Reappointment process, independence and influences

(Reappointment and appointment of judges and prosecutors in Kosovo)
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Kosovo Law Institute (KLI) and Forum for Civic Initiatives (FIQ)

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**List of abbreviations**

1. KJC – Kosovo Judicial Council
2. KPC – Kosovo Prosecutorial Council
3. IJPC – Independent Judicial and Prosecutorial Commission
4. UNMIK – United nations Mission in Kosovo
5. KJI – Kosovo Judicial Institute
6. SRSG – Special Representative of the Secretary General
7. KCA – Kosovo Chamber of Advocates
8. KP – Kosovo Police
9. OJPEV – Office for Judicial and Prosecutorial Evaluation and Verification
Introduction

Initiated in February 2009, the process of reappointment and appointment of judges and prosecutors in Kosovo, which ended in October 2010, left the Kosovo judicial system with 120 vacant positions.\(^1\) Overwhelmed with numerous problems and influences, the reappointment, considered as the most important judicial reform process, began without basic laws regulating the judicial and prosecutorial area. This adversely affected the process, which saw a number of violations of law regarding the criteria for appointment and reappointment, to which politics also had influenced.\(^2\)

Reappointment as a process had three phases: a) appointment of judges and prosecutors at the Supreme Court level, b) appointment of district court judges and prosecutors and c) appointment of judges and prosecutors of the municipal court level and the level of minor offence courts.

During these stages a rather large number of judges and prosecutors had failed the ethics exam (mainly due to improper administration of the test and not adapting to the method of testing of the candidates), which had eliminating character and where the same judges and prosecutors that eliminated from the process were allowed to work until the end of the process of reappointment. The failure to pass the test affected the majority of these judges and prosecutors to carry out their work hastily.\(^3\)

The gravest mistake was that during this process there was no oversight mechanism to control the performance and quality of the work of judges and prosecutors. Consequently, after this phase, a number of judges and prosecutors, who mostly failed the ethics exam, delivered a large number of pending cases, calculating that they will not be reappointed and shall have no responsibility whatsoever. And so it happened. None of them was held accountable for the irresponsibility shown in relation to cases

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currently pending. Thus, there was no legal basis to punish this category, which has abused the judicial positions. Furthermore, most of them have remained part of the judiciary in the broader sense, exercising functions of advocacy.4

This paper aims to investigate and analyze problems that were present during the process of reappointment of judges and prosecutors, to raise them as issues to be addressed by competent institutions. The paper will uncover the need for reappointment of a very important segment of the courts and prosecutions, what was not considered at all from the stakeholders of the reappointment process, which are the support staff of courts and prosecutions. The findings of this paper aim to provide concrete recommendations on how to regulate certain matters relating to the scope of responsibility of judges and prosecutors and how to avoid them in future during the reappointment and appointment process.

It will be seen how this process served to the heads of the Kosovo Judicial Council and the Kosovo Prosecutorial Council, to establish and meet legal and regulatory framework for the establishment of mechanisms to control the quality of work, from which the permanent term in office for around 60 percent of judges and prosecutors shall depend, who currently have an initial term of three years. Also, in the report we will try to analyze who, when and how shall conduct the evaluation of their work.

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4 Report on the work of Public Prosecutions in the Republic of Kosovo for year 2010; March 2011;
METHODOLOGY

Kosovo Law Institute (KLI) has based the report on researching and analyzing the legal framework and interviewing all the stakeholders involved in the process of reappointment and appointment of judges and prosecutors in Kosovo.

This process that began with many problems has marked the most important stage of reform in the justice system in the country. As such, it was characterized by a lack of transparency and numerous problems, primarily of legal nature and political interventions. The research includes deep analysis of all laws, bylaws, regulations, administrative directives and normative acts.

Major contribution to the research of problems was provided by interviews with representatives of various judicial institutions, legal experts and the persons involved in the process of reappointment and appointment of judges and prosecutors.

KLI has analyzed the issues raised during this process, trying to offer a solution for each of them, in order to eliminate in future as many of the problems presented.
Influence of the reappointment process to the work of judges and prosecutors

In February of 2009 the process of reappointment and appointment of judges and prosecutors in Kosovo was initiated. The latter were appointed by the SRSG after the war during the emergency period in an effort to build the judicial system without going through any control of responsibility and professionalism. At that time, the institutions of justice were jointly managed by international and local personnel within the UNMIK Department of Justice. This co-management of early 2000 was not crowned with the building of independent local structures in the area of justice, but they remain in a transition of the transfer of responsibilities since 2005 onwards until the declaration of independence in 2008. Until this date, the final authority in the judiciary had remained with SRSG / UNMIK.

