



# LEGAL AMNESTY OF MILLIONS OF MINOR OFFENCES

(Special analysis of handling minor  
offence cases in Kosovo's courts)

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#### ABOUT KLI

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

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# Table of Contents

1. Executive summary .....	4
2. Methodology .....	6
3. Legal mandate in prosecuting and adjudicating minor offence offenders .....	7
4. Descriptive analysis of the initiation of minor offence proceedings in the Basic Courts by the competent institutions .....	10
4.1. Kosovo Police .....	11
4.2. Central and municipal inspectors .....	13
4.2.1. Fines against environmental pollutants .....	13
4.2.2. Fines against violators of the Law on Tobacco Control .....	15
5. Backlog of courts with minor offence cases during 2016, 2017 and 2018 .....	17
6. The statutory limitation of minor offence cases in the Basic Courts of Kosovo .....	18
6.1. Minor offence cases unsolved at the end in all courts during 2016, 2017 and 2018, expressed as percentage (%) .....	19
6.2. The efficiency of the courts in dealing with minor offence cases .....	21
6.3. Number of minor offence cases that have reached statutory limitation period during 2016, 2017 and 2018 .....	26
6.4. Number of minor offence cases that have reached statutory limitation period during one business day at courts .....	29
6.5. KJC's role and measures taken against the statutory limitation of minor offences .....	33
7. State's losses due to the statutory limitation of minor offence cases .....	37
8. Findings regarding the handling of minor offence cases by courts in our country .....	40
9. Recommendations .....	42

## 1. Executive summary

Minor offences constitute one of the most frequent violations that occur in the daily lives of the citizens of the Republic of Kosovo. Therefore, their treatment by the relevant institutions should be done efficiently, in order to avoid the possibility for these cases to reach the statutory limitations period, taking into account the short periods of reaching statutory limitation for these cases.

Handling minor offence cases also requires efficient case management, coordination and cooperation between law enforcement institutions and the courts, whereas in practice is being proven the opposite. Unfortunately, the practice shows that these cases are not handled and resolved in a timely manner, resulting in their statutory limitation. This results in other consequences, such as the inability of the state to bring to justice those who violate the law and the damage to the state budget as a result of failure to collect funds from offenders. As a result of the inefficiency of the courts throughout Kosovo, over the last three years alone, more than 170,000 minor offence cases have reached the statutory limitations period.

In Kosovo, most of the minor offences appear to be imposed by the Kosovo Police. The penalties imposed by this institution for traffic offences in 2018 had increased compared to the previous two years. However, there are other institutions responsible to impose minor offences fines. This group includes the municipal and central inspectorates, which indicate that they were not satisfied with the work of the courts. Moreover, the approach of justice institutions has discouraged them and made them feel that their authority has been undermined. On the other hand, courts do not agree with this statement.

The year 2018 has shown a lower real efficiency of the courts in resolving minor offence cases. Even more characteristic of this decrease in efficiency is the fact that in 2018 the number of minor offence cases received by these courts has been much lower than in the previous two years, as a result of the new Law on Minor Offences, which has also given powers to administrative bodies to deal with minor offence cases.

The amendment of this law has been a topic of discussion for a long time, precisely for this authorization given to administrative bodies. The Ombudsperson, as the most vocal institution, had stated that this law is unconstitutional and violates human rights. However, after a period of suspension of those provisions, the Constitutional Court decided that the contested provisions were constitutional and did not constitute a violation of human rights, thereby reinforcing all of them, to continue with the enforcement of the law as a whole.

However, it seems that the new law on minor offences in the framework of the provided changes has created a bad situation in terms of execution of fines. This law abolished the punishment of imprisonment and the possibility of replacing the fine with such punishment.

KLI analyzed the official data of the basic courts in the country and graphically presented the situation of statutory limitation of cases for each court. The statutory limitation as a phenomenon has a very negative impact, causing the justice system to fail not only facing the offenders but also with other state institutions. In this regard, it seems that the approach of the justice system to cases of this nature has an impact, given the fact that the efficiency of the work of judges handling cases of this nature should not go downwards but in the opposite direction.

Every year, the Kosovo Police, central and municipal inspectorates, as well as other institutions that have such authorizations, through their work, try to punish minor offence offenders. For this kind of work, the state budget allocates certain amounts of money for the sole purpose of making their work run smoothly and as efficient as possible. But it all fails when it comes to the judiciary. Failure to resolve cases, negligence, legal changes and other forms that lead to the statutory limitation of these cases make the offenders feel more powerful, while other institutions helpless against them and those who abide by the law feel unfortunately, irrelevant.

This report shows that the large number of statutory limitation of cases and the decrease in efficiency make investments and other state initiatives, that address minor offences, completely fail. In addition, the state's losses from the statutory limitation of minor offence cases over the past three years exceed 2 million euros.

