25 million Euros increase for Subventions, for which it is unclear their final destination and does not relate anyhow to the goals of KJC.
56 It is important to note that when Ombudsperson talks about judiciary, makes the relation between the cause and effect, by initially emphasizing on the discrimination of judiciary and later on talking about discrimination by the judiciary in the form of violation of human rights. Eleventh Annual Report 2011 delivered to the Assembly of Kosovo (Prishtina: Ombudsperson Institution, 2012), p. 20.
The KJC and its Secretariat are housed in a barrack which was a donation of the United Nations Mission in Kosovo (UNMIK). The life expectancy of those barracks has expired, thus risking the safety of all the personnel housed in this barrack. The KJC is expected to remain in these facilities until the construction of the Palace of Justice, the work on which is expected to finish during 2014.

This is an issue of concern having in mind millions in investments by the executive for the construction, renovation and renting of facilities for its own needs for office space. Only until recently the lack of investments in the renovation of courts caused a miserable state of these buildings, turning the courts into discouraging facilities to work in, let alone to ensure any efficiency. Due to the lack of courtrooms, many hearings were held and continue to be held in judges’ offices, including also the hearings at the Supreme Court. Such a thing leads to various procedural violations which can be made during the carrying of justice and lead to abuse of office by the judges. Furthermore, the existing architecture itself of the court buildings, staring from the front door and all the way to the judges’ offices, has caused the overcrowding of these buildings and a low security level for the judges and their personnel. In 2007, with the support of USAID at a value of 3 million US Dollars the Model Court Programme was initiated which resulted into ten renovated courts, while the Effective Rule of Law programme (EROL) with additional financing will conduct the renovation of another 20 courts. The construction of the Palace of Justice has not been supported financially by the Kosovo Budget for years until the time when the European Commission allocated 25 million Euros for its construction, which then caused for part of the project to be supported also by the Kosovo Budget. The construction of this building has not been entrusted to the KJC but rather the MPA has been put in charge of handling construction of the building.

Despite the investment supported by USAID for the reconstruction of courts, the reforms through which the judiciary is going through will highlight new needs that require to be adjusted to the new model of functioning of the judicial system, thus putting into question also the investments made through the Model Court programme. For example, the conditions after the renovation at the District Court of Prizren have been significantly improved but this building still lacks offices and courtrooms, and a special room for the storage of evidence. In the Municipal Court of Prishtina, which was renovated according to the Model Courts, the lack of facilities has caused for two judges to share an office. In the Municipal Court of Gjilan, due to lack of sufficient courtrooms, some of the hearings continue to be held in offices. The establishment of Basic Courts as foreseen with the current judicial reform presents also the need for new and suitable facilities for the nature of the work, the departments and the other functions of these courts. The KJC Secretariat, in order to

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57 KLI interviews with Court Presidents and Administrators, July-September 2012. Also, Supra note 20, p. 56.
58 KLI interviews with KJC members, September 2012.
59 Kosovo Legal Profession Program, see http://www.drejtjesia-ks.org/?cid=1,15,172 (last retrieved on 20 August 2012).
60 USAID Kosovo, see http://transition.usaid.gov/kosovo/eng/democracy_rule_of_law.html (last retrieved on 10 September 2012).
61 KLI interview with Mr. Halit Muharremi, former Director of KJC Secretariat, August 2012. The location for this building is in Hajvalia, outside of center of Prishtina, and some of the judges are skeptical that this is the best location as some citizens will not be able to access it easily.
62 KLI interview with Mr. Ymer Hoxha, President of the District Court in Prizren, July 2012.
63 KLI interview with Ms. Makifete Saliuka, Acting President of the Municipal Court of Prishtina, August 2012.
64 As the office of the President of the Court is larger than the others, some of the court sessions are held in this office. KLI interview with Mr. Ramiz Azizi, President of the Municipal Court in Gjilan, September 2012.
properly implement the reform sees as necessary the construction of five Basic Courts. However, there is lack of financial funding to construct the required buildings. Looking at the past, working facilities play an important role in the efficient functioning of the judiciary. Hence, the lack of financial support for the establishment of adequate working facilities can seriously risk the investment into the reform.

The proper running of the work process depends a lot on the equipments put at the disposal of the judges and the other part of the courts. Various processes including also the enforcement of cases, holding of timely hearings, necessary translation, archiving of cases, and other processes often are delayed due to lack of basic working conditions. For example, the lack of vehicles causes serious problems in the enforcement of decisions by the court enforcement officers. In certain cases, the court enforcement officers happen to use the vehicles of parties in the proceedings in order to travel to the location where the enforcement of a court decisions has to be done, which constitutes a legal violation. The request for vehicles has been continuously identified by the judiciary but the resolution of this problem has never been supported. Furthermore, the offices of judges in addition to being scarce in number are also poorly equipped, as most of them contain a desk and a computer, while their furniture is old and in certain cases due to lack of shelves, there are materials, mainly court cases, placed on the ground. These and many other conditions, including the lack of recording equipments, lack of printers, or uniforms for judges, create a difficult environment to function. On the other hand, the Case Management and Information System supported for many consecutive years by the European Commission Liaison Office, still does not function and now 4.7 million Euros are required to put this system in place.

The current working conditions are not satisfactory. The capital investments of the judiciary are largely dependent on the donations of other countries and international organizations. Hence, objectives and analyses related to the judiciary have not been reflected in the budget of the country or in the strategic documents related to investments. In general, there is a prevailing mentality that the international community rather than Kosovo authorities are more interested in efficient

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65 KLI interview with Mr. Albert Avdiu, Director of KJC Secretariat, August 2012. Also, the same need has been mentioned in the MTEF 2013 – 2015. However, MTEF budget has not reflected upon these needs by maintaining the same level of support for capital investments throughout 2013-2015.
66 KLI interview with Mr. Ymer Hoxha, President of the District Court of Prizren, July 2012.
67 Courts use Lada Niva cars which were bought before 1999, Municipal Court in Rahovec for a long time has been asking for an additional vehicle, Municipal Court in Kliena requires two additional cars while it has only one old car, Municipal Court in Podujevo has only one vehicle while it requires another one to fulfill the needs of the court, while the Municipal Court in Skenderaj has only one old vehicle which does not fulfill the needs of the court. Also, the same concerns were raised at the American Bar Association report, Judicial Reform Index in Kosovo published in October 2010. KLI interviews with Municipal and District Court Presidents, judges, and administrators, July-September 2012.
68 KLI has closely observed lack of basic working conditions. In order to give you an idea we will describe a case in a District Court where judges are provided with toilet papers due to the poor conditions in the toilets of the court. KLI interviews with court administrators, judges and Presidents, July-September 2012. Also, Association of Judges has organized regional roundtables with judges during Augst 2011, where among other concerns raised, the judges have mentioned lack of vehicles, uniforms, lack of equipments such as digital camera required for field work, lap-tops, screen monitors for court rooms, as well as other requirements. KLI interview with Ms. Biljana Rexhiq, President of the Association of Judges, August 2012.
69 According to MTEF 2013-2015, in order to implement the IT Strategy for judiciary it is required an investment of 4.7 million Euros, where 3.4 million Euros are sought to come from donations while the remaining 1.3 million Euros will be invested through Kosovo Budget. Supra note 27, p. 171. On the other hand, KJC strategy on IT and Communication 2012-2015, published five months after MTEF 2013-2015, does not contain an analysis of the financial implications of this strategy but states that KJC budget for the next five years is not sufficient to implement the activities of this strategy, by suggesting that the Legislative should allocate more funds or these funds should be sought by donors. IT and Communication Strategy (Prishtina: Kosovo Judicial Council, September 2012), p. 51.
judiciary. As consequence, there are many parties involved in supporting decision making, development of projects, and handle other issues related to the administration of judicial system, which represents diverse problems in management and coordination of the work.