Damned by all governments, working with the despised status and without basic labor conditions, the Kosovo judiciary piled around 213 thousand cases, of which more than half belonged to non enforced cases, which contributed to continuous ranking of the judicial system as most failed and corrupt in the country.6

Beginning of 2009 marked the launch of the reappointment process, which envisaged three stages. All judges and prosecutors were compelled to take the ethics exam, which under the regulation had eliminating character.7 This fact was not known to the majority of candidates, and at the first test around 200 of them failed, most of them judges and prosecutors.8

5 It is worth mentioning that in 2006, PISG/Ministry of Justice agreed with the promulgation of the Framework Regulation on justice which also referred to the re-evaluation process. In this period one can find the first steps of the building of the legal infrastructure that enabled the reappointment process.
6 All international and local reports continuously ranked the judicial system at the top of the list of failures and with highest rate of corruption, including: “Transparency International”, “Kosovo Progress Report”, “Kosovo Anti Corruption Agency” etc;
7 UNMIK Administrative Directive no. 2008/2, article 2.11, article 3.4 and 3.5 UNMIK Regulation no.2005/52 article 6.1 (f)
8 TV show “Jeta në Kosovë” – Ndikimet në sistemin gjyqësor, October 2010; http://www.jetanekosove.com/shikovideo/590/Alb
The failure to pass the test meant elimination from re-election to judicial positions. However, despite this, they were allowed to continue working until the end of the process of reappointment, which is considered one of the biggest flaws of this process, and which has severely damaged the work of the judiciary.

The heads of the Kosovo Judicial Council and the Kosovo Prosecutorial Council stated that after the failure to pass ethics exam a significant number of judges and prosecutors showed great irresponsibility in the conduct of their cases.\textsuperscript{9} Based on the report on the work of Public Prosecutions in 2010, it results that among the prosecutors, that have failed the ethics exam, there are such that upon termination of the mandate after the reappointment, handed over 600 outstanding criminal charges.\textsuperscript{10} This was the case of one of the prosecutors in the Municipal Public Prosecutors Office in Prishtina, and a similar situation happened with dozens of other municipal prosecutors.\textsuperscript{11} Given the norm for performance of municipal prosecutors, it results that for a year, these prosecutors have not worked at all. Annual norm for this level of prosecutors is around 250 cases, whereas it was seen that there are over 100, 200 and up to 600 outstanding cases.\textsuperscript{12}

Unlike prosecutors, their colleagues’ judges, who also failed the exam and knew that would not be re-elected, tried to utilize their position, and resolve as many cases possible.\textsuperscript{13} According to statistics of the KJC, it results that the number of completed cases by judges who had failed the ethics exam had changed drastically both for the

\textsuperscript{9} KLI interviews with heads of KJC and KPC, Enver Peci and Ismet Kabashi; June 2011;
\textsuperscript{10} Report on the work of Public Prosecutions in the Republic of Kosovo for year 2010; March 2011;
\textsuperscript{11} Graph that shows how many pending cases have been handed over by the prosecutors, and by which prosecution offices
\textsuperscript{12} “Human Dynamics” – Sector of public consultation, in 2007 set the annual norm of 250 criminal charges that one municipal prosecutor should process within a calendar year, whereas for District Public Prosecutor the norm is 60 criminal charges for a prosecutor per calendar year.
\textsuperscript{13} KLI interview with Prof. Dr. Ismet Salihu, Professor of the Criminal Law, interviewed on 17 June 2011;
worse, not resolving cases according to the guiding norms, and for the better, resolving much more cases than the set norm. See graphics.14

<table>
<thead>
<tr>
<th>Judges according to Courts</th>
<th>Trimester of 2008</th>
<th></th>
<th></th>
<th>Trimester of 2010</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>January</td>
<td>February</td>
<td>March</td>
<td>Total</td>
<td>January</td>
<td>February</td>
<td>March</td>
</tr>
<tr>
<td>Municipal Court in Prishtinë</td>
<td>22</td>
<td>21</td>
<td>22</td>
<td>65</td>
<td>30</td>
<td>31</td>
<td>30</td>
</tr>
<tr>
<td>Municipal Court in Prishtinë</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>90</td>
<td>25</td>
<td>23</td>
<td>25</td>
</tr>
<tr>
<td>Municipal Court in Gjakovë</td>
<td>20</td>
<td>20</td>
<td>20</td>
<td>60</td>
<td>34</td>
<td>30</td>
<td>35</td>
</tr>
<tr>
<td>Municipal Court in Prizren</td>
<td>13</td>
<td>15</td>
<td>16</td>
<td>44</td>
<td>20</td>
<td>20</td>
<td>20</td>
</tr>
<tr>
<td>Municipal Court in Prishtinë</td>
<td>30</td>
<td>24</td>
<td>35</td>
<td>89</td>
<td>25</td>
<td>33</td>
<td>58</td>
</tr>
<tr>
<td>Municipal Court in Prishtinë</td>
<td>15</td>
<td>9</td>
<td>24</td>
<td>10</td>
<td>12</td>
<td>9</td>
<td>31</td>
</tr>
<tr>
<td>Municipal Court in Kaçanik</td>
<td>21</td>
<td>39</td>
<td>50</td>
<td>110</td>
<td>19</td>
<td>30</td>
<td>34</td>
</tr>
</tbody>
</table>

The explanation of these performance results for the heads of the KJC, is based on the lack of motivation of these judges, because of the inability to be reappointed. Enver Peci stated that among them there are those who have shown no commitment to work, but there were also those who allegedly abused their positions in the remaining days to resolve a series of cases.

