

# JUSTICE SYSTEM REFORM IN KOSOVO

Adem Gashi • Betim Musliu



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## **I. EXECUTIVE SUMMARY**

Justice system, along with other institutional spheres in Kosovo, has suffered severely during apartheid in 90s, as well as during the war in 1998 – 99, upon the absolute control of the Milosevic regime. Apartheid and the communist system have left serious consequences, especially on the judicial professional staff, which even nowadays aggravates the system. Immediately after the war, UNMIK had established emergency judiciary composed of local judges and prosecutors, by inheriting the structure of the courts, the work methodology, laws, and mentality, specifically the communist system. Since the beginning, the structure of courts and prosecution offices has been main subject of discussions, as the inherited structure was not functional. Unresolved status of Kosovo was partially a problem to initiate substantial reforms in the justice system in Kosovo.

After the independence, initiatives, for more substantial and multi dimensional reforms, were intensified, which were closely related to the state building process, whereas the Ahtisari Package was the key and has been entailed in Constitution of the Republic of Kosovo. In this spirit, the Constitution of the Republic of Kosovo has guaranteed independence of judicial and prosecutorial system, by establishing a governance system through control and balance of powers different from the past. Further, Constitutions and laws have guaranteed the permanent appointment until the retirement age and decent salaries, which was a great progress towards an independent judiciary. However, the independence of judiciary has been threatened, especially the budgeting part, as the reform has been supported with minimum resources. Legal reform has involved different aspects, such as establishment of out-of-court mechanisms by helping out the efficiency of judiciary. In the spirit of substantial reform, Criminal Code and Criminal Procedure Code have been drafted. The procedural aspect of the legal reform could be criticized, because of the lack of consultations with public about the changes that have happened.

During this period, there have been initiatives to reform the staff. The greatest challenge during the re-appointment and appointment process of judges and prosecutors has been to recruit professional staff in the system. Lack of a clear offer and in general un-professional staff have had negative impact on the results of this process.

In general, this reform has lacked a comprehensive strategy which would guide the activities of different institutions and would make it easier to evaluate the reform. Lack of a comprehensive strategy has pushed institutions to establish new institutes and mechanisms, re-design existing procedures and mechanisms, and undertake other activities on ad-hoc basis and by responding to immediate needs.

As there is lack of clear indicators based on which the progress of the reform would be evaluated, KLI has developed some indicators which could be used to evaluate the progress on regular basis.

## II. THE PROCESS OF POLICY MAKING IN JUDICIARY REFORMS

### a. *The reform roots and the needs*

Justice system, along with other institutional spheres in Kosovo, has suffered severely during apartheid in 90s, as well as during the war in 1998 – 99, upon the absolute control of the Milosevic regime. Throughout one decade Albanian prosecutors and judges were expelled and left out of the judicial institutions, enabling them to exercise the basic function of the defense attorneys in a system that was politically influenced and depended on the power structures. Apartheid and the communist system have left serious consequences, especially on the judicial professional staffs, which even nowadays aggravate the system. Consequently, Kosovo has had an immediate need to initiate reforms in judiciary, in terms of training its staff, organizational reforms, as well as legal reforms in order to address the challenges of post communist and post war society.

Immediately after the war, the United Nation Mission in Kosovo (UNMIK) has reviewed the judicial systems and the pro, the judicial system and the prosecutorial system. However, this process was addressing the emergency situation in Kosovo, as well as addressing short term challenges. UNMIK had established emergency judiciary composed of local judges and prosecutors, by inheriting the structure of the courts, the work methodology, laws, and mentality, specifically the communist system.<sup>1</sup> Unresolved status in Kosovo, held hostage judicial reforms<sup>2</sup> which were much needed, hence the system was dependent and under the authority of PSSP, who could intervene at any case.

In meantime, Kosovo was faced with many challenges,<sup>3</sup> which “have put the judiciary in a state of constant reform.”<sup>4</sup> Continually, UNMIK and Provisional Institutions of Self Government (PISG) were engaged in drafting policies, laws, and in establishing mechanisms and institutions which would assist the system. One of the main and major accomplishments was drafting and entry into force of the Criminal Code and Criminal Procedure Code 2004. While in 2008, reforms have happened were related to transfer of competences from internationals to locals.<sup>5</sup> After the independence, initiatives, for more substantial and multi dimensional reforms, were intensified, which were closely related to the state building process, whereas the Ahtisari Package was the key and has been combined with the Constitution of the Republic of Kosovo. The Constitution has opened the road to drafting of the new legislation, and fixing the architecture of the independent

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<sup>1</sup> Haxhaj R., *Issues of Reform in the Justice System Reform in Kosovo*, (Prishtina: Annual Conference, 2008).

<sup>2</sup> *Ibid.*

<sup>3</sup> According to OSCE challenges include: “[judiciary in Kosovo] is faced with a numerous problems and a number of challenges such as the backlog of cases, organized crime, property issues, ethnical crimes, allegations of corruption, burden of war crime cases, as well as poor infrastructure, to highlight the most important once.” *Judicial Independence in Kosovo: Institutional and Functional Dimensions* (Prishtina: Organization for Security and Cooperation in Europe, Mission in Kosovo, January 2012), pg. 6.

<sup>4</sup> *Judicial Independence in Kosovo: Institutional and Functional Dimensions* (Prishtinë: Organization for Security and Cooperation in Europe, Mission in Kosovo, January 2012), pg. 6.

<sup>5</sup> We need to take into account here the establishing of Ministry of Justice, Ministry of Internal Affairs, as well as establishing of Kosovo Judicial Council (in 2005 to replace the Judicial and Prosecutorial Council of Kosovo which was in fuction since 2001).

governance of justice system, as per OSCE, legislative and judicial reforms which entailed a big number of laws.<sup>6</sup> All these legal changes have resulted in radical changes in the system.

*b. Stakeholders involved in policy making and law reform*

International community, UNMIK which has originally administered Kosovo and then ICO had supervised independence, were the lead actors and influential in process of policy making and law reforms in post war Kosovo.

UNMIK administration main goal was establishing the basic governance institutions in Kosovo. In the institutional aspect, during its first year of functioning, basic institutions were established with very limited competencies, but key to functioning of everyday life in Kosovo, such as Ministry of Justice, Ministry of Internal Affairs, as well as Kosovo Judicial and Prosecutorial Council (KJPC) which was transformed to Kosovo Judicial Council. Gradually, with increased capacities of local institutions the process to carry certain competencies from internationals to locals has started. Throughout this time not much has been done in terms of reforms, and there was lack of long term policies for a functional justice system in Kosovo. A special attention was paid to the transition process to local institutions, while reserving some of the competencies which had state-building elements remain in hands of international institutions. Consequently, without the final resolution of the political and legal status of Kosovo, it was impossible to shape the justice system through substantial reforms. Even after independence, certain powers with state building elements remain in the hands of international institutions, including here UNMIK, such as the case of international judicial cooperation in criminal matters, Interpol, etc.

Despite the fact that UNMIK had the space to act, with its priority to have a stability in the country, it did not take any measures and reforms for the personnel, as to filling the vacant positions for judges and prosecutors, which will have a long term impact in the future developments, especially after the declaration of independence of Kosovo. This has left a big gap in terms of functioning and efficiency of the judicial and prosecutorial system.