## 2. Methodology

KLI has used a mixed research methodology in order to compile a comprehensive and analytical report on the handling of minor offence cases in Kosovo courts.

In this report, KLI used various official documents including primary and secondary legislation, KJC reports, and other data provided by other institutions through requests for access to public documents. KLI has simultaneously analyzed the legal basis and other relevant documents that deal with the issue of judges' work in minor offence cases.

The research includes the handling of minor offence cases by all courts in Kosovo over a three-year period (2016 – 2018). Based on the KJC data for each court in the country the real efficiency of the work of the courts is calculated, then calculating individually the data for each court, taking into account the number of cases resolved by the respective court and the number of judges of that court, who were responsible to solve minor offence cases during the respective year.

Also, based on the number of cases at work and the number of unsolved cases at the end of each year, the percentage of unsolved cases for the respective year was presented.

The number of cases that have reached statutory limitation period, while waiting to be solved in the courts, is presented based on the data received by the KJC, while the number of cases that have reached statutory limitation period within one day in a respective court has been calculated based on the number of cases that have reached the statutory limitation period within a year. and the number of working days during that same year.

The data provided by KLI on the imposition of fines in specific cases of the Basic Court in Pristina have been used in order to calculate the total losses incurred by the state budget as a result of statutory limitation. Thus, it was first analyzed how many cases were handled in total within the year, then on how many of those cases were imposed fines and thus the percentage was calculated. Then the number of cases that had reached the statutory limitation period during that year were taken and based on the previous percentage the number of cases in which a fine would be imposed if they didn't reach the statutory limitation period was calculated. In the meantime, from the total amount of the incomes collected as a result of the imposed fines and the number of the fines imposed for that year, the average of a fine imposed for a respective year has been calculated. At the end, this average amount of the fine was calculated within the number of fines that would have been imposed if the cases hadn't reached the statutory limitations period, and thus we came to find the value that the state budget lost within one year, due to statutory limitation of such cases.

All of these have enabled KLI to identify and address key issues and to propose specific recommendations to resolve problems in dealing with minor offence cases.

### 3. Legal mandate in prosecuting and adjudicating minor offence offenders

Minor offence shall be the behavior by which there are violated or jeopardized the public order and peace as well as social values guaranteed by the Constitution of the Republic of Kosovo, the protection of which is impossible without minor offence sanctioning.<sup>1</sup>

In this regard, Kosovo in the year 2017 has marked a turning point in the area of minor offences. This is because, in January of that year Law no. 05/L – 087 on Minor Offences entered into force, after being approved in advance on August 5, 2016 by the Assembly of the Republic of Kosovo. This law was seen differently, thus facing positive and negative criticism even after starting to be implemented in practice.

It's a fact that prior to the entry into force of Law no.05/L – 087 on Minor Offences, all violations of this nature were treated under the Law no.011/15-79 of the Autonomous Province of Kosovo on Minor Offences. For certain individuals, the adoption of this law was a positive step towards advancing our country's positive legislation, since they considered that a 1979 law did not coincide with the current development of our country and society. On the other hand, the Ombudsperson was one of those who strongly opposed the new law, or rather some of the provisions deriving from this law, since according to this institution, these provisions were unconstitutional and violated human rights.

Ombudsperson Institution represents legal mechanism for protection, monitoring and promotion of human rights and fundamental freedoms of natural and legal persons from unlawful and irregular actions or inactions of the public authorities, institutions and persons or other authorities, who exercise public authorities in the Republic of Kosovo.<sup>2</sup>

Therefore, on February 10, 2017, this institution submitted a request to the Constitutional Court of Kosovo, requiring (1) the repeal of Article 55, paragraphs 4-5 and Articles 56-68 of Law no. 05/L-087 on Minor Offences, and (2) interim measure for the immediate termination of these provisions until the final decision of this Court.<sup>3</sup>

The Ombudsperson alleged articles of the new Minor Offences Law, that “delegate adjudicatory competences to the executive branch”, respectively Articles 55 (paragraphs 4 and 5), 56, 57, 58,

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<sup>1</sup> Law no. 05/L-087 on Minor Offences, Article 2.

<sup>2</sup> Informative leaflet of the Ombudsperson (Follow link <https://oik-rks.org/2018/11/01/misioni-kompetencat-dhe-pergegjesite-e-institucionit-te-avokatit-te-popullit/>).

<sup>3</sup> The Ombudsperson. “*Annual report 2017*”. Pristina, 2018. Pg. 195.