14 Graph: Comparison of completed cases by judges in trimester of 2008, before the reappointment process and in trimester of 2010, after these judges failed the ethics exam.
Lessons learned from this process:

The phenomenon of hasty resolution of cases or with different purposes of benefits is also confirmed by the heads of KJC and the KPC. They claim to have identified total irresponsibility during the work for majority of these candidates that failed the ethics exam. During this phase, as was publicly reported, it is estimated that judges were trying to resolve sensitive cases, which would be made public only after the expiry of their mandate. Such was the "Grand Hotel" case, for which the judge had taken the decision, however it was not made public, instead the judge kept it in his drawer. The publication of the decision came only after the judge was not reappointed.

The following are some of the statistics that serve the purpose of this paper:

**Municipal Public Prosecution in Prishtinë:**

<table>
<thead>
<tr>
<th>Name and Surname</th>
<th>Total pending cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutor A</td>
<td>633</td>
</tr>
<tr>
<td>Prosecutor B</td>
<td>262</td>
</tr>
<tr>
<td>Prosecutor C</td>
<td>221</td>
</tr>
<tr>
<td>Prosecutor D</td>
<td>68</td>
</tr>
</tbody>
</table>

**Municipal Public Prosecution in Gjilan:**

<table>
<thead>
<tr>
<th>Name and Surname</th>
<th>Total pending cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutor A</td>
<td>128</td>
</tr>
<tr>
<td>Prosecutor B</td>
<td>133</td>
</tr>
</tbody>
</table>

15 KLI interview with heads of KJC and KPC, June 2011;
16 B.M. and A.S., “Mysterious judge under investigation”, “Lajm” newspaper, 28 April, 2010; N. Ahmeti, “Grand starts from zero”, “Lajm” newspaper, 5 May 2010;
Municipal Public Prosecution in:

<table>
<thead>
<tr>
<th>Name and Surname</th>
<th>Total pending cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutor A(^{17})</td>
<td>240</td>
</tr>
<tr>
<td>Prosecutor B</td>
<td>201</td>
</tr>
<tr>
<td>Prosecutor C(^{18})</td>
<td>225</td>
</tr>
</tbody>
</table>

Municipal Public Prosecution in Gjakovë:

<table>
<thead>
<tr>
<th>Name and Surname</th>
<th>Total pending cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutor A(^{19})</td>
<td>30</td>
</tr>
</tbody>
</table>

Municipal Public Prosecution in Prizren:

<table>
<thead>
<tr>
<th>Name and Surname</th>
<th>Total pending cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutor A</td>
<td>482</td>
</tr>
</tbody>
</table>

\(^{17}\) Currently a judge in the Municipal Court in Ferizaj.

\(^{18}\) Was not appointed as a prosecutor by the ex – acting President of Kosovo, Jakup Krasniqi, despite the recommendation for appointment made by the Kosovo Judicial Council. Her non – appointment, as well as non – appointment of two other candidates, Driton Muharremi and Agron Qalaj, are considered as cases of political interference in the reappointment process.

\(^{19}\) This dynamics may be considered as normal.
Violations of law and political influence in the process of reappointment

Political influence and violations of the law were visible during the reappointment process, and as such they were highlighted in the Progress Report of European Commission.20

The most extreme case is considered to be that of the candidate for the President of the Municipal Court of Pristina, Driton Muharremi, who was recommended as the only candidate with superior assessment by IJPC and KJC. Along with Mr. Muharremi also two other candidates were removed in the last moments from the list to be decreed at the time of the acting president, Jakup Krasniqi.21 Possibility of interference was not excluded by the former IJPC executives who have led this process.22

Candidates who have passed through all filters of IJPC, being investigated to the smallest details and considering the approval received by the members of the KJC, proposing them for appointment, there should have been a very strong reason on the side of the Presidency, for them to be left out of the list of the decree. Numerous allegations of misconduct in this case, were mentioned in the media for a week, for which the Acting President of Kosovo, Jakup Krasniqi, gave no reason why it had not appointed these candidates, leaving the possibility of interpretation that was connected to pure political reasons.23 Also, KJC had an opportunist stance in relation to the President, without making an issue of the fact that the candidates proposed by the Council, are not decreed without any solid reason. The President has not given any explanation, whereas the KJC did not insist to learn the reasons and proceeded further, leaving as uncertain the political interference.