Comprehensive Proposal for the Kosovo Status Settlement had defined the Kosovo status, determined the construction of the state, and consequently had defined the position of the judiciary. ICO was engaged in establishing the foundations of a democratic state and laws that would ensure the implementation of the Ahtisari package which was also a guide for institutional and legal framework of the independent state. Substantial reforms are considered those to be implemented after the entry into force of the Constitution of the Republic of Kosovo in 2008. In this process, different stakeholders have reached a consensus on many initiatives that had to be undertaken. However, divergences have existed with regard to creation of specific ethnic based structures. The

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<sup>6</sup> Law on Courts; Law no. 03/L-225 for the State Prosecutor, 30 September 2010; Law No. 03/L-224 for the Prosecutorial Council of Kosovo, 30 September 2010; Law on Kosovo Judicial Council; Law NO. 03/L-202 on administrative conflicts, 16 September 2010; Law No. 03/L-191 for execution of criminal sanctions, 22 July 2010; Code . 03/L-193 for juvenile justice, 8 July 2010; Law No. 03/L-117 on the Bar, 12 February 2009; Law No.: 03/L-121 on Constitutional Court, 16 December 2008; Law No. 03/L-123 the composition of the interim Kosovo Judicial Council, 16 December 2008 (to assist the re-appointment review ); Law No. 03/ L-007 Contentious Procedure 20 November 2008; Law No: 03/L-002 Amending the Criminal Code, 6 November 2008; Law No.. 03/L-003 amending the Criminal Procedure Code, 6 November 2008; Law No.: 03/L-10 Notary, 17 October 2008; Law No.: 03/L-006 on Contested Procedure (Civil Code), 30 June 2008; Law No. 03/L-008 on Executive Procedure, 2 June 2008; Law No.: 03/L-052 Special Prosecutor, 13 March 2008; and Law on responsibilities cited above. *Judicial independence in Kosovo: Institutional and Functional Dimension* (Prishtinë: Organization for Security and Cooperation in Europe, Mission in Kosovo, January 2012), pg. 7.

international community insisted on establishing the court of appeal in north Mitrovica, because of the Serb community in this part of the country. This was not supported by the Kosovo Government and ultimately was not included in the basic laws. The process ended with only one Court of Appeal in Prishtina. Resolving this dispute paved the way for the adoption of laws by the Parliament of the Republic of Kosovo and proceeding further with reforms in various areas of the justice system.

Local government institutions, in particular the political class, were reluctant to contribute to the justice system reform. While excluding problems with re-structuring and organizing of the judiciary and prosecution due to unresolved status of Kosovo, these institutions have anathematized justice system and have further contributed to its fragility. Institutions have failed to establish policies for development of professional staff. Education of lawyers had its deficiencies,<sup>7</sup> thus contributing to a significant number of unprepared professionals to run in appointment and re-appointment in 2009.

Justice System had appointed judges and prosecutors to contribute to the drafting of policies and laws. Due to the fragility of the system, “there was no contribution of the judiciary but the contribution of judges on individual basis in terms of legislative drafting for courts and KJC”<sup>8</sup> Finally, legislative reforms may reflect personal opinions of appointed judges and prosecutors, but not politics of such systems. Such problem continues even nowadays when the process is undergoing through amendment of basic justice laws and establishing the new justice institutions.

Throughout the process of reforms in the justice system, civil society organizations were left out. Such practice continues even today.<sup>9</sup> Marginalization of civil society’s role in drafting policies for the justice system reform results in passive engagement of civil society organizations in implementing such reforms, because of lack of knowledge for existence of such policies and laws. Lack of transparency and cooperation with citizens is considered to be a harmful approach of reforming the system which is vital to the society. Without having a consensus, the society is imposed to adapt to norms which are generated by a very narrow interest groups.

International donors are main stakeholder in all reform initiatives of the judicial system. In general, their contribution was very positive.<sup>10</sup> This is because local institutions lacked the resources to draft policies and to build a genuine reform. This support has also the other side of the coin. Each donor through its support was able to push forward their own school of thought.<sup>11</sup> Hence, none of the laws in the justice system has a spirit of a certain school of thought from the beginning to the end, but you can find different schools intertwined in one law. This is a result of inability of local institutions to coordinate donor assistance and their contribution. Finally, a vision should be established and practices based on context should be taken into consideration.

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<sup>7</sup> Gaps were identified at the Public University and other educational institutions, private and public, which did not have a program to offer legal studies with high quality, therefore having lawyers who do not have the knowledge on drafting the laws, interpretation of laws, or applying the applicable laws. Institutions are to be blamed as well, who do not have the capacity to organize qualitative trainings and other activities such as practice in courts to prepare these young lawyers. Issues of Reform in the Judicial System in Kosovo, Mr. Sc. Rafet Haxhaj, RSHSL, Annual Conference 2008. Kosovo and its integration in EU, Robert Muharremi, 13 April 2008, pg 10.

<sup>8</sup> KLI interview with Mr. Albert Avdiu.

<sup>9</sup> There was very little transparency and discussion for the Criminal Code (2012), New Code of the Criminal Procedure (2012), amendment of the basic laws for the judiciary (2013-), and amendment of other laws.

<sup>10</sup> KLI interview with Mr Hajredin Kuci, Deputy Prime Minister and Minister of Justice.

<sup>11</sup> *Ibid.*



EULEX reserves a special place in justice system in Kosovo. After the declaration of independence, presence of this mission has been very important in determining the infrastructure of the judiciary and prosecutorial system in Kosovo, reserving exclusive jurisdiction for prosecution and trial of certain cases. The Government of Kosovo has always paid a special attention regulating the responsibilities of this mission, and always required to consult closely with the European Union for possible changes. Furthermore, the new Criminal Code of Kosovo specific responsibilities are specified for the Special Prosecutor of Kosovo, which is lead by and is held accountable by EULEX, while including here procedural issues that do not belong there.

Despite numerous initiatives, major changes have been already accepted by the majority of institutions, policy makers and citizens. This is a result of the interconnection of the existing system with communism and apartheid regime.<sup>12</sup> Therefore, the changes in the system are easily embraced and without any resistance.

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<sup>12</sup> *Ibid.*

	Mandate	Position	Context	Developments	Stagnations
<b>UNMIK</b>	Administration of Kosovo during the emergency phase until definition of its final status  Supreme authority of SRSG	Intervention in emergency situation  Maintaining political stability  Attention to responsibilities in the first UNMIK pillar respectively with judges and international prosecutors of Penal Division of Justice Department (which has played the role of Ministry of Justice)	When deployed has found a situation of a post war and post communist place  Final Status of Kosovo not resolved  Different laws applicable	<b>Issuance of:</b> Constitutional Framework, Criminal Code, Code of Criminal Procedure  <b>Establishment of institutions:</b> KJPC, KJC, MoJ, MoA  Infrastructure for the re-appointment and appointment, transfer of responsibilities.	Continues crawl up of the reforms in the system up to a collapse of the justice system  Installing a sort of intervention practice to bring justice by SRSG's use of executive powers to influence judicial decisions and serious violation of human rights, more precisely European Convention of Human Rights.
<b>NEGOTIATIONS KOSOVO – SERBIA / MARTI AHTISAARI</b>	Define the final status of Kosovo  Approximation of positions of parties in the dialogue between Kosovo and Serbia	The creation of independent institutions that will respect the highest standards on human rights and freedoms	Kosovo under international administration	Package which lead the process of creation of Republic of Kosovo, as a democratic country which functions based on the principle of separation of powers	Serbia's negative impact in Kosovo's internal matters (paralysis of the scope of authority in Northern Mitrovica)
<b>QUINT Countries</b>	Influence which they exert as Partners in the process of state building in Kosovo.	Establishment of Court of Appeal in Mitrovica  Conflicting presence in terms of legal schools of thought (counties with	Kosovo Government vulnerable towards international community	Have supported and lead initiatives	N/A

		most influence USA, Germany, Great Britain)			
<b>EXECUTIVE INSTITUTIONS AND LEGAL INSTITUTIONS</b>	Limited mandate due to UNMIK presence. After the independence has a leading role in drafting and enforcing the laws	Refusal on establishing the Court of Appeal in North Mitrovica	Vulnerable towards internationals, in process of drafting and implementation	Engagement in numerous initiatives in close cooperation with international community  Establishing and functioning of non judicial institutions	Lack of inclusive strategy  Dragging the drafting and enforcing new laws
<b>LOCAL JUDICIAL INSTITUTIONS (for more see tables below)</b>		Reluctance to re-appointment process		Completion of the transition process from the old structures to the new structures with the new staff which were appointed or re-appointed	Lack of accountability  Lac of efficiency (increase of backlog cases)  Vacant positions for judges and prosecutors  Individual opinions of judges and prosecutors in law-making consultations
<b>PRISHTINA – BELGRADE DIALOGUE / APRIL AGREEMENT 2013</b>	AAA	Kosovo: Unified System in accordance with the Constitution and Laws of the Republic of Kosovo  Serbia: Creation of autonomous mechanisms which are contributing to the ethnic, territorial division, parallel networking	Difficulties in expanding authority of legal institutions in Northern Kosovo	N/a	Uncertainty about the interpretation / implementation of the agreement

c. Policy making for reform

Right after the war, several research and analysis had been conducted to address the reform of judiciary as part of the overall reforms for state building in Kosovo. A continuous attention was paid to restructuring of courts and prosecution offices, in order to clarify responsibilities, advance staff professionalism, simplify the system and ease public access. In this light, establishing Basic, Appeal and Supreme Courts was considered the most acceptable option from all stakeholders.