### 3.2.2. Support staff and career development

In addition to the lack of adequate physical space, equipment and information technology, there is poor quality and insufficient number of support staff. Good judges are a product of a long career building process. The career path\(^{70}\) in the judiciary is absent due to the lack of knowledge among various stakeholders on the nature of the judicial system and lack of political will, something which has resulted with poor financing of the system. The support staff is part of the civil administration in Kosovo, where MPA has the final say on the number, structure and salaries. Over the years, the court administrative staff has remained the same in numbers, even though there has been lack of positions like interns, clerks and others.\(^{71}\) In meantime, many courts function without any professional collaborators, where the judges are compelled to personally conduct the legal research, preparation of the case, and all the administrative tasks related to the case.\(^{72}\) In absence of professional collaborators, a judge “spends about 70% of his/her time dealing with administrative work.”\(^{73}\) Last three years, KJC is requesting to hire more than 70 interns, which is seen by Executive as an unreasonable request, and the Legislative has not allocated the funds and positions.\(^{74}\) In this form the judiciary has been deprived from the right to make a career development path in the judiciary, where through recruitment and promotion of personnel, where interns and professional collaborators would one day become potential candidates for judges, enabling thus higher competition, professionalism and consequently more efficient courts.

<table>
<thead>
<tr>
<th>Budget for the Salaries of the Judiciary for 2012</th>
<th>Number of positions</th>
<th>Budget (EUR)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Judges</td>
<td>392</td>
<td>5,210,856</td>
</tr>
<tr>
<td>Administrative Staff</td>
<td>1,483</td>
<td>5,976,968</td>
</tr>
<tr>
<td>Office of the Disciplinary Prosecutor</td>
<td>20</td>
<td>149,524</td>
</tr>
<tr>
<td>Unit for Judicial Performance Appraisal</td>
<td>7</td>
<td>70,489</td>
</tr>
<tr>
<td>Special Chamber (7 judges)</td>
<td>27</td>
<td>198,466</td>
</tr>
<tr>
<td>TOTAL</td>
<td>1,929</td>
<td>11,606,303</td>
</tr>
</tbody>
</table>

Source: Department for Budget and Finance, KJC Secretariat

The current judicial system does not contain high quality professional collaborators.\(^{75}\) The judiciary does not have an offer that would entice highly qualified people. This negative effect on Judiciary is a direct result of the policies of the Government, where the Government has developed various

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\(^{70}\) Career path refers to the career development in judiciary starting from the education, internship, and other professional work in the law sector (especially professional collaborators in the courts), and the judges in different levels.

\(^{71}\) Supra note 19, p. 8-9.

\(^{72}\) Lack of the professional collaborators can be observed best in the municipal courts, where most of them do not employ any professional collaborator at all. KLI interviews with judges, July-September 2012.

\(^{73}\) KLI interview with Mr. Enver Peci, KJC Chairperson, September 2012.

\(^{74}\) KLI interview with Mr. Enver Peci, KJC Chairperson, September 2012. The Association of Judges has compiled a report after conducting several roundtables with judges around Kosovo during 2012, which points out the concerns of judges regarding lack of adequate number of professional collaborators. Lately KJC did not recruit people for all its vacant positions due to the current transformation of court system.

\(^{75}\) KLI interview with judges and Presidents of Courts, July-September 2012.
professional development programs amongst the civil servants, but such policies has not included the court support staff. In order to ensure greater professionalism of administration, the Government has invested in the following directions: a) in ensuring better salaries, and b) education of potential human resources.

Kosovo does not have standardized salaries amongst the civil servants, and in setting the salary amount only one principle applies, “who is the strongest”. In order to illustrate this matter, we shall compare the annual income of officials in equivalent positions but in various institutions, where in some cases the difference per annum comes to about 10 thousand Euros.

General Secretary of the Constitutional Court – 22,476 Euros; Secretary of the Assembly – 19,126 Euros; Permanent Secretary of the Office of the Prime Minister – 14,060 Euros; Secretary of the Office of the President - 13,941 Euros; and the Director of the KJC Secretariat – 12,523 Euros.

Almost in all levels there is significant difference in income. Amongst these offers, the job offers for professional collaborators and court administrators are not so attractive. A professional collaborator receives a gross salary of 350 to 370 Euros per month, while the court administrators have a monthly gross salary from 372 to 419 Euros. The Government of Kosovo with the aim to recruit and retain skilled professionals in public service positions, in December 2008 established the Brain Fund Scheme, which allows for the Government to provide these people salaries from 800 to 1,800 Euros per month. The judiciary did not benefit out of this scheme despite the great need to recruit as many professionals as possible in this sector. Even though KJC’s mandate is to ensure independent, impartial and efficient functioning of the judiciary, it is difficult to make proper policies in these aspects when there is lack of advisors or analysts that would contribute in this regard.

In 2004, European Union started to support the “Young Cells Scheme” project, which so far has awarded tens of scholarships to students to study in different EU universities and return back to work for the Kosovo Government, the line ministries, and independent authorities. It is a great concern that the Judiciary did not have the opportunity to recruit these young professionals, especially when a certain number of 250 beneficiaries of scholarships have not been recruited in any governmental agency despite their contractual obligation to return and work for these institutions and pay back the investment.