20 Kosovo Progress Report 2010, European Commission
21 TV show “Jeta në Kosovë” – Ndikimet në sistemin gjuqësor, October 2010;
http://www.jetanekosove.com/shikovideo/590/Alb;
22 TV show “Jeta në Kosovë” – Ndikimet në sistemin gjuqësor, October 2010;
http://www.jetanekosove.com/shikovideo/590/Alb;
23 TV show “Jeta në Kosovë” – Ndikimet në sistemin gjuqësor, October 2010;
http://www.jetanekosove.com/shikovideo/590/Alb
Violations of law and of the criteria have permeated the entire process of reappointment and appointment of judges and prosecutors, but problems had arisen with the candidates for the Supreme Court. In the vacancy announcement for 15 positions for judges and nine positions for prosecutors, including all levels of courts and prosecution offices throughout Kosovo, the KJC Secretariat required from candidates the following criteria:

a) To be permanent residents of Kosovo;

b) To have high moral integrity;

c) To be able to carry out duties during full working hours;

d) To have graduated in Law;

e) To have passed the Bar Exam;

f) To have passed the Entry Exam for judges;

g) To have, at least three (3) years of working experience in legal area;

The last criterion caused many problems in this competition. Initially, none of the courts had any special regulation that provided criteria that candidates must meet to be appointed in a certain court.\(^24\) Even now when this report is drafted, none of the courts has its own regulation which establishes criteria to be met by candidates for appointment to any court. Lack of regulation in this area, had caused problems during the reappointment, especially in cases of candidates for the Supreme Court, for whom the criteria established immediately after the war to build the judiciary in Kosovo, were to be applied. Thus, as seen from this competition, the criterions were template for all levels of courts.\(^25\)

\(^{24}\) Any of the levels of courts in Kosovo does not have a regulation on criteria that should be met by the candidates for appointment either in Municipal Minor Offence Courts, Municipal Courts, District Court or Supreme Court;

\(^{25}\) Vacancy published in newspaper “Koha Ditore”, 25 September 2007;
Problem in itself, which IFJP and KJC faced, was the lack of regulation through laws, of the criteria for determination of work experience in legal area.²⁶

As legal experience can be considered experience working as a secretary at an elementary school, experience in administration and experience as a lawyer. But, as such, these experiences differ greatly among themselves. And this has caused serious problems to the KJC, as the candidates formally met the competition criteria, requiring three years of legal experience, whereas their ambitions were appointment to the highest levels of courts or prosecution offices.

Therefore, a large portion of candidates in the first phase could not be appointed due to lack of experience, which required 12 years of experience as judges or prosecutors, thus applying the UNMIK Regulation, promulgated immediately after the war that served in the emergency phase of establishment of the judicial system in Kosovo. This had led to the situation where a number of new professionals, with a high degree of professionalism, good performance and a large number of trainings in the field of justice, were not appointed.²⁷

Same as in the first phase of the reappointment process, in the stage that we are now, where the KJC in March 2011 announced the vacancy for positions of judges, the criteria for appointing judges to the Supreme Court of Kosovo are the same.²⁸ This has deprived a number of new judges and prosecutors with proven professional skills of the right to be appointed to the supreme level. Consequently, the criterion of 12 years of experience as judge or prosecutor could be met only by persons who have worked in the previous judicial system, thus also preventing the introduction of the new legal professionals in the local judicial system²⁹.

²⁶ Kosovo Institutions have yet to regulate the issue of experience and education in juridical area;
²⁷ KLI interview with Prof. Dr. Ismet Salihu, Professor of the Criminal Law, interviewed on 17 June 2011;
²⁸ KLI interview with candidates for Supreme Court of Kosovo, June 2011;
²⁹ KLI interview with juridical experts, June 2011;
Reappointment process, independence and influences

Reappointment of the support staff of the courts and prosecution offices

One of the biggest failures to have been made in the phase of reappointment, as stated by the head of the Kosovo Judicial Council, Kosovo Prosecutorial Council and Kosovo Chamber of Advocates, is the lack of a similar process of the re-appointment for the support staff of courts and prosecution offices. Misuse of official duty and suspicion of corrupt activities among judges and prosecutors, could naturally not be performed alone, without the help of their support staff. This is confirmed by the head of the KJC, Enver Peci, according to whom, the fact that the same support staff remained in position without being filtered in a process similar to that of the judicial office holders, calls into question the entire investment made in creating a clean court system, through the reappointment process.30

A considerable number of support staff employees of courts and prosecution offices were investigated and have fallen under police handcuffs, on suspicion of misuse of official duty.31 Court administrators and prosecutors revealed that a large part of the support staff is unskilled, mainly with high school education, whereas a large portion of them are useless for the job. Their employment has occurred in different periods since the work of the courts restarted after the war in Kosovo and this was done without any control.

Administrator of the District Court in Prishtina, Feriz Berisha, stressed the urgent need for a thorough reassessment of support staff, as according to him, the large number of judges who are not reappointed, means that a large portion of employees who have worked together with them could potentially be involved in abuses.32 Continuous allegations for activities at the level of corruption and organized crime among judges and prosecutors can easily be avenues for investigation by Special Prosecution of

30 KLI interview with head of KJC, Enver Peci, 16 June 2001;
31 KLI interview with the Public Information Officer of the Kosovo Police, Sabrije Kamberi, 15 June 2011;
32 KLI interview with the Administrator of the District Court of Prishtina, Feriz Berisha, 16 June 2011;
Kosovo. One example that speaks loudly for this is the case of judges of Municipal and District Court of Prishtina, which worked in civil matters, out of whom none was reappointed.