This process acknowledges the contribution of local and international experts, including those from Max-Planck Institute and University of Graz, which articulated the need for a law on the organization of courts, recommending a system of courts' structuring where the Basic Court with specialized branches will rule at the first instance, the Court of Appeal will rule at the second instance, as well as at the first instance for the criminal offenses with high dangerousness, and the Supreme Court will decide on the extraordinary legal means and in certain cases at the second instance.<sup>13</sup>

The following scheme was suggested in 2002 for the courts in Kosovo:<sup>14</sup>

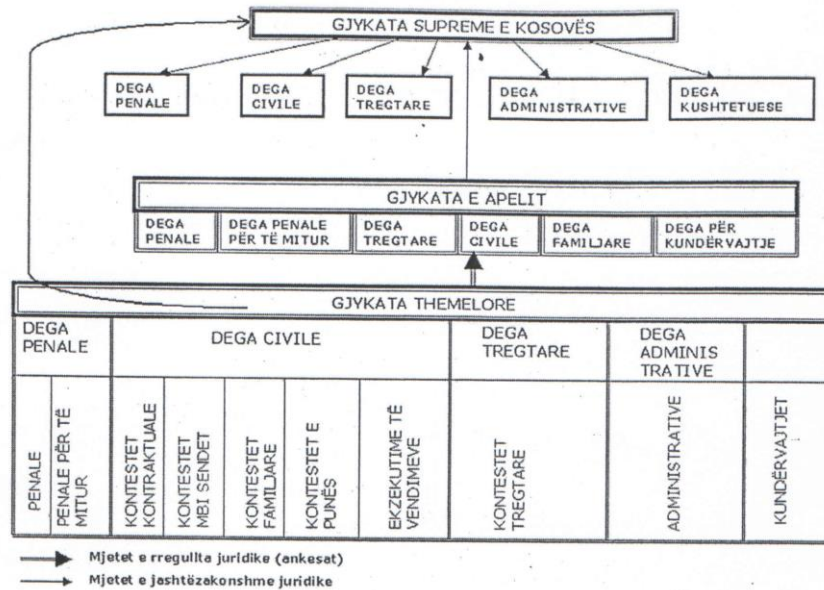


Figure 1 – The suggested structure for courts in 2002

Current reform in some parts resembles the issues and recommendations of 2002 presented in the paper “Suggestions for reorganizing the judiciary in Kosovo”,<sup>15</sup> of Rexhep Haxhimusa, than the Head of Supreme Court of Kosovo, be it regarding the independence of judiciary, its structural

<sup>13</sup> Haxhimusa, R. *Options on court re-organization in Kosovo: Law Studies in Kosovo, Vol. 3, 2002/II* (Prishtina: Kosovo Law Center, 2002).

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

organization, or establishment of non-judicial institutes. Current judicial reform is closely linked also with the assessment and options offered by the Judicial Assessment Group<sup>16</sup> based on the request of the Special Representative of Secretary General (SRSG), filed May 14, 2002 and of the Judicial and Prosecutorial Council of Kosovo.<sup>17</sup>

This endeavour resulted in a document with concise analysis on the current context in Kosovo, as well as concrete recommendations for the justice system, all of which were summarized in the “Judicial System of Kosovo: Assessment and Suggested Options, 2003-2004” report. A more efficient structure of the jurisdiction of courts’ system has been one of the central issues that has paved the way to the respective recommendations of this report. This assessment concluded that “the judicial system of Kosovo is unnecessarily complicated with (i) too many court instances, and (ii) overlapping responsibilities assigned to judges, particularly having in mind the population size of Kosovo and the insufficient financial sources.”<sup>18</sup> The same report suggested restructuring of the judiciary and its responsibilities, where municipal courts would rule the first instance cases, the district ones would handle the appeal cases, and thus the Supreme Court would deal with important legal issues. This report also articulated the need for non-judicial mechanisms, specialized courts, lay judges, as well as the support staff.

This research and others such as those of ABA ROLI,<sup>19</sup> indicate that Kosovo could have developed better policies based on the high quality research. Regardless these researches, state authorities did not come up with a strategic document to plan the phases of changes and improvements in the justice system, be it the structuring of the system, development of human capacities, establishment of non-judicial mechanisms, or elimination of complexity in primary and secondary legislation.

The lack of a comprehensive strategy open the door to new institutes and mechanisms, redesigning of procedures and existing mechanisms, and other ad-hoc activities and reactions based on the current need. Consequently, relevant stakeholders lack a unified standpoint on the aim of the reform, but all to a certain degree agree that “the reform of judiciary has aimed a higher efficiency of justice system.”<sup>20</sup>

The lack of a strategic document did also cause a weak coordination of initiatives, thus negatively impacting the overall success of the reform. For example, the reappointment and appointment of judges and prosecutors was damaged by the lack of a dignified offer, knowing that many well-

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<sup>16</sup> Note: The Main Group for Judicial Assessment consisted of G. N. Rubotham, Director of Reform and Development, Courts’ Service in Ireland; Lis Sejr, Judge in the Western High Court of Denmark; John Tunheim, US district judge in the Minnesota District, USA; Elizabeth C. Wiggins, Senior research associate, Federal Judicial Center in the USA; and Markus B. Zimmer, Administrator in the District Court of the United States for the District of Utah.

<sup>17</sup> Note: Letter of Mr. Michael Steiner, SRSG, for Mrs. Renate Winter, Head of Kosovo Judicial and Prosecutorial Council.

<sup>18</sup> G.n.Rubotham et al., *Kosovo Judicial System: Evaluation and options suggested 2003-2004*, Section IX Organization and jurisdictional staff in courts of Kosovo (Prishtina: 2004), pg. 257.

<sup>19</sup> Series of four volumes of publications of Judicial Reform Index for Kosovo

<sup>20</sup> KLI interviews with Mr. Hajredin Kuci, Minister of Justice, Mr. Enver Peci, Chairman of the KJC, Mr. Ismet Kabashi, Head of KPC, Mr. Fejzullah HASANI, President of Supreme Court, Mr. Albert Avdiu, Director of KJC Secretariat, Mr. Shkëlzen Maliqi, General Director of the Chief State Prosecutor Secretariat and others.

known lawyers did not consider the judicial and prosecutorial system for their career development. The main reason behind this was the initiation of re-appointment and appointment process before defining the status of judges and prosecutors, including remuneration and responsibilities, as well as before defining the organizational structure.

The only public document summarizing in a page and a half the efforts of government to address the needs and challenges of the justice system reform is the Policy Priority Document 2014-2016, which consists of the following:

- Establishment and advancement of legal and institutional framework in support of rule of law in accordance with the EU integration process priorities,
- Further advancement of the system of international legal aid and cooperation,
- Ensuring the preconditions for and more efficient administration of the system of execution of penal sanctions,
- Development of a legal system that would be transparent and ensure full functioning of the judicial reform in accordance with the applicable law,
- Creation and improvement of physical infrastructure.<sup>21</sup>

These priority policies have remained on the paper since budgetary allocations do not correspond with these commitments.

In the absence of a comprehensive vision, the contribution of local experts, international community, their missions and different donor organizations had an important impact in shaping this reform, imposing practices of other places, a challenge that will impact the functioning and efficiency of the justice system in Kosovo. The justice system of Kosovo is mostly influenced by the American legal system, as well as combines elements of German and French legal school. If we look at the Criminal Code and the Criminal Procedure Code we discover a mixed system of justice combining practices and institutes from German, French, Italian and Anglo-Saxon systems. “Criminal Procedure Code and some of its parts have inherited pure American Culture, such as the plea bargaining. The practice of the European Convention on Human Rights is all over the law, especially on establishment of a balanced system of forces between the parties in criminal procedure.”<sup>22</sup>

The practice of making laws without policies and strategies is still accompanying the process of reform in general. “Nothing has changed, we talk about a Special Chamber for Serious Crimes, but there is no concept document, ... This is proceeding with ad-hoc solutions.”<sup>23</sup> As a result, laws that are linked with the reform are seen as problematic from the very planning phase of action and nowadays, even though less than a year passed since their entry into force, meetings are being held for their substantial amendment.

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<sup>21</sup> Declaration of Mid-Term Policy Priorities 2014-2016, Office of Prime Minister, p. 23 and 24, 5 April 2013.