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76 For same position in different institutions exist different salaries, which are set in absence of any objective criteria. KLI interview with Mr. Agim Krasniqi, Director of Budget of Kosovo at the Ministry of Finance, 2012.
77 KLI interviews with Directors of Budget Departments in diverse budgetary organizations, July-September 2012.
78 The same situation occurs with the income of the leaders of institutions including President of Constitutional Court (40,200 Euro), President (34,478 Euro), Speaker of the Parliament (32,400 Euro), Prime Minister (17,381 Euro), President of the Supreme Court (15,848 Euro), and KJC Chairperson (15,867 Euro). These data were taken from the declaration of assets that these officials have submitted to the Anti Corruption Agency in 2012, which include base salary, additional compensation, bonuses, and other income from Kosovo Budget related to their activities in their current positions.
79 There is a bonus of 30 Euros per month for civil servants, which is given also to professional collaborators and court administrators.
81 Establishment of a research center so far has not been supported by the Executive or Legislative. KLI interview with KJC members and officials at the KJC Secretariat, July-September 2012.
The process of re-appointment and appointment of judges and prosecutors has purified the judicial staff; however, the administrative staff remained untouched and did not go through any screening process. A large number of former judges have not been re-appointed and a number of them are now suspected of having abused their positions in the past. In August 2011, KLI published the analysis “The Process of re-appointment, independence and influences”, which highlighted concerns related to the support staff, who could have been collaborators of judges who are now being suspected on the grounds of abuse of power. In absence of a re-appointment process that would screen court support staff, as it happened with judges and prosecutors, it is necessary to have additional control over them and supervise closely their exercise of duties.

In conclusion, mix of competencies between Judiciary and Executive in managing court support staff has had negative results for the judiciary. Executive and Legislative bodies have made wrong choice with regard to the issue of career path in judiciary, which includes recruitment of interns and all the way to employment of professional collaborators. Their approach is significantly damaging the quality and efficiency of the judicial system, which will have consequences even in the future. One cannot ensure high quality judges after six-month trainings, but rather good judges can become those who have worked in diverse positions in judiciary, especially as professional collaborators. Further, as long as Executive has better job offers, it will be difficult for Judiciary with its current offers to recruit or retain in its system better qualified support staff.

3.2.3. Judges

What is the adequate number of judges for judicial system in Kosovo? As it is the case with many other issues related to judiciary in Kosovo, in absence of detailed analysis, the issue of adequate number of judges has been simplified to a request for “greater number of judges”. This is the conclusion of many local and international reports. However, based on observations and interviews it can be noticed that the current number is not sufficient, but nobody has gone beyond this rhetoric, besides few possible internal reports.

Lack of adequate research over the years caused for the resources of the courts not to be in line with the needs. Since 2008, the judicial system did not fulfill all of its vacant positions for judges. In 2008, only 296 judges were working, while there were 322 allowed positions. In 2009 there were 282 judges working, which is lower than 330 positions that were allowed. The reluctance in filling vacant positions during the last four years is largely due to the process of reform in the judicial system. The three phases of re-appointment and appointment process have occurred from beginning of 2009 until October 2010, which sought recruitment of 373 judges. During this time, the work of IJPC has resulted in appointment of 274 judges by the President. One of the reasons why 98 positions remained vacant is related to lack of a serious job offer for judges. The fundamental laws for the judiciary, which included also better salaries for judges, were adopted only after re-appointment and appointment process was complete. Reappointment and appointment, which was

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84 According to Ms. Makifete Saliuka, in order to be efficient in solving cases in Prishtina region, we are required to double the resources, including number of judges and support staff. KLI interview with Ms. Makifete Saliuka, Acting President Prishtina Municipal Court, August 2012.
85 Supra note 20, p. 85.
86 Supra note 31, p. 21.
the most important process of the reform, did not contain any good offer for many high quality candidates to join the judicial system. In the following years, the Office for Judicial and Prosecutorial Evaluation and Vetting, within the KJC, has carried on with recruitment process of judges. After UPC left, an additional 77 judges have been recruited, leaving another 42 vacant positions, where 25 of them are reserved for minority communities.

For a long time, there have been different comparisons of the number of judges per capita or per number of cases. However, KLI has avoided such comparisons, but rather identifies the need for an in-depth analysis/assessment of this situation. This assessment would be based on the characteristics and case weight of cases that are received by courts, where annually there are 85 thousand new cases received.

The ever changing legal and social environment requires for continuous professional development of the people involved in judicial system. The Kosovo Judicial Institute (KJI) is an independent institution which continuously has developed training programs and activities with regard to continuous legal education of judges, preparation of candidates for judges, their training for promotion and other programs, which are related to basic activities of the work in judicial system. Judges have also had the opportunity to conduct study visits and training activities abroad, in regional and international conferences in the field of legal education for judges. The Continuous Legal Education Program (CLEP) during 2011 has implemented 78 training activities that have involved 992 judges, 115 prosecutors and 166 other participants (administrative staff of the courts and prosecution offices, police officers, officers from the probation service and centres for social work). One of the priorities of the Ministry of Justice is the establishment of the Judicial and Prosecutorial Academy of Kosovo, which will conduct the training of Kosovo lawyers towards their professional development in order to become future judges and prosecutors. Despite the assessment of Ministry of Justice that such an initiative will provide positive effects, due to lack of comprehensive consultations, the representatives of the judiciary do not see this as an initiative that will have positive outcome as this Academy will involve a number of institutions that deliver trainings for representatives of the justice system, by dissolving the KJI which has a narrow mandate.

3.3. Management of the judiciary’s budget

The courts have very limited access to management of the Judiciary’s budget, as it is centralized at the KJC. Regarding this budget management model, KLI interviewees had different opinions, with majority supporting more decentralized budget management. The supporters of the current model explain that limited resources allocated for the Judiciary cannot be managed better by individual

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88 Supra note 87.
89 Ministry of Justice Priorities 2011-2014 (Ministry of Justice, April 2011).
90 “Akademia e Drejtësisë, krah i rëndësishëm i drejtësisë në Kosovë” [“Justice Academy will be great support to justice system in Kosovo”], Koha Net, 17 April 2012, see http://www.kohaditore.com/?page=1,13,95960 (last retrieved 11 September 2012). Also, KLI interview with Mr. Lulzim Alija, Director of Legal Department at Ministry of Justice, August 2012.
91 Courts manage only petty cash to buy certain products, whose list is quite limited. KLI interviews with Court Presidents, July-September 2012. Also, KLI interview with Mr. Lulzim Alija, Director of Legal Department at the Ministry of Justice, August 2012. Also, Supra note 20, p. 51-52.
courts. While others, have suggested that current procedures are bureaucratic and it takes time for their requests to be fulfilled, no matter how simple they might be, like the purchase of furniture, equipment, interventions in infrastructure of the courts, or other materials. Consequently, there are various problems created that directly impact on the efficiency of the courts because they have access to petty cash only and no other funds.

After the increase of judges’ salaries in 2011, about 63% of the Judiciary’s budget is allocated for salaries and wages. About 26% of the budget is allocated for Goods and Services, Utility Expenditure and Subsidies, and about 11% remain for capital investments. See the table below on the budget allocations and efficiency of judiciary to utilize these funds.