And this line of cooperation of the Municipal and District courts raises suspicions that some of the support staff of both courts should be subject to criminal investigations or assessments, to see if their work was completed in accordance with the law.\(^{33}\)

Given that only 40 percent of former judges and prosecutors were reappointed, there is a need to create an evaluation mechanism, which will entirely filter all support staff employees of the courts and prosecution offices.

As support staff is mainly included under the category of civil servants, this raises two important issues for institutions: if they can be categorized in the future so they are not subject to rules for civil servants, and if this can happen, then the full authority should be transferred to the judicial / prosecutorial council due to the fact that institutions such as Judicial and Prosecutorial Council in each case of the treatment of their civilian personnel are subject to civil service rules and based on the principle of several instances, after exhaustion of remedies within the Judicial or Prosecutorial Council, these civil servants can present their case before non-judicial institutions such as the Independent Oversight Board of Kosovo which is an independent body that reports to the Assembly of Kosovo\(^{34}\). This transfer of responsibilities in the administration of the assessment process of civil servants within the institutions that report to the Assembly of Kosovo may be considered a violation of judicial independence, as judicial administration largely depends on civil servants who in accordance with the above mentioned law are put under the auspices of a parliamentary agency.

\(^{33}\) KLI interview with heads of KJC, KPC and KCA, June 2011;
\(^{34}\) For more information see the Law on Independent Oversight Board of Kosovo: http://www.assembly-kosova.org/common/docs/ligjet/2010-192-alb.pdf
And finally, there is a disturbing trend, which is being discussed at the level of heads of the KJC and the KCA, as all former judges and former prosecutors who are not reappointed, have already managed to get licenses and become advocates. Of course, there was no legal obstacle to this, but the KCA has never considered that this trend of judges and prosecutors being converted to advocates further reduces the degree of confidence in the profession and enables them to still be part of the judiciary in the broader sense.

For the head of the KJC this adds to the need to have a reappointment process for support staff, as these lawyers, since they possess a valid license, will have the opportunity to be part of the justice system, and thus possible abuse cannot be excluded, based on ties that these advocates may have had with the current staff of the judiciary.

Licensing of these candidates, who failed in integrity during investigations conducted by the Independent Judicial and Prosecutorial Council, has made the KCA as a haven for these former judges and prosecutors without integrity, who in one or the other way, are again through advocacy a part of the justice system.\footnote{TV show “Drejtësia në Kosovë”, broadcasted on 15 November 2010, http://www.jetanekosove.com/drejtesia/612/Alb visited last on 21 June 2011;} Their number of them who raided the Chamber is quite large and talks are currently held at the institutional level between the KJC and the KCA to find a solution for this problem, where the heads of these institutions have agreed that they should not be provided with advocates’ license.\footnote{KLI interview with President of the KCA, Musa Dragusha; June 2011;}
Lack of mechanisms for control of the quality of work

One of the unsolved problems until now was the mechanisms of the control of the work of judges and prosecutors in Kosovo.

Indeed, the control of the work of these holders of the judicial posts was almost never evaluated and no one was carrying consequences for his/her non-performance. The KJC Secretariat, namely the Department of Statistics has continuously published reports on the work of judges (now recently the Statistical Office of Prosecutorial Council published report on prosecutors), but their publication has not produced any legal consequence, thus no measure was imposed either for performance or non – performance.

Reappointment process has been completed and as noted above none of the judges or prosecutors, who had been dismissed from their positions, were not held responsible to any institution. Within KJC, there is the Office of Disciplinary Prosecutor, but the office has no mandate to ex officio check the quality of the work of judges. ODP's inspectors act on complaints of the parties, their submissions, if there is suspicion of misconduct by a judge or prosecutor.\(^\text{37}\) So far, the presidents of the courts and chief prosecutors were able to evaluate the work of judges and prosecutors, but they did not exercise this authority and no one was punished for this.

The new Law on the Kosovo Judicial Council, in Chapter IV, Article 19, foresees the Judicial Performance Evaluation, which leaves the possibility that by creating new regulations, appropriate committees for control of the work are established.\(^\text{38}\)

KJC has already begun to regulate the area of accountability, which provides evaluation mechanisms. Under the draft regulation for evaluating the work of judges, if approved as such, the judges will be evaluated at regular periods, while they are

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\(^\text{37}\) http://www.kgjk-ks.org/?cid=1,152, visited last on 18 June 2011;  
\(^\text{38}\) Law on the Kosovo Judicial Council, No. 03/L-223;
exercising their function. The evaluation is foreseen to be conducted based on the following criteria:

- The rate of compliance with the norm
- The quality of work
- Compliance with the deadlines for resolution of cases
- Compliance with the deadline for drafting of the adjudications
- Resolution of cases based on the priorities foreseen by the law and according to the receipt of cases for resolution by the judge

Based on these criteria, the draft Regulation foresees incentive, support and disciplinary measures. Mechanism that will undertake these evaluations, is expected to be the Evaluation Committee, which shall be established by the KJC, and which be composed of 5 members reflecting different levels of courts. Moreover, the KJC is in the process of drafting the regulation, which sets working norms required from judges of the regular courts, as well as judges of minor offence and economic court.