<sup>22</sup> KLI e-mail communication with Mr. Kujtim Kerveshi, Law Expert.

<sup>23</sup> KLI interview with Mr. Albert Avdiu, Director of KJC Secretariat.

### III. LEGAL REFORM

During the post war period, the justice system has gone through permanent reforms, addressing many needs and challenges. Before the independence, Kosovo had many serious problems with its highly complicated legal system consisting of many levels of applicable law which produced legal uncertainty.<sup>24</sup> Before the declaration of independence, drafting and entry into force of Criminal Code and Criminal Procedure Code in 2004 was considered an achievement of the legal reform process. These two pieces as well as adoption of other laws, such as Family, Inheritance and so on, have improved the legal infrastructure.<sup>25</sup>

Entry into force of the Constitution of Republic of Kosovo and adoption of other laws have eliminated to a certain extent the complexity of legal system. Moreover, year 2008 marked the peak of legal reform, when Kosovo, according to its Constitution was declared a democratic Republic, which respects the division of powers and checks and balances between them.<sup>26</sup> For the first time, the judicial branch of power in Kosovo is defined as unique, independent and to be exercised by courts, marking the biggest progress in ensuring the independence of this branch of power.<sup>27</sup> Besides granting judiciary's independence, the Constitution did also foresee the process of independence of prosecutorial system through the establishment of Prosecutorial Council of Kosovo. This way, the Constitution paved the way for a thorough reform of justice system, indicating clearly the vision for the system of governance. Resultantly, legislative and judicial reform has incorporated drafting and amending a relatively high number of laws.<sup>28</sup> All these laws aim at impacting the creation of legal predictability and certainty in Kosovo.

Drafting and entry into force of four basic laws of justice system<sup>29</sup> have been delayed mainly due to the disagreements between the Government and international community over the court structures, the latter insisting on the establishment of an Appeal Court in the northern part of Mitrovica.<sup>30</sup> The respective laws were adopted in 2010, further advancing the independence of judicial and prosecutorial system. Moreover, the laws defined the new structure of courts and prosecution offices, thus changing the overall functioning of the system.

The lifetime tenure until the retirement of the judges and prosecutors, levelling of salaries with other branches of power, new court structures with specified responsibilities, establishment of PCK, as well as other legal improvement in judicial and prosecutorial system have been the main elements of the reform process.

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<sup>24</sup> Muharremi R., *Kosovo and its integration into the European Union* (Prishtina: AUK, 13 April 2008), pg. 5.

<sup>25</sup> *Supra*, note 1, pg. 5.

<sup>26</sup> Article 4, *System of Governance and Division of Powers*. Constitution of Republic of Kosovo.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Supra*, note 6.

<sup>29</sup> Consisting of the Law on Courts, Kosovo Judicial Council, State Prosecutor, and Kosovo Prosecutorial Council.

<sup>30</sup> TV debate on: "*Justice system reform*". RTK, Program Jeta në Kosovë, 9 July 2009. (accessed last on 24 November 2013 <http://jetanekosove.com/sq/Debate/Reformimi-i-sistemit-te-drejtise-45>)

In light of a genuine reform process, the new Criminal Code and the new Criminal Procedure Code were drafted, as well. The Criminal Procedure Code of the Republic of Kosovo have been promulgated in Official Gazette only three days prior to its entry into force,<sup>31</sup> causing many difficulties in actual implementation of the Code. The enforcement officials had lack of necessary knowledge about its content and implementation. This situation produced a considerable insecurity in the justice system with regard to proper implementation of the Code. Neither trainers had a clear idea on its implementation.<sup>32</sup> Uncertainties around the CPC caused difficulties in the functioning of courts and proceedings, urging Supreme Court judges to issue a legal opinion on 7 January 2013, to specify the procedures on the basis that “transitional provision [of CPC] are absolutely dubious and unclear...”<sup>33</sup> Further, law experts consider that the old Criminal Procedure Code has been better, considering the aspects of the law techniques and compatibility.<sup>34</sup>

Ministry of Justice in cooperation with KJC and KPC has drafted the “Terms of References for the joint mechanism of assessing the functioning of restructured system of criminal justice”.<sup>35</sup> Several meetings were held and information was gathered around the shortcomings as well as the needs for amendments of the current laws in this sector. This process will in the end produce an analysis and recommendations “to improve efficiency, effectiveness, economy and system of criminal justice ...”<sup>36</sup>

In post-communist countries, civil issues, especially those related to property, are quite sensitive and many challenges occur around them. Kosovo is precisely facing with such problems, which were not adequately addressed until now, starting from the incomplete legislation. Government identified legislative reform as a priority area, since “civil issues are not properly defined, among them, the issue of property, their regulation, types of property and so on”.<sup>37</sup> In the coming years, this part of the reform of justice system should receive special attention, with a particular focus on codifying the civil justice. In this regard, lawmakers should also bear in mind the advancement of administrative justice.

Legal framework is mostly complete.<sup>38</sup> Besides many delays in drafting and adopting these laws, they failed ensuring sustainability, since even before entry into force many problems have been

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<sup>31</sup> Criminal Code Procedure has been approved in Assembly on December 13, 2012, has been signed by President on December 21, 2012, and has been published in the Official Gazette on December 28, 2012. It has entered into force on January 1, 2013.

<sup>32</sup> KLI interview with Mr. Driton Muharremi, Court of Appeals Judge.

<sup>33</sup> Legal Opinion, 15 January 2013, Supreme Court of Republic of Kosovo.

<sup>34</sup> KLI interview with Mr. Ismet Salihu, Criminal Law expert.

<sup>35</sup> This mechanism was established to address the recommendations from the Report on Visa Liberalization, which has asked that in the second half of 2013, to review restructuring and functioning of the Criminal Justice, including here the basic laws as well as the new Criminal Code and the Code of Criminal Procedure”.

<sup>36</sup> Terms of Reference for a joint mechanism for evaluating the functioning of the restructured system of criminal justice

<sup>37</sup> KLI interview with Mr. Hajredin Kuci, Deputy Prime Minister and Minister of Justice.

<sup>38</sup> *Ibid.*



anticipated. As a result we come to the process of amending the basic laws of judicial and prosecutorial system, due to the challenges of implementation.

#### **IV. JUDICIAL AND PROSECUTORIAL PERSONNEL REFORM**

Personnel reforms cannot be limited only to the process of re-nomination and nomination of the judges. This reform requires clear policies and strategies which would include a large number of institutions, to go beyond the judicial and prosecutorial.

During UNMIK administration, the justice system in Kosovo was comprised of judges and prosecutors, and they did not go through proper verification and testing. The justice system at that time was very rigid in including new people. Throughout this, local judges and prosecutors had limited competencies and were very much dependent, and under the orders of Justice Department of UNMIK.

The process of appointment and re-appointment of judges and prosecutors is seen as one of the substantial reform of the justice system, with the aim of regaining the public trust in the system. Based on the similar process that was in Bosnia and Hercegovina,<sup>39</sup> the legal basis for the re-appointment and appointment were founded in 2006.<sup>40</sup> While in 2008 legal norms were enacted to establish Independent Judicial and Prosecutorial Commission (UPC), a body that would deal with verification and evaluation of the candidates.<sup>41</sup>

The biggest challenge in the re-nomination and nomination process of the judges and prosecutors was recruiting and brining in the professional staff in the system. Numerous backlog cases, corruption and favoritism, and lack of competence, never could have been solved with the old / existing staff, and / or with the mindset that has created such problems in the first place. Lack of concrete offer and generally non professional staff has adversely impacted the results of this process.

The offer for candidates for judges and prosecutors was not tempting, in terms of compensation as well as the uncertainty of their status. Harmonizing salary level for judges and prosecutors, with the rest of personnel that were in other institutions<sup>42</sup> has happened only after the re-nomination process. Consequently, the judge and prosecutor positions are not seen as dignified position from many lawyers. In general, there was lack of qualified candidates, where from 898 candidates, only 418 have passed the basic ethical, and only 334 were nominated. The process ended with 274

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<sup>39</sup> This was ongoing process that started in 2002 and continued through 2004. KLI interview with Mr. Fejzullah Hasani, President of the Supreme Court of Republic of Kosovo.

<sup>40</sup> Regulation on regulative framework of the justice system in Kosovo, *Regulation No: 2006/25, Article 7 "Judicial Reform"*, United Nation Mission in Kosovo, 27 April 2006.