59, 60, 61, 62, 63, 64, 65, 66, 67 and 68, are not compatible with Article 31 [Right to a Fair Trial] of the Constitution, in conjunction with Article 6 [Right to a Fair Trial] of the ECHR.<sup>4</sup>

Thus, the Constitutional Court with the Decision VPM 1043/17, date February 21, 2017, decided to approve the interim measure until April 30, 2017 and immediately suspend Articles 55 (paragraphs 4 and 5), 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of the Law on Minor Offences.<sup>5</sup> Then this court, once again prior to rendering a judgment based on Ombudsperson's request, it decided to continue the interim measures until 11 April, 2017 and continue the suspension of articles 55 (paragraphs 4 and 5), 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of the Law on Minor Offences.<sup>6</sup>

Whereas, on May 29, 2017, the Constitutional Court finally decided regarding the Ombudsperson's request. Thus, the Constitutional Court, through the judgment 1073/17, found that articles 55 (paragraphs 4 and 5), 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of the Law on Minor Offences are compatible with Article 31 of the Constitution in conjunction with Article 6 of the ECHR. Also, this Court found that the Decision VMP 1054/17, based on which the suspension of abovementioned articles continued until June 15, 2017, is terminated upon the entry into force of this Judgment.<sup>7</sup>

The criticism and skepticism regarding this law finished with this judgment of the Constitutional Court and now besides the Court, on certain minor offences determined under the Law or Regulation of the Municipal Assembly, the minor offence proceeding may be held, and minor offence sanctions may be imposed, by the state administration body, or the body holding a public authorization to supervise the implementation of the law, which foresees minor offences.<sup>8</sup>

This law enabled the courts to have less backlog of cases, but on the other hand it also enabled to carry on faster with the proceedings, since responsible administrative bodies have competencies to carry-out such proceedings. This competency is given to these bodies for the fines in the defined amount, for the fines up to 500 euros for natural persons, fines up to 1000 euros for legal persons, as well as fines imposed at the site.<sup>9</sup>

In this regard, the courts themselves have seen this as a relief and have given positive assessment regarding the impact of the new law in this respect.

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<sup>4</sup> Constitutional Court. "*Judgment in the case KO12/17, no. ref: AGJ 1073/17*". Pristina. May 29, 2017. Pg. 4.

<sup>5</sup> Constitutional Court. "*Decision on interim measure, no. ref: VPM 1043/17*". Pristina. February 21, 2017. Pg. 8.

<sup>6</sup> Constitutional Court. "*Decision to continue the interim measure, no. ref: VVPM 1054/17*". Pristina. April 11, 2017. Pg. 4

<sup>7</sup> Constitutional Court. "*Judgment in the case KO12/17, no. ref: AGJ 1073/17*". Pristina. May 29, 2017. Pg. 19.

<sup>8</sup> Law no. 05/L-087 on Minor Offences, Article 55.

<sup>9</sup> Ibid, Article 56.



“LMO no.05/L-087, that provides the competency of the administrative bodies and that has given extra authorization for light minor offences, of course that has had an effect on the judges’ work in a positive aspect.”<sup>10</sup>

“Of course the new law on Minor Offences has had an effect on the work of judges, with the extra authorizations given to the administrative.”<sup>11</sup>

“It has had a large effect in the amount of cases, since the number of cases received by the Court, now is smaller, compared to previous years and this has enabled judges to have less backlog of cases.”<sup>12</sup>

“Extra authorization of administrative bodies has had a positive impact in the court’s work, based on the number of cases received it is shown that there is a smaller number of cases received by the court, where the submitters are administrative bodies.”<sup>13</sup>

The situation on the ground also confirms such a state, where especially in 2018 the number of fines imposed for violators of the Law on Tobacco Control, as well as environmental pollutants has increased. The last quarter of 2018 marks a turning point in terms of dealing with cases of environmental pollution. The imposition of fines in these cases finds support in the Administrative Instruction on Mandatory Fines issued by the Ministry of Environment and Spatial Planning in October 2018, with the aim of preventing the dumping of waste outside designated waste disposal sites, or reduction of pollution, protection of environment and human health, protection of environment and human health, protection of public and private areas from pollution through waste management. At the same time, this AI sets out procedures for imposing mandatory penalties on natural and legal persons who dump waste outside designated waste disposal sites.<sup>14</sup>

Unlike the fines imposed against environmental polluters, for those who do not comply with the law on tobacco, the situation is not very good. Despite the fact that the new Law on Tobacco Control<sup>15</sup> had entered into force in 2013, this law has never been properly implemented. According to this law, smoking is strictly forbidden indoors, otherwise it is foreseen to impose different fines on violators of this law.

Despite the fact that the laws have provided for all these issues, the main problem remains their implementation in practice, the efficiency of the work of the courts at the national level, and above all the enforcement of fines.