While the KJC is now in the process of approval of two regulations, for determining the working norms required and for evaluating the work of judges, the KPC has not yet moved in this direction. Head of the KPC, Ismet Kabashi, stated that KPC has only been established, and according to him, the work on the creation of all the norms that will regulate this area, based on the Law on the Kosovo Prosecutorial Council, will commence shortly. The latter envisages the creation of the Performance Review Unit, but for its functionality, the relevant regulation is needed.

These legal and normative acts are necessary measures for creation of a continuous system for the control of work, especially when considering the fact that about 60 percent of judges and prosecutors who are working in the judicial system are new and

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39 Draft-Regulation on Evaluation of the work of judges, June 2011;
40 Draft Regulation on determination of obligatory norms, June 2011;
41 Law in the Kosovo Prosecutorial Council, No. 03/1-224;
their mandate is only three years, therefore, there is a need for re-evaluation of work for a significant number of them.

Lessons learned from the completed process of re-evaluation should be studied so that the obstacles and the flaws detected are not repeated in future.

**Re-evaluation of judges and prosecutors for provision of permanent mandate**

Creation of mechanisms for assessing the work of judges and prosecutors, which are already provided with two basic laws, that of the KJC and KPC, shall be specified by the respective regulations that are expected to be promulgated. As noted above, the draft regulation of the KJC for evaluating the work of judges, based on all criteria will assess the quality of work for each judge.

However, the draft regulation does not provide for a comprehensive process, which should be done after three years for all judges, who have a temporary mandate.\(^{42}\)

This is an obligation arising from the Constitution of the Republic of Kosovo, Chapter VII, on the Judicial System, Article 105, which talks about the mandate and the reappointment of judges, which clearly established that the initial mandate for judges shall be three years. According to this article, in case of reappointment of these judges, their mandate will be permanent until the retirement age.\(^{43}\) The Constitution provides the Kosovo Judicial Council with the right to establish criteria and procedures for reappointment of judges.\(^{44}\)

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\(^{42}\) Draft-Regulation on Evaluation of the work of judges, June 2011;

\(^{43}\) Constitution of the Republic of Kosovo, Chapter VII, on Judicial System, Article 105:

1. The initial mandate for judges shall be three years. The reappointment mandate is permanent until the retirement age as determined by law or unless removed in accordance with law.

\(^{44}\) Constitution of the Republic of Kosovo, Chapter VII, on Judicial System, Article 105:
The KJC has undertaken efforts in this direction, by drafting the regulation, but which does not specify in any of its sections, including transitional and final provisions, that a comprehensive reassessment is to take place after three years and that will include about 60 percent of the judges.

Heads of the KJC and KPC estimate that this will be seen in the future, since the evaluation by the Special Unit for Performance Assessment will generate accurate results for quality of work and performance of each judge and prosecutor. The head of the KJC, Enver Peci, asserts that the assessment shall be made by the Evaluation Committee, which under the draft regulation will be composed of judges representing all levels of courts. And finally, in his opinion, the Commission will periodically release the results of the work of judges and depending on the performance, it shall be decided whether they will obtain permanent mandate or they will be sanctioned in case of not fulfilling the norms. Mr. Peci states that the regulation has not specified the comprehensive three-year period, but that would only serve to better clarify the assessment that will be made after three years.45

In March of this year, the Kosovo Judicial Council published the vacancy for 120 positions for judges. The process of reappointment, evaluation and verification of the candidates was conducted by the Independent Judicial and Prosecutorial Commission that had temporary mandate and was led by internationals. The mandate of the latter has already been transferred to locals, namely the Office of Evaluation and Judicial and Prosecutorial Verification within KJC.46

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2. The criteria and procedures to reappoint a judge shall be determined by the Kosovo Judicial Council and they may be different in degree from the criteria used for the removal of judges.

45 KLI interview with head of KJC, Enver Peci; 16 June 2001;
46 KJC Regulation on the Process for Appointment of Judges, 16 February 2011;
Office for Judicial and Prosecutorial Evaluation and Verification

Generally, the role and powers of the Office for Judicial and Prosecutorial Evaluation and Verification (hereinafter OJPEV) are the same as previously held by the IJPC. Under the new rules for appointing judges, OJPEV is responsible for the proper and correct evaluation of training and extensive background vetting of candidates for judicial positions, a process that includes in itself a comprehensive collection of data regarding the knowledge, skills, performance, of their past criminal records, revenues and reputation enjoyed in the country where the candidate lives and works.47