<sup>41</sup> Administrative Instruction for Implementation of the UNMIK Regulation number 2006/25 on Regulative framework of the justice system in Kosovo, Administrative Instruction number 2008/2, United Nation Mission in Kosovo, 17 January 2008.

<sup>42</sup> Salary level was ensured with new Law on Courts and Law on State Prosecutor, which were enacted at the end of 2010, and such provisions were entered into force only in 2011.

judges and 60 prosecutors that were either re-nominated or nominated, thus leaving vacant 98 positions for judges and 29 positions for prosecutors.<sup>43</sup>

Despite that the initiative had begun earlier, responsible institutions had failed to prepare the new staff, which would join the justice system, because “in Kosovo there is not lack of lawyers, but lack of good lawyers”.<sup>44</sup> This had effected the overall process and that the low level of professionalism of judges and prosecutors left many vacant positions. Throughout years, the number of higher education institutions, including here the Law Faculties has increased. This may be a possibility that in the future as a result of high competition the legal education of young lawyers may be improved. Besides formal education, there is a great need to offer a career path development in the judicial system, which does not exist at this moment. Responsible for such failure are judicial institutions, prosecutorial as well as governmental institutions. The justice system should be able to prepare career advancement scales, which would come as very natural process in terms of developing a cadre of professionals, who would be equipped with knowledge as how to interpret and apply laws. In this spirit, Kosovo Judicial Institute, is key in terms of preparing judges and prosecutors and advancing their knowledge. Capacity building and quality training at KJI is essential to ensure good quality of staff in the future. In this regard, ongoing debate is present for the creation of the Justice Academy, which would be specialized in training and education of justice personnel.

During the reform process, political influence was present, specifically during the process of re-appointment and appointment of judges and prosecutors, the filtering process of judges and prosecutors in leading positions. Appointments and refusals which were done on political basis were mentioned in the European Commission Progress Report 2011. Former Acting President Mr. Jakup Kransiqi has intervened and shortened the list submitted by KJC, which had names for the proposed judges and prosecutors.<sup>45</sup>

The other shortcoming of the reform process of the staff in the process of appointment and reappointment of judges and prosecutors, are the criteria's set forth for this process. The work experience set in the criteria for appointment of judges and prosecutors is still not comprehensible by a number of professional's lawyers in Kosovo. Consequently, the required 12 years experience has eliminated a great number of young candidates, because such criteria of 12 years work experience as judge or prosecutor were able to meet only those who have worked in the previous judicial system of communist times, whereas the young cadre of professionals were unable to meet such criteria, who were part of the system only after the war.<sup>46</sup>

A serious problem with the justice reform is the issue of judicial administration. We have sufficient number of administrative staff compared to judges in the courts, three staff for one judge.<sup>47</sup>

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<sup>43</sup> Work report of IJPC (Prishtinë: The Independent Judicial and Prosecutorial Commission, 29 October 2010), pg. 2.

<sup>44</sup> KLI interview with Mr. Hajredin Kuci, Deputy Prime minister and Minister of Justice. *Supra note 26*, pg. 10.

<sup>45</sup> Kosovo *Progress Report 2010* (Brussels: European Commission, 2010).

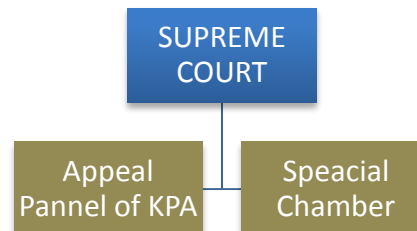
<sup>46</sup> Musliu, B., The process of re-appointment and appointment, independence and impacts: Re-appointment and appointment of judges and prosecutors in Kosovo (Prishtinë: Kosovo Law Institute, August 2011).

<sup>47</sup> KLI interview with Mr. Hajredin Kuci, Deputy Prime Minister and Minister of Justice .

However, the main problem is the structure of the judiciary, and there is lack of professional staff. The policy which had requested not to dismiss anyone but to have all employees resettled had a negative impact on the reform.<sup>48</sup> The administration is a crucial part on the judicial and prosecutorial system, because it does great amount of work in preparation of cases. At the same time, it is quite disturbing that this administration was inherited from the from the past system, and it did contribute a lot to the post-war judicial deficiency. Therefore, personnel reform process, which includes judges and prosecutors, through the re-appointment and appointment process should establish a mechanism and a process which will also deal with support staff and administrative employees as well. Furthermore, if the reform process does not foresee this, it will be considered a great failure.<sup>49</sup> A numerous allegations of corrupt activity cannot be done solely by judges and prosecutors without a close cooperation with their support staff. In the past there were cases where the support staff was accused, who have taken the responsibility to take over some of the responsibilities of the judges and prosecutors.<sup>50</sup> KLI considers that the reform of the administration of the judicial and prosecution, is one of the key elements in order to regain trust of society in the justice system. The first encounter of citizens that go to court it is with the administration staff, and their performance is crucial in order for citizens to believe in justice system. Therefore, some sort of filtering process should be taken into account also for this part of the court system, and to create a mechanism that would measure the performance, which remains to be a challenge for the justice institutions.

## V. Structural Reform and support with resources

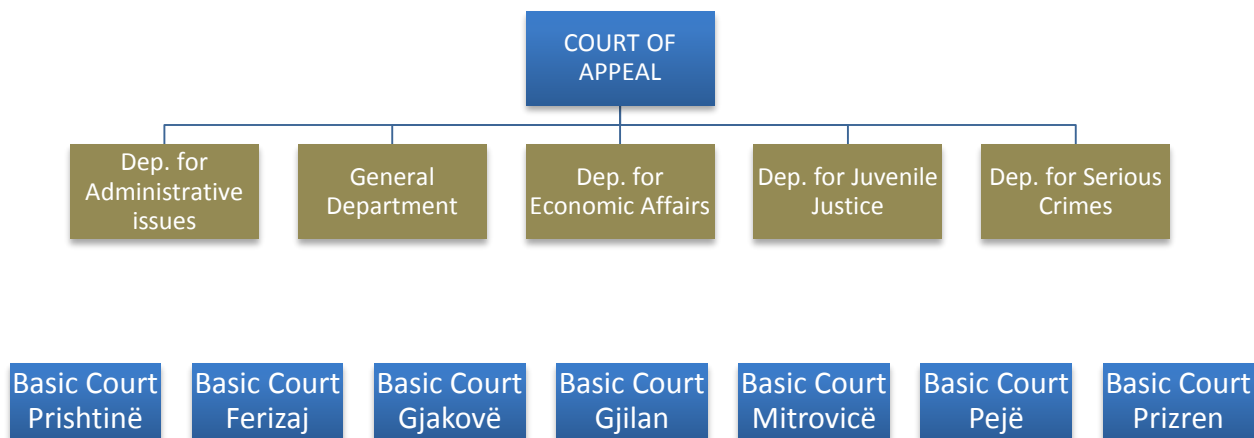
The court reform process has started right after 1999. However, the unresolved political status of Kosovo was one of the key factors that somehow postponed this reform to happen. The new structure was intended to simplify the system, to assist in specializing judges and prosecutors, and clarify the responsibilities as much as possible. Below is the new court structure:



<sup>48</sup> IKD interview with Mr. Sali Mekaj, President of Court of Appeal in Prishtina.