<table>
<thead>
<tr>
<th>Year</th>
<th>TOTAL</th>
<th>Salaries and Wages</th>
<th>Goods and Services</th>
<th>Utilities Expenditure</th>
<th>Subsidies and Transfers</th>
<th>Capital Expenditure</th>
<th>Utilization</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>A 15,235</td>
<td>7,855</td>
<td>4,146</td>
<td>552</td>
<td>371</td>
<td>2,310</td>
<td>77.61%</td>
</tr>
<tr>
<td></td>
<td>B 13,340</td>
<td>6,397</td>
<td>4,254</td>
<td>564</td>
<td>-</td>
<td>2,125</td>
<td></td>
</tr>
<tr>
<td></td>
<td>C 10,354</td>
<td>6,363</td>
<td>3,018</td>
<td>402</td>
<td>-</td>
<td>570</td>
<td></td>
</tr>
<tr>
<td></td>
<td>D 12,077</td>
<td>6,363</td>
<td>3,523</td>
<td>479</td>
<td>-</td>
<td>1,713</td>
<td></td>
</tr>
<tr>
<td></td>
<td>E 8,717</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>2010</td>
<td>A 15,471</td>
<td>7,779</td>
<td>4,489</td>
<td>569</td>
<td>320</td>
<td>2,315</td>
<td>93.9%</td>
</tr>
<tr>
<td></td>
<td>B 13,608</td>
<td>7,163</td>
<td>3,793</td>
<td>584</td>
<td>-</td>
<td>2,069</td>
<td></td>
</tr>
<tr>
<td></td>
<td>C 12,780</td>
<td>7,106</td>
<td>3,318</td>
<td>408</td>
<td>-</td>
<td>1,948</td>
<td></td>
</tr>
<tr>
<td></td>
<td>D 13,395</td>
<td>7,106</td>
<td>3,778</td>
<td>443</td>
<td>-</td>
<td>2,069</td>
<td></td>
</tr>
<tr>
<td></td>
<td>E 8,689</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>2011</td>
<td>A 18,915</td>
<td>10,986</td>
<td>4,337</td>
<td>577</td>
<td>250</td>
<td>2,765</td>
<td>87.9%</td>
</tr>
<tr>
<td></td>
<td>B 16,210</td>
<td>10,109</td>
<td>3,794</td>
<td>463</td>
<td>-</td>
<td>1,845</td>
<td></td>
</tr>
<tr>
<td></td>
<td>C 14,248</td>
<td>9,274</td>
<td>3,449</td>
<td>413</td>
<td>-</td>
<td>1,112</td>
<td></td>
</tr>
<tr>
<td></td>
<td>D 15,351</td>
<td>9,274</td>
<td>3,770</td>
<td>463</td>
<td>-</td>
<td>1,845</td>
<td></td>
</tr>
<tr>
<td></td>
<td>E 9,789</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
</tbody>
</table>

Note: A – Request; B – Annual Revised Budget; C – Budget Spent; D – Committed Budget; E – Revenues of the judiciary
Source: Department of Budget and Finance, KJC Secretariat

Over the years the judiciary has utilized 78-94% of the budget (revised). Due to small budget, failure to implement a project can result in alarming figures in relation to the utilization of the budget. For example in 2009 the property rights problems and difficulties in obtaining building permits from the Municipal Assemblies have caused the failure of three capital projects like the construction of the Municipal Court of Prishtina (600,000 Euros), the Court of Gjilan (765,000 Euros), and the Municipal Minor Offences Court of Prizren (400,000 Euros). The failure to build these buildings has resulted in non-utilization by 30% of the Goods and Services budget. Poor planning was highlighted by the General Auditor, as these situations have resulted in inefficient utilization of funds.

92 Different cases show the inefficiency of centralized system with regard to purchase of equipments or other things. For instance, a Municipal Court shows that they have asked for a printer one year ago and so far have not received it yet. Another court has been waiting for months now for the KJC Secretariat to build a small wall.

93 KLI interviews with KJC Secretariat officials, September 2012.
In the recent years, MF has played a negative role in the management of the Judiciary’s public funds, especially during 2011 due to decisions that were not carefully thought through by the Government, which had placed the whole country in significant financial problems.

“In 2011 the Ministry of Finance – Department of the Treasury has suspended (reduced) two projects, that of Security Equipment and Video Surveillance at the sum of 100,000 Euros, and the one for building the Courthouse in Shterpce at the value of 244,000 Euros”. 94 Above all, this decision of the Governmental authorities represents a direct interference in Judiciary. In addition to capital investments, through various decisions the Government has reduced 326 thousand Euros form the Goods and Services and 121 thousand Euros in Capital Expenditure. 95 Despite the establishment of legal norms that proclaim independence and equality of the judiciary, “if you take out the main element, if you limit its budget, decrease it continuously, by creating obstacles, this is a type of tendency to influence it.” 96 It is a concern that the Commission for Budget and Finance or any other authority of the Assembly has not reacted against this form of interference by Government in the budget, consequently in the efficiency of the judiciary.

In addition to these interferences, the Government has played a negative role in planning of funds for 2012, by suggesting a proposal which was also adopted by the Assembly, where without any need 1.25 million Euros are allocated in the category of Subsidies. 97 In fact these funds were foreseen to remain as contingency in case KJC fills all of its vacant positions foreseen for judges. In middle of 2012, during the budget revision, 1 million Euros were reduced from the category of Subsidies while the Category of Salaries and Wages was increased by 250,000 Euros. 98 This is another case that represents the deep crisis in the management of public finances. Based on the practice so far, the Auditor General and also the MF and Assembly will next year consider the large shifting of funds from one category to another as a lack of capacity of the Judiciary to plan and utilize efficiently the public funds.

The KJC, like any other budgetary organization, is subject to the annual financial auditing from the Auditor General. During the years, the KJC has made considerable progress in addressing the problems identified in the reports of the Auditor General, see the table below. 99

94 Supra note 19, p. 10-11.
95 Supra note 19, p. 11.
96 KLI interview with Mr. Fejzullah Hasani, President of the Supreme Court, August 2012.
97 It is a great concern how such a proposal advanced, passed all those screening phases and was allocated by the Assembly. KLI interview with KJC Secretariat officials, September 2012.
98 Comparisons of tables of Budget and Revised Budget of 2012. Ministry of Finance.
## Performance of the Judiciary according to the Auditor General

<table>
<thead>
<tr>
<th>Year</th>
<th>Fully implemented</th>
<th>Partially implemented</th>
<th>Unimplemented</th>
<th>Most important issues raised by the Auditor General for the current year</th>
</tr>
</thead>
</table>
| 2009 | 1                 | 5                     | 4             | - Budget planning should improve and significant changes should be explained  
- The full and comprehensive registration of assets should be conducted  
- Improvement in the management of human resources  
- To improve the process of planning and procurement for capital investments  
- To improve internal auditing  
- To improve the management of petty-cash |
| 2010 | 4                 | 2                     | 3             | - To have budget planning throughout the year  
- To make operational the software for the registration of revenues  
- To have more professional commissions for evaluation of tenders  
- To carry over as few obligations as possible to the following year  
- To improve the internal auditing  
- To improve on the management of petty-cash |
| 2011 | 6                 | 3                     | 0             | - Planning and implementation of the budget to be in line with the cash flow, avoiding overspending at the end of the year  
- Better planning of the procurement process, and implementation in accordance to the terms of the contract  
- To create the register of all assets |

*Source: Reports of the Auditor General for 2009, 2010, 2011*

In 2011, a commission of the KJC had prepared a detail report on all the comments that Auditor General presented in the previous year, and which required from the Secretariat to undertake measures against officers that have made violations as determined by the Auditor General. This is one of the few cases in Kosovo that the audit report was being addressed with such great responsibility, and this approach of the KJC was highlighted as a good example in the third meeting of the National Anti Corruption Council which was focused on public procurement, public finances and their management.