It is anticipated that every year a number of 10-15 judges and prosecutors will retire or may leave the system for different reasons. Based on this fact, KJC and the KPC will continually respond to situations, to fill these positions through public vacancies. In the latter, it is expected that a huge number of persons will apply, from 200 to 300. All these candidates will be filtered under the eye of the OJPEV, which currently has a temporary mandate. In Article 4, item 4.5, the KJC has left open the possibility that the Office may extend the scope of responsibilities, pursuant to the needs of the KJC, to establish a permanent system for assessing and verifying the possible candidates for judicial positions.48

Therefore, based on the continuing needs of the KJC and the KPC to fill judicial positions, evaluation and verification of all candidates for these positions is also needed. Consequently, the heads of the KJC and KPC agreed that the OJPEV should have a permanent mandate for assessment and verification of candidates for judicial positions.49 This should be embedded in law, especially given the fact that the current

49 KLI interview with heads of KJC and KPC; June 2011;
staff of the OJPEV bears all the experience of assessment and verification process of reappointment, experience that was obtained in cooperation with internationals.\textsuperscript{50}

The OJPEV mandate should be supplemented with additional permanent powers, so that the investigators of this office can conduct continuous investigation of judges and prosecutors, even after their appointment to judicial positions.

Finally, the Kosovo Anti-Corruption Agency has published a report on declaration of assets by senior officials,\textsuperscript{51} under which it turns out that judges and prosecutors have increased their real estate assets within a short period of time. How this occurred should be treated with caution. Revenues of judges have increased this year with the salary increase but it should be carefully analyzed, possibly in another study, whether this growth had immediate impact on increasing the assets portfolio of judges.

Similar annual reports should be published by the OJPEV, after continued investigation of the assets of judicial officials.

The head of the KJC asserts that these powers in OJPEV mandate would be welcomed and would serve to provide a strong permanent attention to the growth of assets of judges and prosecutors.

\textsuperscript{50} KLI interview with the head of OJPEV, Faton Muslija, June 2011;

\textsuperscript{51} Report of the KAA on the declaration of assets of senior officials, June 2011;
Main findings:

- The problems in the process of reappointment and appointment derive from an inauspicious beginning, since there was an absence of basic laws to develop a successful process of such a great importance. The process has begun with the absence of four basic laws, such as: the Law on the Judicial Council of Kosovo, the Law on the State Prosecution, the Law on Courts and the Law on Prosecution Offices. In addition, a chain of whole other issues has also been absent, which have not been regulate with accompanying legal acts, such as the clear criteria on the appointment and re-appointment of judges and prosecutors, as well as the definition of the legal experience, which have all had a significant impact on this process.

- A costly mistake was the exam on ethics with an eliminating character, which had de-motivated judges and prosecutors that had failed the exam, and who were allowed to continue their work until the finalization of the process. This had a negative effect, since being unmotivated, they had completed the work hastily and in certain cases, they had completed cases which had laid suspicions over their possible abuse of official duty.

- Regardless of the processes they may go through, judges and prosecutors must respond to legal obligations in order to perform efficiently. Research shows that there have been cases of abuse such as incompletion of cases during the time while they were exercising the function of judge or prosecutor, or completing cases in a greater number than their usual norm. All of this is a consequence of the lack of mechanisms to control the work, and which should have monitored the works and completion of cases, as defined by legal provisions.

- The President of the Republic of Kosovo has interfered politically in the process of appointment and re-appointment of judges and prosecutors. On the occasion of decreeing judges and prosecutors, the president of the country has removed certain candidates from the list of the KJC without any explanation,
which is otherwise required by law within the only mechanism that is allowed to submit proposals for appointment in the KJC. The President has the right to question the validity of certain candidates, however, in no cases is he allowed to do so without the appropriate justification at the Judicial Council, who may then use the right to repeat the proposal for that specific candidate, or make a proposal for another candidate, as defined by law. Such political interferences emphasized by the Progress Report of the European Commission, besides damaging the process, casted a shadow over the whole process. The stance of the KJC has been overly opportunistic in relation to the institution of the president, on the occasion of the non-appointment of four candidates, mentioned in the report. The KJC has been silent over the political interference of the President of the Republic, despite the fact that it had not received any written explanation as to why the proposed candidates had not been decreed.

- The absence of basic laws and other accompanying acts regulating the field of the judicial and prosecutorial system have influenced the process of re-appointment and appointment of judges and prosecutors. No level of courts or prosecution offices in the country possessed relevant regulations on the appointment criteria for judges and prosecutors. This has caused problems in the process of re-appointment and appointment, whereas for example, the Supreme Court of Kosovo had utilized the appointment criteria as those immediately after the war in Kosovo, at the emergency phase of creating the judicial system. This has influenced lack of clarity regarding the legal experience that was required in order to be appointed as a judge for the Supreme Court and has subsequently cause the elimination of a number of professional candidates.