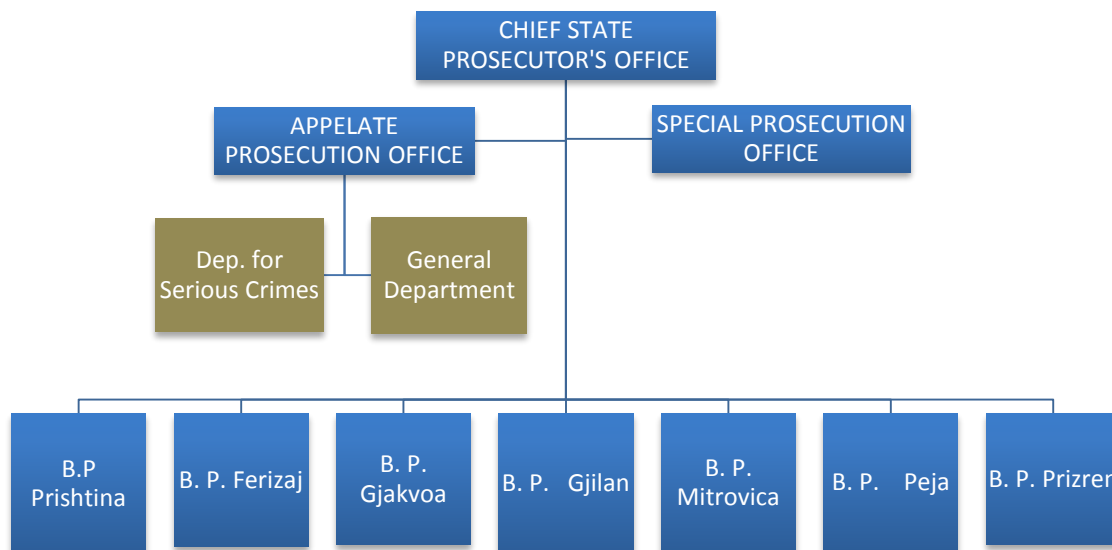
<sup>49</sup> *Supra note 45.*

<sup>50</sup> Bajrami S., Shoferi i pazareve, Gazeta Express, 24 gusht 2009.



*Note:* Each of seven Basic Courts (B.C.) has the following departments: General Department, Department for , Serious Crimes, and Department of Juvenile Justice. Whereas, only the Basic Court in Prishtina, has to extra departments, Department on Economic Affairs and Department of Administrative Affairs. Basic Courts have braches: Prishtina (4), Mitrovica (4), Peja (3), Gjakova (2), Prizren (2), Gjilan (3), and Ferizaj (2).

Whereas the structure of prosecutorial system is as follows:



*Note:* Each Prosecutors Office has three departments: Serious Crimes, General Crimes, and Juvenile Justice.

Structuring such courts in seven Basic Courts, an Appeal Court, and the Supreme Court has allowed for courts to be concentrated in certain issues, opportunities for further development and specialization of judges and prosecutors. At the same time, establishing branches enabled for citizens to have easier access in justice institutions. However, the new structure did not address in the best manner the issue of serious crimes and administrative cases. For cases of serious crimes it is required from judges that they pay special attention and special treatment for such delicate

cases, which the difference in terms of payment is only 20 Euros. This small difference in compensation does not stimulate judges to be part of departments that deal with more serious issues. Although not much time has passed since the new structure has been functioning, a number of debates and discussions were raised on creation of Special Court for Serious Crimes, as well as the need for creation of Administrative Court. The President of Basic Court in Prishtina agrees that there is a need to establish Economic Court / Administrative High Court as well as Court of Serious Crimes, noting the need for special qualified staff.<sup>51</sup>

Medium Term Expenditure Framework (MTEF) 2014-2016 it is not in accordance with the priorities stated in the DPP 2014 – 2016, which fails to oversee adequate financial resources to create and improve the physical infrastructure of the courts. With current forecasts and the trend of budget planning, this goal will be achieved only in 2028.<sup>52</sup> While, MTEF for 2014-2016 foresees that there will be budget to construct the Basic Court in Ferizaj, Vushtrri,<sup>53</sup> Gjakovë, and Pejë,<sup>54</sup> which is not in accordance with the workplan and budget planning of the KJC.<sup>55</sup>

While the law theoretically has done concentration of the courts in practice this is not yet happening. This is because the basic court in Prishtina has four buildings, Basic Court in Peja in two buildings, Basic Court në 2 objekte, and Basic Court in Prizren in two buildings. Apart from Basic Court in Prishtina, the rest of the courts do not have declared any problem that they encounter in everyday work process.<sup>56</sup> The Basic Court in Prishtina was not prepared for the reforms.<sup>57</sup> “The reform required new conditions, and it required support with professional and support staff.”<sup>58</sup>

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<sup>51</sup> KLI interview with Mr. Hamdi Ibrahim, President of Basic Court in Prishtina

<sup>52</sup> KLI interview with Mr. Albert Avdiu, Director of Secretariat of KJC.

<sup>53</sup> Judicial system in Kosovo does not have Basic Court in Vushtrri, but has only a branch of Basic Court of Mitrovica, which does make the process confusing as to what will be built in Vushtrri.

<sup>54</sup> Midterm Expenditure Framework 2014-2016 (Prishtinë: Ministry of Finance), pg. 177.

<sup>55</sup> According to Albert Avdiu, the costs to construct a building for basic court it would cost 2.5 – 3.0 million Euros, where as per trends of capital investments, KJC has the possibility to construct such building every three years. KLI interview with Mr. Albert Avdiu, Director of Secretariat of KJC.

<sup>56</sup> KLI Interview with Mr. Albert Avdiu, Director of Secretariat of KJC.

<sup>57</sup> IKD interview with Mr. Hamdi Ibrahim, President of Basic Court in Prishtina.

<sup>58</sup> *Ibid.*

## VI. OTHER ISSUES

### *a. Judicial independence violation*

Justice system reforms in Kosovo have contributed in securing the independence of judicial and prosecutorial system. Positive aspects of the independence of judiciary have been mentioned above. This includes the permanent mandate until pension age, decent salaries, as well as establishment of the Kosovo Prosecutorial Council.

On the other hand, there are some very important issues which have remained under great influence by other powers. In this aspect, lack of resources for judiciary could be considered as violation of judicial and prosecutorial independence. Basic laws of judiciary have not been implemented successfully partially because they have not been accompanied with adequate financial, human and other resources. Executive and legislative have expressed very little will to support judiciary with resources, and this has been the case because of the small budget of the state. For instance, with the current allocation of the budget as well as forecasts for the future, judiciary can complete building its buildings as law requires only in 2028. Violation of judicial independence could be considered any action of the Executive or legislative which undermines the efficiency of the work of judiciary as a result of inadequate resources allocated to the judiciary. (Office of the High Commissioner on Human Rights).<sup>59</sup>

Besides the inadequate support, the individual financial independence of judges and prosecutors in Kosovo has been always threatened. In 2012, Government approved a Draft Law on the Salaries of Public Officials which changed the leveling of salaries. Judges and prosecutors' salaries were at a lower level than those of officials in other powers. Kosovo Assembly approved the request of the Government to take back this draft law in order to address the concerns raised by judges and prosecutors. Another aspect is also the pension system, as judges and prosecutors when they retire they receive only 112 Euros per month which is way below their last salary that they receive.

### *b. Accountability during the appointment and re-appointment*

The judicial misconduct mechanisms were not effective and efficient to prosecute misconduct of judicial officials. During UNMIK times there was the Judicial Inspection Unit,<sup>60</sup> which later was transformed into the Office of Disciplinary Counsel.<sup>61</sup> Judicial Auditing Unit (JAU) while being

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<sup>59</sup> Gashi A. and Musliu B., *Independence of judiciary in Kosovo: Analysis on the institutional and individual financial independence*. (Prishtina: Kosovo Law Institute, November 2012), pg. 5.

<sup>60</sup> Judicial Inspection Unit was established with the Administrative Instruction of UNMIK number 2001/4 on May 11 2001 to implement the UNMIK regulation number 2000/15 (article 1) on Establishing the Department of Justice as a service in charge for inspection, revision and investigations within the judicial system in Kosovo.

<sup>61</sup> With AI, Nr. 2008/7, dated 14 June 2008, to Implement the UNMIK Regulation Nr. 2006/52 on Regulatory Framework for the Justice System in Kosovo, former JIU is transformed in ODC within the Department of Justice with mandate (Article 21. a) "to investigate the activities of judges, prosecutors, and lay of judges that work in the judicial system and prosecutorial system,

challenged with a number of complaints it has continuously failed to address and further investigate as well as prepare reports. In 2007 there were 604 complaints that were filed, and JAU was able to prepare and report only on 11 cases.