The judiciary does not have the best practices in the management of human resources as the duties and responsibilities of the administrative staff in the courts are not specified accurately.¹⁰⁰

¹⁰⁰Due to inadequate number and quality of court staff, Court Administrators ask the court staff to work on duties that are not set in their contracts. KLI interviews with Court Administrators, July-September 2012.
Therefore, it happens that in addition to the main responsibilities, the court staff to be involved in other activities which have to be covered in absence of the required number of staff. Consequently, these actions do not ensure efficiency of the courts and only expose the system towards the risk of lack of accountability.
4. Individual Independence of Judges

In order to build a system where the judges do their work independently, above all the method of selection of judges has to be taken into consideration, the duration of mandate, and remuneration. Pressure on the judges can be exercised in various forms, and different forms of threats include also their remuneration, which can compromise their involvement in exercising their profession of a judge in a professional and independent manner.\(^{101}\) Salaries and opportunities for career development in the judicial sector represent very important factors in the improvement of quality of the judges and support staff in the courts.\(^{102}\) Taking into account the terms of remuneration and career development in the judiciary that is offered in Italy, for 200 positions there are more than 10,000 applications.\(^{103}\) Considering such a large number of applications, it is certain that the Judiciary can select the best to serve in the system and to improve the efficiency of the system.

In absence of better policies of the Kosovo Government, the existing international standards should serve as a guide for the drafting of future Government policies. Our state has continuously failed to fulfill the requirements like compensation in cases of illness of judges or the adequate pensions after retirement, which represents basic requirements in the following documents:

“The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.” – Principle 11, Basic Principles\(^{104}\)

“Financial security: i.e. the right to salary and pension which is established by law and which is not subject to arbitrary interference by the executive in a manner that could affect judicial independence....” – Commentary of the Principles of Bangalore on the Conduct of Judges\(^{105}\)

“Judges exercising judicial functions in a professional capacity are entitled to remuneration, the level of which is fixed so as to shield them from pressures aimed at influencing their decisions and more generally their behaviour within their jurisdiction, thereby impairing their independence and impartiality. [...] [Judges that are retired] are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.” – European Charter\(^{106}\)

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\(^{101}\) Supra note 17, p. 116. Also, OSCE Mission in Kosovo states that “Without sufficient funding the judiciary not only cannot attract qualified professionals to the bench, but also may make judicial actors vulnerable to external pressures.\(^{,}\) Independence of the Judiciary in Kosovo: Institutional and Functional Dimensions (OSCE Mission in Kosovo, January 2012), p. 20.


\(^{103}\) Supra note 102, p. 4.

\(^{104}\) Basic Principles, Principle 11.

\(^{105}\) Commentary on the Bangalore Principles of Judicial Conduct (Group on Judicial Integrity, March 2007), p. 36.

“The judge must receive sufficient remuneration to secure true economic independence. [...] The judge has a right to retirement with an annuity or pension in accordance with his or her professional category. ...” – Universal Charter

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

In the following sections there will be an analysis on issues related to the individual independence of judges.

4.1. Compensation of judges and the treatment by the other branches

In the second part of 2010, after a prolonged drafting process, Law on Courts and Law on KJC was adopted by Assembly. Even though the Law on Courts will fully enter into force in January 2013, certain provisions related to remuneration of judges have started to be implemented since January 2011. This was considered a great achievement in the judicial system as until that time there was no equal treatment as far as the salaries are concerned between the income of representatives of Judiciary with those of Executive or Legislative.

During 2011 and 2012, the Government has caused continuous concerns in relation to compensations of judges, which has had a negative effect as judges were becoming afraid in relation to their financial security.

During July of 2011 the KPC had taken a decision to allocate additional funds for the compensation of prosecutors retroactively for four months, starting from 150 and up to 950 Euros per months for the prosecutors. This decision was taken in coordination with the MF, and has created reactions amongst the judges who expressed their dissatisfaction with unequal treatment. Through this action, the Government of Kosovo has sent a wrong and unnecessary message to judges and KJC, that everything depends on the will of the Government to distribute more income. KJC has also made a request to re-allocate the unspent funds but that inquiry was denied.

As the judges threatened to take measures to eliminate this

108 Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, article 54, adopted by the Committee of Ministers on 1098th meeting of the Ministers’ Deputies, Council of Europe, 17 November 2010.
109 The Progress Report states that “Salaries for judges and prosecutors have been increased, as provided for in the relevant laws, further strengthening the independence of judges.” Commission Staff Working Paper Progress Report 2011 on Kosovo (European Commission, 12 October 2011), p. 10.
inequality and pressure was made by civil society and the KJC, this decision was suspended temporarily. In addition to wrongful actions of the KPC and the Government, in this case also the request of the KJC to reallocate the unspent funds represents a huge concern as there continues to be dependency on the executive for the income of the judges.

The decisions of the Kosovo Government have continuously provoked fear amongst the judges in relation to their compensation. Every year there is a discussion about the level of judges’ salaries and thus “creates insecurity and risks not to have in the future proper human resources in the system.” Recently the MPA had sponsored a draft-law for the salaries of senior public officials, which avoided involvement of the Judiciary in drafting process even though this law has an impact on this branch as well.

In June of 2012 the Government adopted the Draft-law on the Salaries of Senior Public Official, which placed judges in an unequal position compared to the representatives of the Executive and the Legislative. In addition to the existing inequality in practice, “this draft-law has also formally created inequality.” It required KJC, Association of Judges and civil society, in this case KLI, to react on this issue in order to raise the awareness of all the stakeholders on the inadequate treatment of the judiciary. All the judges were concerned as their salaries would be reduced, and at the same time they were being compared to officials in agencies and not their counterparts which manage the other branches of governance. On the 11th of October 2012, upon the request of the Government, the Kosovo Assembly sent back the Draft-law on the Salaries of Senior Public Officials.