- The process of re-appointment and appointment of judges and prosecutors should have certainly included proper scanning of supporting staff of courts and prosecution offices. At the end of this process, there were 40% judges and prosecutors appointed, whereas 60% are new. This shows that most of the
60% of judges and prosecutors, in one way or another, were not up to duty to be part of the justice system in the country. However, the issue that must be raised now, is how worthy is the 60% of the supporting staff of judges and prosecutors who were not re-appointed? It has been proven that in certain cases, the staff in courts and prosecution offices had supported the various illegal activities of judges and prosecutors. Whereas, as noted, their role is very significant throughout the judicial and prosecutorial processes, since they are inseparable to the daily work of judges and prosecutors. Therefore, they should also be subjected to a similar process of re-appointment as their superiors.

- Since the creation of the judicial system at the emergency phase, after the end of the war, there were never any mechanisms foreseen to monitor the quality of work. The influence of such a system of no supervision was very negative towards the work of courts and prosecution offices. All judges and prosecutors were treated the same: those who have failed to meet orientation norms to solve the cases and those who have done so. The level of their responsibility was minimal in most of the cases, whereas this system has discouraged a great number of judges and prosecutors who have exceeded the orientation norms. This problem that has been continuously addressed, has caused irreparable damage to the justice system in the country. Whereas, as of last, the KJC is currently at the stage of drafting the regulation which shall create a system whereas accountability should be reported periodically by all judges. Similarly, the field of responsibility at work for prosecutors has yet to be regulated, whereas a similar regulation should be drafted by the KPC (Kosovo Prosecutorial Council).

- The Constitution of the Republic of Kosovo has defined a permanent mandate for judges and prosecutors who shall be appointed. The initial judges and prosecutors shall have a mandate of three years, after which they shall be evaluated in order to be able to gain the permanent mandate. Similar as in the past, the manner of their evaluation after three years, remains worrying. A step
towards the regular evaluation of their work is being undertaken through the drafting of the first draft-regulation of KJC. The draft-regulation does not put an emphasis on the three year transitional period and upon its completion, the evaluation of initial judges shall take place. The KJC shall establish clear sustainable and transitional provisions in its regulation, regarding the continuous evaluation of the initial judges. Similarly, the KPC shall adopt a right and quick approach to this problem. The role and competence envisioned by the temporary mandate of the Independent Judicial and Prosecutorial Commission that was headed by the internationals is now headed by locals at the Office for Judicial and Prosecutorial Evaluation and Verification. The role of this office in the investigation, verification and evaluation of the wealth and integrity of judges and prosecutors has been very successful towards selecting candidates based on the merit, to be proposed for appointment and to join the judicial and prosecutorial system. A worrisome issue in Kosovo remains to be the over-night enrichment of officials exercising public functions. Amongst such officials, a great number of local judges and prosecutors were not spared from criticism. It is not sufficient for only the Kosovo Anti-Corruption Agency to deal with the continuous investigation and verification of their wealth.
Recommendations:

- Central institutions should eliminate political influence on occasion of appointing judges and prosecutors who are recommended by the Kosovo Judicial Council and the Kosovo Prosecutorial Council.

- The Kosovo Judicial Council must draft a specific regulation on the appointment criteria for judges in all levels of courts. Each court should have its own specific regulation with all necessary criteria for appointment.

- Currently, the Ministry of Justice as the responsible party to draft legislation in the field of justice, shall draft a specific law which regulates the field of legal experience and the continuous education in the field of justice. This law should clearly define what is meant by legal experience and who falls within this category.

- The draft-regulation of the Kosovo Judicial Council for the evaluation of the work of judges shall regulate and specifically define transitional and final provisions, the issue of evaluation of new judges after the three-year transitional mandate, as defined by the Constitution of the Republic of Kosovo.

- The Kosovo Judicial Council must proceed as soon as possible with the approval of regulations, such as the regulation on the evaluation of the work of judges and the regulation on defining obligatory norms of work;

- The Kosovo Prosecutorial Council must draft as soon as possible the Regulation on the Evaluation of the Work of the Prosecutors;

- The Prosecutorial Council of Kosovo must draft as soon as possible the Regulation on Defining Obligatory Norms of Work for Prosecutors so measuring the quality of work becomes easier;

- Local institutions, the Government, the Parliament and the judiciary must carefully address the issue of the independence of the administration and evaluation of civil servants within the judiciary;
• KJC through its Secretariat, must establish a specific mechanism for the development of an independent and professional process upon re-appointing supporting staff of courts;

• KPC through its Secretariat must establish a specific mechanism for the development of an independent and professional process upon reappointing supporting staff of prosecution offices;

• The mandate of the Office for Judicial and Prosecutorial Evaluation and Verification must be permanent, in order for this mechanism to be able to respond continuously to the needs and demands of the KJC and KPC in regard to the verification of candidates;

• The Office for Judicial and Prosecutorial Evaluation and Verification must be provided with additional competences in investigating continuously the wealth of judges and prosecutors in Kosovo;

• The Kosovo Chamber of Advocates must toughen the criteria of licensing attorneys, when it comes to former judges and former prosecutors with a compromised integrity during investigation developed by the Independent Judicial and Prosecutorial Commission