There was no accountability throughout the re-appointment and appointment process of judges and prosecutors. There was no accountability or sense of responsibility in the day to day work of judges and prosecutors.<sup>62</sup> At this phase, a number of judges and prosecutors have failed in the ethics test, where allegedly they were misusing their position. However, no one was held accountable for such conducts.<sup>63</sup>

Only after the entry into force of the Law on the Judicial Council and the Law on Prosecutorial Council, mechanisms were established for work quality control. Now such mechanisms exist to control the quality of work of judges and prosecutors. The process of evaluation in terms of the work quality was done mainly for judges and prosecutors who had initial term and were applying for permanent mandate in 2013. The assessment results show that 90% of prosecutors were told that they need to attend additional training in order to be able to apply for permanent position, which shows that the results were not very promising. Whereas, 15% who had their initial mandate, were obliged to take on additional training, in order to be eligible for permanent mandate. Court Presidents have different opinions regarding Commission's evaluation for Performance and Evaluation of Judges, where some estimate that majority of judges meet only minimum requirements<sup>64</sup> and some others have a different opinion while stating that they are very professional and their performance is at satisfactory level.<sup>65</sup>

### *c. Legal Profession in Kosovo*

In the Constitution of Republic of Kosovo, the legal profession in Kosovo is placed under the chapter of Justice System. Legal Profession in Kosovo is integral part of the justice institutions that directly affects the rule of law in the country. Until 2009, this was regulated according to laws of 1979.<sup>66</sup> In 2009, law on Bar has entered into force,<sup>67</sup> which was replaced with a new law in 2013. Numerous issues / debates were raised regarding legal profession as an integral part of the justice system, in terms of reforming it, and assisting with educational programs to increase their professional capacities and to hone their professional development as well as strengthen their professional ethics. In this regard, the international organizations have been crucial partners and have helped the process

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regardless if there was a complaint or not “ and (b) “to pursue cases of misconduct before the relevant disciplinary bodies of the judiciary and prosecution “.

<sup>62</sup> *Supra note 26.*

<sup>63</sup> *Supra note 26.*

<sup>64</sup> KLI interview with Mr. Hamdi Ibrahim, President of Basic Court in Prishtina

<sup>65</sup> KLI interview with Mr. Sali Mekaj, President of Court of Appeal in Prishtina.

<sup>66</sup> Law on Bar and other Legal Aid, Official gazette, No. 011-69/79.

<sup>67</sup> Law on Bar. No. 03/ L-117 of 12 February 2009. Kosovo Assembly.

During the re-appointment and appointment process, those judges and prosecutors that were not appointed were licensed as lawyers. The Chamber of Advocates in Kosovo, did not have proper means and system in place to filter judges and prosecutors that passed the integrity test, hence allowing them to exercise their profession as lawyers. In this way, these prosecutors and judges were able to remain as part of the justice system through the Chamber of Advocates.<sup>68</sup> This has damaged a lot the credibility of ChoA and the image of lawyers in Kosovo. To bring back the credibility to the attorneys' community, there is a great need for oversight of the system and implementation of laws and increase the efficiency of the disciplinary acts.

*d. Correctional and Probation Service*

As part of this great justice architecture is the Correction and Probation Service. This service is facing problems which are of various nature, the challenges are those that deal with safety and security, management as well as meet some of the basic requests of those prisoners serving the sentence have. Recently, the Jail of High Security was built, and this will be able to provide better conditions for prisoners. Within the framework of justice institutions, government institutions have shown progress in creation of Correction Service, as the only one in the region which accepts former prisoners and deals with resettlement.

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<sup>68</sup> *Supra* note 26.



## VII. Indicators

Justice Institutions in Kosovo, including the MJ, KJC and, KPC as well as other institutions don't have a list of indicators to measure their performance and evaluate their work in reforming the justice sector. In absence of such indicators, KLI tried to create and draft some of the basic indicator, having in mind the most important issues / processes. These indicators were developed and completed with the help of KJC Secretariat, KPC Secretariat, and MJ, the Mediation Commission, Arbitration and Notary. In addition a number of documents and reports were consulted to gain a better understanding a most up to date information.

### a. Indicators for Justice System

Indicator for projects and results		Baseline	Reporting period	The target
<b>Reconstruction of courts based on standards</b>	Amount: 6 Basic Courts x €2.5-3 Mil. = <b>€15-18 Mil.</b> (finance by Rep. of Kosovo)  Justice Palace (section for judiciary) = <b>€18 Mil.</b> (financed by EU)	There were no buildings that would fulfill the needs  20 buildings that did not fulfill the needs	Basic Court Gjilan is finished  Basic Court in Ferizaj – started in 2013 and expected to finish in 2015  The construction of Justice Palace is nearly finished by 60% and is expected to be done by July 2014	Building of 6 Basic Courts which will meet the needs as per new and additional scope of work.  The building of Justice Palace where the Supreme Court, will be places, the Special Chamber, Court of Appeal, and Prishtina Basic Court, and if there is a space the Kosovo Judicial Council and Gracanica Branch.
	Dates	Year 2008	November 2013	Year 2028
	Comments		Apart from Basic Court in Gjilan, other courts do not meet the needs, especially for the Department of Serious Crimes.	Every 3 years the KJC is able to build a new Basic Court. This means that all courts will be built by 2028.

			USAID assisted with 2 projects, one in 2007, with the amount of \$ 3 Mil. Model Courts with renovating 10 courts, and it continued with the EROL which has financed the renovation of 20 other courts.	
<b>Transparency improved (courtrooms, courts spokesperson; websites, regular reporting)</b>	Amount:	Courts have no spokesperson	6 spokesperson are recruited	9 spokesperson are placed in courts
	Salary for spokesperson.	One spokesperson in KJC.	1 spokesperson at KJC	1 main office in main building with 2 spokespersons
	USAID supports the development of web portal.	KJC website Court don't have websites Reports (statistics and other reporting) in quarterly basis and annual basis.	Developing the web-portal, the contract was signed with implementing company Reporting plans developed KJC Annual Report is published and continues with statistics on regular basis	The main portal, which includes the website for each court. Periodic reporting of spokespersons in courts. KJC Annual Report.
	Dates	Year 2008	November 2013	November 2014
	Comment		USAID assisted in developing some websites for model courts but these websites are no longer functional	
<b>???% time reduction with cases (from the beginning of the case till the end)</b>	Amount	No such measure was done	No such assessment	Has no objective or aim
	Date			
	Comment			

<b>Conduction of cases in time</b>	Amount	Time standards entered into force in 2007.	The 2007 standards do not match with the current situation, the weight of cases.	Revise the time standards Cases should be resolved on time.
	Date	2007	November 2013	No time frame set
	Comment			
<b>Developing and implementing standards related to justice reform (strategic documents for justice reform)</b>	Amount	Did not have	The Action Plan developed for applying basic laws	Action Plan for basic laws Strategy for Justice System .
	Date	2007	November 2013	There is no timeline
	Comments			
<b>Software for data collection is in place (SIML)</b>	Amount: 2.5 Million Euro for initial project 7 million Euro for the current project	SIML was never fully fictional	The software was developed, but was never used fully, and with new technological developments, there was a need for a new system.  For the new software: The contract with the company was signed.	Fully functional SIML
	Data	2002-2003		2020
	Comment		SIML was developed but as it was not used by judges this project has never been implemented. This has happened before 2010, before the re-appointment process.	
<b>Best budgeting practices are in place</b>	Amount	Centralized budget	Planning and expenditure of the budget continues to be centralized	Performance based on indicators
	Date		November 2013	There is no timeline

	Comment			
<b>Criminal Code, Criminal Procedure Code and Civil Code are amended / drafted and have been enacted</b>	Amount	Old Criminal Code and Old Criminal Procedure Code	Criminal Code and Criminal Procedure Code is amended and is enforced	Criminal Code and Criminal Procedure Code, and Civil Code are drafted and are enforced
	Date		November 2013	January 2017
	Comment	The Criminal Code was approved in 2003 and enforced in 2004.		
<b>Evaluation of Criminal Code, Criminal Procedure Code and Civil Code</b>	Amount	There is no assessment	Terms of reference are drafted for joint mechanisms to assess the functioning of reformed criminal justice (KJC, MJ, and KPC)  The first phase of the work to create joint mechanisms is done, which came out of the Terms of Reference	Publication of the final report to assess / evaluate the criminal justice and civil justice
	Date		November 2013	January 2018
	Comment			
<b>Amendment and drafting laws on Courts and Judicial Council</b>	Amount	Old laws were in force of year 1978, regulation 1981, 1999, UNMIK 2000.	New Laws are enforced and in place	Law on Courts and Judicial Council are in place
	Date	2008	November 2013	January 2011 and January 2013.
	Comment			