Despite the standardization of the base salary for judges, there are still a range of international standards like ensuring compensation in cases of illness or other cases for which the Government has failed to produce policies and laws. Furthermore, the actions of the Government which represent a continuous threat in relation to compensation of judges are creating and maintaining dependency on the Executive, insecurity amongst the judges and create easy channels for influencing the Judiciary.

4.2. For a proper pension system for judges

The issue of the income of judges and prosecutors is related also with their status that they will have when they retire. By serving in judicial functions, the judges are quite limited in developing

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112 KLI interview with Mr. Hamdi Ibrahimi, President of the District Court in Prishtina, August 2012.
114 This draft law has set the following coefficients: 15 for the President, 12.5 for Speaker of the Parliament, Prime Minister and President of the Constitutional Court. Whereas, President of the Supreme Court had a coefficient of 9, way below the other leaders of the institutions and also below ministers. The main deficiency of this draft law was absence of the position of the KJC Chairperson. Draft law on the Salaries of Public Officials, Government of the Republic of Kosovo, June 2012.
115 KLI interview with Mr. Fejzullah Hasani, President of the Supreme Court, August 2012. In practice, there is no equality in remuneration of senior officials, as there are great differences in income for instance the annual compensation for the following people are President of Constitutional Court (40,200 Euro), President (34,478 Euro), Speaker of the Parliament (32,400 Euro), Prime Minister (17,381 Euro), President of the Supreme Court (15,848 Euro), and KJC Chairperson (15,867 Euro).
117 Transcript of the Assembly meeting held on October 10, 2012, p. 74-75.
An analysis of the Institutional and Individual Financial Independence

economic activities in the private sector. Consequently, the retirement and other income after retirement are quite important in order to have security during and after the conclusion of the mandate. In Kosovo, judges after retirement will receive pensions of about 1,344 Euros per annum,\(^{118}\) which is a difference of about 11,000 Euros per annum compared to their remuneration for their work as judges. The lack of economic security represents a risk for the whole system, as after the conclusion of their mandate the judges will have to fight for their survival.\(^ {119}\) The current pension system for the judges will risk the whole judicial system, as the judges do not have dignified pensions they could compromise the judicial system through the decisions that they take.

In 2012, a judge in the District Court of Prishtina, just before reaching the age of retirement changed his year of birth in an attempt to defer his retirement for three years.\(^{120}\) This action of the judge is suspected of being done by taking incriminating actions, for which the State Prosecution together with the Kosovo Police have taken necessary legal actions to shed light on the matter.

This could be a representation of what financial insecurity of judges could bring after their retirement. Article 6.4 of the European Charter on the Statute of Judges highlights that “In particular the statute ensures that judges who have reached the legal age of judicial retirement, having performed their judicial duties for a fixed period, are paid a retirement pension, the level of which must be as close as possible to the level of their final salary as a judge.”\(^ {121}\) In countries like Italy, the issues of compensation at a satisfactory level both during the mandate and after retirement is considered in particular as quite an important measure to offer the necessary security which results in considerable independence.\(^ {122}\) In 2007, the European Association of Judge issued a resolution in relation to the pensions system of Judges in Hungary, in order to raise concerns on the pensions system for judges, as there was a large difference between the income of judges during the mandate and those who were retired.\(^ {123}\) Kosovo can learn a lesson from this example as it has similar weaknesses in its pensions system, where there is difference of about 900 Euros per month between the salary of the judge (over 1,000 Euros) and the pension (112 Euros per month).

\(^{118}\) So far the pension for those who pay pension contributions has been 80 Euros per month, while from 2013 this pension will increase for 40%. Social Welfare Statistics 2011 (Prishtina: Statistical Agency in Kosovo, April 2011), p. 4. Also, Decision number 2/93, Government of the Republic of Kosovo, 4 October 2012.

\(^{119}\) KLI interviews with judges, August 2012.

\(^{120}\) Jeton Llapashtica, “Rinohet gjyqtari Dehari”, Zëri, 5 October 2012, see http://www.zeri.info/artikulli/1/1/S8802/rinohet-gjyqtari-dehari/ (retrieved 6 October 2012).

\(^{121}\) European Charter on the Statue for Judges, Article 6.4, approved by Council of Europe in Strasburg, 8-10 July 1998.

\(^{122}\) Supra note 102, p. 9-10.

\(^{123}\) Resolution concerning pension system of Hungarian judges, approved unanimously by European Association of Judges in Valencia, 30 March 2007.
5. Case Studies

In this part of the paper a number of examples have been taken, including also local institutions which have certain financial independence like the Constitutional Court and the OI, and cases of another country have been presented which had gone through the path of reforms in order to enter the European Union, and another democratic and developed country like Sweden. These examples indicate the importance of proposing and managing of the judiciary’s budget.

From the following examples it can be understood that financial issues are vital for the independence of the institutions/braches of power, and that regardless of the model of proposing and managing of the budget, an interference or threat for the judicial branch can be considered an event when the allocated resources for this branch do not ensure efficiency at work. However, in cases like that of Kosovo, one of the best forms to avoid the influences of the Executive in the independence of the judiciary or of vital institutions is for the budget proposal to go directly to the Assembly.

5.1. Constitutional Court and Ombudsperson

The Constitutional Court of the Republic of Kosovo was established in January 2009, based on the law for this court.\textsuperscript{124} In order to ensure the financial independence, the legislators had avoided any interference by the Government or any other authority in the proposal of the budget of the Constitutional Court by clearly specifying that “Notwithstanding provisions of other laws, the Constitutional Court shall prepare its annual budget proposal and forward the said budget proposal to the Assembly of the Republic of Kosovo for adoption.”\textsuperscript{125} The MF and other authorities of the Government and Legislative could not adapt initially to the legal requirements of the law, by attempting to interfere in the proposal of this Court, something which they had also done.\textsuperscript{126} However, these problems were resolved to a certain extent and now the Constitutional Court enjoys support of about 1.5 million Euros per year.\textsuperscript{127} As mentioned in the Strategic Plan of 2010-2013, the reduction of funds initially impacted on the flow of work in the Court. However, the improvement in financing later on has surely played a role in the positive assessment which was made by the European Commission for the exercise of its responsibilities.\textsuperscript{128} This is an example which shows clearly the importance of adequate financing and especially of the sustainable model of financing in order to ensure efficiency of the system.

\textsuperscript{124} Law on Constitutional Court of the Republic of Kosovo, Law number 03/L-121, Assembly of the Republic of Kosovo, 16 December 2008.
\textsuperscript{125} Supra note 124.
\textsuperscript{126} KLI interview with Constitutional Court officials, August 2012. Also, Strategic Plan of the Constitutional Court 2010-2013, Constitutional Court of the Republic of Kosovo.
\textsuperscript{127} Annual Report 2011 (Prishtina: Constitutional Court of the Republic of Kosovo, 2011), p. 27.
Despite the similar provisions, Ombudsperson has encountered huge difficulties with its budget and limited resources. The Law on the Ombudsperson highlights that “Regardless of the provisions of other Laws, the Ombudsperson Institution prepares its annual budget proposal and sends it for approval to the Assembly of the Republic of Kosovo.” In practice such a thing was not respected neither by the Legislative not the Executive.

The budget proposal for 2011 drafted by Ombudsperson was submitted to the Assembly, but Ombudsperson was not called for hearing session at any time by the Assembly or the Budget and Finance Commission in order to consider the proposal. In absence of consultations, the budget approved by the Assembly was not in line with the needs of the Ombudsperson institution, as the total sum was smaller, and large sums were allocated to utility expenditures without any real need, and the sums for salaries and wages were reduced which were more important. In addition to the arbitrary planning, the MF made sure that it intervened arbitrarily during the year also by withdrawing funds without consulting the Ombudsperson at all. Tensions reach peak in 2012 when the Minister of Finance threatened the OI that he would cut their budget and make it zero Euro. Such arbitrary actions of the Ministry of Finance are scandalous and unacceptable, because they are not only an arbitrary reduction of funds but a direct denial of the functioning of such an important institution like the Ombudsperson.

The issue of financing and resources for the Ombudsperson were raised also in the Feasibility Study, which requires addressing as soon as possible these issues in order not to have problems in the future with the budget proposal going directly to the Assembly. The example of the Constitutional Court and the Ombudsperson Institution represent clearly the huge importance of the process of proposing and managing of the budget in order to ensure efficiency and consequently independence and avoidance of interference on independent institutions.

5.2. Hungary

The independence of the judicial branch in Hungary is ensured by the Hungarian Constitution, specifically in 1997 with the aim of strengthening the judiciary in Hungary the National Justice Council was established, a mechanism created in accordance with the Hungarian Constitution. Until 2002, the practice of drafting the budget and its proposal to the Parliament was conducted in the same way as the one that exists in Kosovo now, where the National Justice Council submitted the proposal to the Government and then the Government if they had any other proposal sent both of these proposals to the Parliament. While now, it has been a decade since the National Justice Council in Hungary, see http://www.birosag.hu/engine.aspx?page=birosag_english_02_national (retrieved 7 August 2012).
Council submits the budget proposal directly to the Assembly without the intervention of the Government, which is considered to be a huge achievement in the independence of the judiciary.\footnote{National Justice Council in Hungary, see http://www.birosag.hu/engine.aspx?page=birosag english _02 national, (retrieved 8 August 2012).}

European Commission in its report on the preparation of Hungary for membership in the European Union, has marked as progress the issues of strengthening the independence of the judiciary in October 2002 through the Law on the Budget of courts and judges, which foresees that the National Justice Council submit the budget proposal directly to the Parliament. Further, the National Justice Council in 2003 received 62.3 million Euros of additional budget support which were added to the annual budget of 154 million Euros. This additional budget was used to facilitate the continuation of the judicial reform, including the establishment of three appeals courts, further development of information technology and the training of judges on European Union legislation.\footnote{Comprehensive monitoring report on Hungary’s preparations for membership (European Commission, 5 November 2003), see http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52003SC1205:EN:NOT (retrieved 10 August 2012).}

Through this new model of budget proposal, the financial support for the judiciary in Hungary has experienced a continuous increase achieving thus in 2008 to have an annual budget of 273 million Euros.\footnote{Justice System in Hungary, see http://www.birosag.hu/engine.aspx?page=birosag english _03 judicial (retrieved 9 September 2012).}

### Comparative Table between Hungary and Kosovo

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Judges</td>
<td>2,887</td>
<td>247</td>
</tr>
<tr>
<td>Support staff</td>
<td>7,999</td>
<td>1,530</td>
</tr>
<tr>
<td>Annual budget (Euro)</td>
<td>272,938,288</td>
<td>16,298,821</td>
</tr>
<tr>
<td>Received cases for processing</td>
<td>1,572,166</td>
<td>86,394</td>
</tr>
<tr>
<td>Cases per judge</td>
<td>545</td>
<td>350\footnote{If we consider that 399 judges are employed then we will have 216.53 cases per judge annually.}</td>
</tr>
<tr>
<td>Cases per one support staff</td>
<td>197</td>
<td>57</td>
</tr>
<tr>
<td>Budget per case (Euro)</td>
<td>173.61</td>
<td>188.66</td>
</tr>
<tr>
<td>Population</td>
<td>9,982,000</td>
<td>1,733,872</td>
</tr>
<tr>
<td>Judges per 100,000 inhabitants</td>
<td>28.92</td>
<td>14.25\footnote{If we consider that 399 judges are employed then we will have 23.01 judges for 100,000 inhabitants.}</td>
</tr>
<tr>
<td>Support staff per 100,000 inhabitants</td>
<td>80.13</td>
<td>88.24</td>
</tr>
<tr>
<td>Budget per capita</td>
<td>27.34</td>
<td>9.40</td>
</tr>
</tbody>
</table>

**Sources:** KJC, National Justice Council of Hungary, Kosovo Statistical Institute, Central Office of Statistics in Hungary

### 5.3. Sweden

In Sweden, the budget is negotiated between the Government and the Swedish Judicial Council, which is known as the Domstolsverket. The budget is planned for a three year cycle and the negotiations conducted between the Government and the Domstolsverket for the budget of the following year last from 1\textsuperscript{st} of March to the 20\textsuperscript{th} of September, the date on which the proposal is submitted to the Parliament. The Parliament takes the final decision until December. A key role in the decision of the Parliament is played by the strategic plans of the judiciary and the reports of the
An analysis of the Institutional and Individual Financial Independence

previous years on the management of funds by the judiciary. The funds that are allocated by the lawmakers for the judiciary are not specified for what exact purpose it will be utilized.\textsuperscript{140} The Domstolsverket handles the allocation of the budget to the courts depending on the type of court, its size, caseload, and other specific needs. Taking into consideration the existence of buildings and infrastructure of information technology, about 80\% of the overall budget of above 400 million Euros is spent on salaries.\textsuperscript{141} Considering such a large budget, even the 20\% that remains for the buildings, computers or trainings, is a sufficient budget for a country with over 9 million inhabitants.

The budget and other resources for the judiciary in Sweden are allocated on the basis of strategic plans, quality management, and objectives that are aimed to be achieved, including also the objective of improving of the period of time required to complete a case, or the reduction of unresolved cases, or any other objective. In the judicial system of Sweden there are about 1,039 judges employed who are supported by the non-judicial staff comprised on 3,418 persons.\textsuperscript{142} The number of cases and their weight play a key role in drafting of strategic plans and the allocation of resources for the judiciary. From 2000 and until 2010, the number of cases filed in courts increased by 39\%, achieving in 2010 to reach 382 thousand cases. Together with the increase of the number of cases the number of resolved cases has also increased, where in 2010 there were 370 resolved cases, leaving thus another 155 thousand of backlog cases.\textsuperscript{143} The judicial system was continuously supported with adequate financial and other resources, as with the increase in the volume of work, the support of the judiciary was also increased in order to maintain the efficiency of the judiciary.