<b>Assessment of Laws on Court and Judicial Council</b>	Amount	There is no assessment	Terms of Reference are drafted for joint mechanism to evaluate the functioning of restructured criminal justice system (KJC, KJ, and KPC)  The first phase of the work is done, which came out of the terms of reference.	Publishing of the assessment report on criminal justice system
	Date	January 2013	November 2013	July 2014
	Comment			
<b>???% reduction of backlogged cases in courts</b>	Amount	200,000 old cases.  There is no strategy for backlog reduction.	Two strategies were developed: - November 2010 - August 2013  222,000 unresolved cases	Determine what old case is.  The aim of the strategy is backlog reduction of old cases.
	Date	2009	November 2013	There is no time frame
	Comment			
<b>???% e of citizens trust is increased</b>	Amount	There is no such assessment  Some surveys which were developed by UNDP and USAID but are not taken into account by governmental institutions	No development in this field	Publishing periodical reports
	Date			
	Comment	2004, 2005, and 2006.	November 2013	There is no time frame

<b>Establishing alternative mechanisms / out of court (Mediation, Notary, Arbitration)</b>	Amount	None	Institute for mediators established (99 mediators licensed)  Institute of Notary established (68 notaries)  Arbitration institutions established (two arbitration centers established: one at the American Chamber and one at Kosovo Chamber of Commerce)	Licensing of mediators, noters, and establishing arbitration centers.
	Data	2008	November 2013	
	Comment			
<b>Functional alternative mechanisms / out of court (Mediation, Notary, Arbitration) (how it helped the judiciary with backlog)</b>	Amount	No such institutions existed	<b>Mediation:</b> In 2012 there were 178 referred cases for mediation. 76 were resolved, 63 unresolved and in process 39. In 2013, for the period of January – November, cases referred by courts, prosecutors with self initiatives are 432 cases for mediation. 216 cases were resolved, 45 unresolved, and 52 are in process.  <b>Notary:</b> has helped the judiciary with more than 50,000 cases  <b>Arbitration:</b> 5 cases are in process	There is no aim for these institutions
	Date		November 2013	No time frame.
	Comment			
<b>Filling the vacant positions for judges</b>	Amount	372 vacant positions	345 judges	372 judges
	Data	2009	November 2013	2010

	Comment			
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b. Indicator for the Prosecutorial System

Indicator of projects / results		Baseline	Reporting period	Target
<b>Reconstruction of Prosecution office buildings base on standards</b>	Amount	They have mainly operated in private buildings and court buildings.	The building is finished in Prizren Basic Prosecution in Peja is in its final phase of construction. Justice Palace is almost finished. The reconstruction of the building in BP in Gjilan, Ferizaj and Gjakove has started.	Building of 6 Basic Prosecution.  Building of Justice Palace.
	Date	2008	November 2013	2014-2016
	Comment			
<b>Transparency improved (spokesperson in prosecution, websites, regular reporting)</b>	Amount	Prior to 2011, no spokesperson.  After 2011 one spokesperson	Website of BP is functional whereas for KPC is in process of finalizing  2 spokespersons requited (1 BP and 1 KPC).  Quarterly reports published, annual reports, and other thematic reports for the work of the prosecution.	9 spokesperson.  Website of KPC is functional  Publishing quarterly reports, annual reports and other thematic reports.
	Data	2010	November 2013	2015
	Comment			



<b>Development and implementation of standards of implementation of the reform (strategic documents for reform)</b>	Amount	Did not have	The plan to implement the law it was developed and has been implemented.	The plan to implement the law on State Prosecution. Strategy for judiciary
	Data		November 2013	5 December 2011.
	Comment			
<b>Software program to collect information in place (SIML)</b>	Amount: 2.5 million Euro for initial project 7 Million Euro for current project	SIML software was never functional	The software was finished but was never in function and with developments in technology there was a need to develop a new program  For the new program: Contracting the company to develop the program.	Functional SIML.
	Data	2002-2003		2020
	Comment		SIML is developed but because judges were not using it this project was never functional. This happened prior to 2010 when the reforms in personnel happened.	
<b>Best practices on budgeting are in place and are applied</b>	Amount	Prior to establishing the KPC, in 2011, MJ was responsible for the budget  After 2011, the budget was passed at the Secretariat of the State Prosecutors Office of KPC.	Commission for budget was established in the KPC.  Salary is now in place for an economist for each Prosecutors office starting January 1 2014.	Decentralizing the planning and execution of the budget in prosecutorial system
	Data	2011	November 2013	2015
	Comment			

<b>Criminal Code, Criminal Procedure Code are amended / drafted and have been enacted</b>	Amount	Old Criminal Code and Old Criminal Procedure Code	Criminal Code and Criminal Procedure Code is amended and is enforced	Criminal Code and Criminal Procedure Code, are drafted and are enforced
	Date	2008	November 2013	January 2013
	Comment	In 2003 was approved and in 2004 the Criminal Code entered into force.		
<b>Evaluation of Criminal Code, Criminal Procedure Code</b>	Amount	There is no assessment	Terms of reference are drafted for joint mechanisms to assess the functioning of reformed criminal justice (KJC, MJ, and KPC)  The first phase of the work to create joint mechanisms is done, which came out of the Terms of Reference	Publication of the final report to assess / evaluate the criminal justice and civil justice
	Date	2010	November 2013	January 2014
	Comment			
<b>Amendment /drafting of the law for KPC and SP</b>	Amount	Old laws were in force, the year 1978, regulation 1981, 1999, UNMIK 2000.	New laws are approved and enacted .	Law on State Prosecution and Law on Kosovo Prosecutorial Council are in force.
	Data			
	Comment	2008	November 2013	January 2011 and January 2013.

<b>Assessment of laws for the KPC and SP</b>	Amount	No assessment	Terms of reference are developed for joint mechanisms of assessment of the functioning of the criminal justice (KJC, MoJ, and KPC)  The first phase was implemented of the Joint Mechanism which came out of the Terms of Reference	Publishing of the Assessment report of the Criminal Justice System
	Date			July 2014
	Comment			
<b>???% reduction of outstanding criminal charges</b>	Amount		18,749 criminal charges outstanding.	No aim
	Date		November 2013	No time frame
	Comment		This number was taken from the report in March 2013 in all Basic Prosecution offices	
<b>???% increase of citizens trust</b>	Amount	No assessment	No assessment	Assessing the level of citizens trust in the work of prosecution offices.
	Date		November 2013	No time frame
	Comment			
<b>Establishing alternative mechanisms / out of court (Mediation)</b>	Amount	None	Was established (99 mediators licensed)	Establishing the Mediation institute and licensing mediators
	Date		November 2013	

	Comment			
<b>Fully functional alternative mechanisms / out of court (Mediation) (how much it helped prosecution with outstanding cases)</b>	Amount	None	In 2012 cases referred for mediation from courts, prosecution offices, or self referred are 178. 76 were resolved, 63 are unresolved, and 39 are in process. In 2013, for the period of January - November, cases referred by courts, prosecutors offices, or self referred are 432. 216 are resolved, 45 unresolved, and 52 are in process.	No aim.
	Date		November 2013	No time frame
	Comment			
<b>Filling vacant positions for prosecutors</b>	Amount	89 positions are vacant	124 prosecutors.	171 filled positions.
	Date	2009	November 2013	2014
	Comment			

## VIII. RECOMMENDATIONS

To address the different issues around legal reform, below we will list some of the recommendations:

- **Separate evaluations** – there different studies which would result in concrete recommendations on how to reform the system: 1) Criminal Justice, 2) Civil and 3) Administrative.
- **Specialized evaluations** – in-depth analysis should be done in order to assess the establishment of the courts/ special chambers such as the one on Serious Crimes and administrative issues. With current structure it seems as if the issue of serious crimes and administrative justice was not well addressed, while focusing on the quality of personnel and how to stimulate.
- **Preparing a comprehensive strategy** – a need to develop a strategy on how the reform should continue, in order to set the goals and start taking initiatives. Such strategy would assist in assessments of laws and other policies. Moreover, the strategy would also help to coordinate activities between different actors.
- **Set aside resources** – available resources in terms to ensure law implementation, especially the basic laws in the judicial and prosecutorial system
- **Accountability** – As the independence of judicial and prosecutorial system is ensured at large, the focus should be on accountability. Kosovo Government and the Assembly should analyze and find an advanced model and more efficient model in order to improve accountability of the judicial and prosecutorial system
- **Administrative reform** – A method should be developed on how to filter the support staff and administrative staff and create efficient mechanism for their performance, as this still remains the biggest challenge for the justice institutions.