The courts have a considerable flexibility in spending of funds, including the contingency funds that are kept by the courts, and these funds are not sent back to the state budget. However, financial accountability has been improved over the years where the courts through Agressos, a sophisticated software program, report to the Domstolsverket in time with justifications and detailed information on the spending, which are then reported to the Government. The Domstolsverket reserves the right to withdraw the management of finances from certain courts. So far, there have been only threats but never occurred to Domstolsverket take back the competences. Despite the support that it enjoys, in terms of management, the Domstolsverket/judiciary in Sweden is considered as an independent agency, which are numerous in Sweden, rather than as the third branch of state power.\textsuperscript{144}

\begin{thebibliography}{99}
\bibitem{141} Nordic Countries and CEPEJ, \textit{Conclusions on the peer evaluation work} (Strasbourg: European Commission on Justice Efficiency CEPEJ and Domstoladministrasjonen, 7 April 2011).
\bibitem{142} Supra note 141.
\bibitem{144} J. Bell, \textit{Sweden's Contribution to Governance of the Judiciary} (Stockholm: Stockholm Institute for Scandinavian Law 1957-2010, 2010).
\end{thebibliography}
6. Recommendations

KLI will offer the following recommendations in order to address more accurately the problems that have been presented above.

**For the judiciary, executive and legislative (part of these recommendations should be addressed through amendment of Laws on the KJC and Courts):**

1. A higher level of financial independence should be guaranteed for the judiciary by allowing the **KJC to deliver the budget proposal directly to the Assembly** without any interference of the Government. So far, the Government has played a negative role in the allocation of resources for the Judiciary. Hence, the financial independence should be ensured like in the case of the Constitutional Court of the Republic of Kosovo, the Ombudsperson Institution, and the Hungarian Justice Council. All of these cases have proven that this is the sustainable model that ensures the independence of the institutions, with regard to financial aspect.

2. Reforms and other initiatives in the judiciary should be supported with additional funds as there can be no positive changes without having financial support to back these initiatives. For a certain period of time a **part of the own revenues of judiciary should be invested in capital projects** that would be beneficial for the judicial system, including construction of necessary court buildings, improvement of information technology or doing any other necessary investment.

3. Due to the nature of the judiciary, **three year plans should be developed for the financing of the judiciary.** These plans should go beyond the Mid-term Expenditure Framework, as the MTEF has achieved to identify the challenges and future projects but not to foresee also sufficient funds and the results that can be achieved with those funds.

4. **The salaries of the judges should be adequate for their profession, set by law** and not subject to reduction during the mandate of a judge. There should be no more threats about the judges’ financial security.

5. An adequate pension system for the judges should be developed and put in place, as financial insecurity of judges could risk their commitment during their mandate as judge. **The pension compensation should be as close as possible to the last salary of the judge during their mandate.**

6. **The court support staff should be separated from the other part of civil servants** so that the planning and management of this staff would be transferred from the Ministry of Public Administration to the Secretariat of the KJC. Consequently, there should be a law on the judicial administration.
7. The legal discrepancies should be avoided related to the Office of the Disciplinary Counsel, where the financing of this office is foreseen differently in the Law on KJC compared to the Law on KPC. Therefore, this issue should be addressed either by revising the current laws or by issuing a specific law.

8. The selection of KJC members, where eight out of thirteen members are selected with votes from the Assembly, represents a problem in the independent representation of the judiciary. Consequently, in order to ensure independence in every other aspect, the majority of members of the KJC have to be selected by the judges themselves.

For the judiciary:

9. The KJC should alarm all the stakeholders in case of interference from the Ministry of Finance, either in the planning or the management of the budget. The KJC should raise issues whenever funds are allocated in categories which are not necessary, like it has happened in 2012 with the category of Subsidies where about 1 million Euros were allocation without any need. Additionally, in case of increase/suspension/withdrawal of funds in an arbitrary manner by the Ministry of Finance, the KJC should immediately react as such a thing is interference in the efficiency of the judiciary, consequently a violation of independence.

10. The KJC should be more committed to ensuring sufficient funds for an efficient judiciary, using here also the call of the European Commission in the Feasibility Study Report for greater funds and human resources in order to support the judicial reform.

11. The KJC should conduct surveys in all the courts to assess: the number and weight of the existing cases and those that arrive in the meantime. Such a survey should serve for the assessment of the real needs for the number of judges, their distribution, number of support staff and other resources, in order for the courts to have full efficiency during their work.

12. Together with the proposed budget, the KJC should present the clear indicators also of what is going to be achieved with the requested or allocated funds, including the efficiency in improving the time period for solving cases and the reduction of backlog cases.

13. There should be a decentralization of the budget within the judiciary, but the KJC should retain the right to withdraw in certain moments the budget planning and management function. Initially this should be done in a pilot court and should involve an auditor to evaluate continuously the advantages and disadvantages before proceeding with other courts. This process should be followed by the drafting procedures and standards that have to be fulfilled.

14. The KJC should create a clear career path in the judiciary so that it ensures the development of human resources and professionalism in the future. There should be specific programs which lead the way from internship up to professional collaborators.
For the legislative:

15. The Assembly as a body that approves the budget and requires accountability for the implementation of the budget should have a more active role in ensuring that the asymmetry of information is not misused between the Ministry of Finance and the KJC. In this way when Judiciary complains about the arbitrary intervention of the Ministry of Finance, the Assembly should take adequate measures.

16. The Assembly should develop capacities for analyzing budget planning in the institutions so that in future there will be in-depth analysis about budget proposal rather than approve blindly the documents provided by Ministry of Finance. This is particularly necessary at a time when the law requires some institutions to deliver their budget proposals directly to the Assembly.

For the executive:

17. The Ministry of Finance should be constructive and make no arbitrary interventions either in the planning or the management of the judiciary’s budget. Based on past experience, the MF has had a negative impact on the planning in the sense of suggesting a non-functional budget, where for certain categories it has unnecessarily allocated larger funds than the actual requirement (the Subsidies category), while for the categories where the need was greater, there was lack of funds.

18. The government should improve the policy making process by developing policies that are sustainable and consistent, so that all the strategies with similar focus are in harmony with each other. Government should avoid cases when one strategy puts the strengthening of Rule of Law as a priority and the other does not mention it at all (see the Mid-term Expenditure Framework and the Action Plan of the Economic Vision for Kosovo).

For the donors:

19. The Office of the European Union in Kosovo as the implementer of the project “Young Cells Scheme” should coordinate with KJC so that the beneficiaries of scholarships who complete their Masters studies in the Universities of the European Union countries, have an opportunity to get employed in the judiciary in various positions.