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<sup>10</sup> Interview with the Supervising Judge of the Minor Offences Division at the Basic Court in Pristina, Mr. Mustafë Selimi. February 28, 2019.

<sup>11</sup> Interview with the Supervising Judge of the Minor Offences Division at the Basic Court in Peja, Mr. Kadri Prekaj. March 6, 2019.

<sup>12</sup> Interview with the President of the Basic Court in Gjilan, Mr. Ramiz Azizi. March 5, 2019.

<sup>13</sup> Interview with the President of the Basic Court in Gjakova, Mr. Vatun Durguti. March 12, 2019.

<sup>14</sup> Administrative Instruction MESP – Nr. 06/2018 on Penalties with Mandatory Fines, Article 1.

<sup>15</sup> Law no.04/L-156 on Tobacco Control.

As for the enforcement of fines, the new Law on Minor Offences no longer provides for imprisonment and the possibility of replacing the fine with imprisonment. This is because it is in contradiction with the Constitution of the Republic of Kosovo. Such a phenomenon of imprisonment for minor offences was often identified before the new law came into force. But, despite the changes in the law on minor offences, it is still provided by the Law no. 03/L-142 on Public Peace and Order. Provisions describing offences against public order and peace also provide for sanctions, which include imprisonment. Consequently, we can say that this law is in contradiction with that of the minor offences and the Constitution of the country.

#### 4. Descriptive analysis of the initiation of minor offence proceedings in the Basic Courts by the competent institutions

Based on the research conducted by KLI and based on the correspondence with the Press Officers of the Basic Courts in the Republic of Kosovo, it turns out that the institution that most often initiates minor offence procedures in the courts is the Kosovo Police.

In addition to the Police, fines are also imposed by the Central Inspectorates within the respective Ministries and Municipal Directorates.

Upon initiation of the procedure by the competent authority, the minor offence burden of proving and liability remains under the claimant for commencing the minor offence proceeding.<sup>16</sup>

Before making decision on a minor offence, the defendant shall be given the possibility to declare him/herself on the charges.<sup>17</sup> If a duly summoned offender does not appear for questioning and does not justify his/her absence, and his/her questioning is not necessary for establishment of important facts for making a legal decision, the decision on the offence can be made without the questioning of the defendant.<sup>18</sup>

The minor offences procedure shall be conducted briefly and quickly, but it should not affect the regularity and legality of the decision making.<sup>19</sup> No one can be judged again for a minor offence on which is judged or released with a final decision.<sup>20</sup>

Whereas, against a decision issued in the first instance, it may be submitted an appeal, if not specified otherwise in this law.<sup>21</sup>

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<sup>16</sup> Law no. 05/L-087 on Minor Offences. Article 47.

<sup>17</sup> Ibid. Article 48, par. 1.

<sup>18</sup> Ibid, par. 2.

<sup>19</sup> Ibid. Article 50.

<sup>20</sup> Ibid. Article 52.

<sup>21</sup> Ibid. Article 54.

Also, with the new law there is a novelty, since the body on minor offence shall carry-out the minor offence proceeding, if the law provides for exclusive competences on such proceedings.<sup>22</sup> The body on minor offence shall conduct the minor offence proceeding ex-officio, upon the request by an authorized official or upon the request by the authorized body, or based on a claim submitted by injured party.<sup>23</sup>

#### 4.1. Kosovo Police

Based on the answers received from the courts, it results that the Kosovo Police is one of the institutions that most often initiates minor offence procedures in these courts.

During 2018, the Kosovo Police established a “task force” for the prevention of road traffic accidents, with the aim of increasing the level of safety, preventing traffic accidents and enforcing the law in the function of road traffic management and control.<sup>24</sup>

In addition, according to data received from the Kosovo Police, only during the period January – November 2018, 14,393 accidents occurred, of which 85 were fatal, killing 110 people. While, 5 thousand 706 accidents were with injuries, of which 11 thousand 336 persons suffered bodily injuries, while were recorded 8 thousand 602 accidents with material damages. Otherwise, a concern of Kosovar society and the justice system in the country remains the large number of court cases.<sup>25</sup>

Therefore, regarding the handling of these cases in the courts, KLI has communicated with the KP in order to provide a clearer picture of this situation. In its response to KLI, KP has confirmed that during 2018 alone it has processed 10,904 minor offence cases to the courts. Out of these, according to them, lead the cases initiated for traffic accidents with material damages and those for disturbing public order and peace.<sup>26</sup>

However, the KP was unable to provide us with precise information on the number of cases separately for each court, or even specifically on the nature of the particular case.

Therefore, we have requested from this institution to send us data on the number of fines imposed during 2016, 2017 and 2018, in order to compare such data. Their response shows that in 2018 the highest number of traffic offenses was imposed. (see the graph below)

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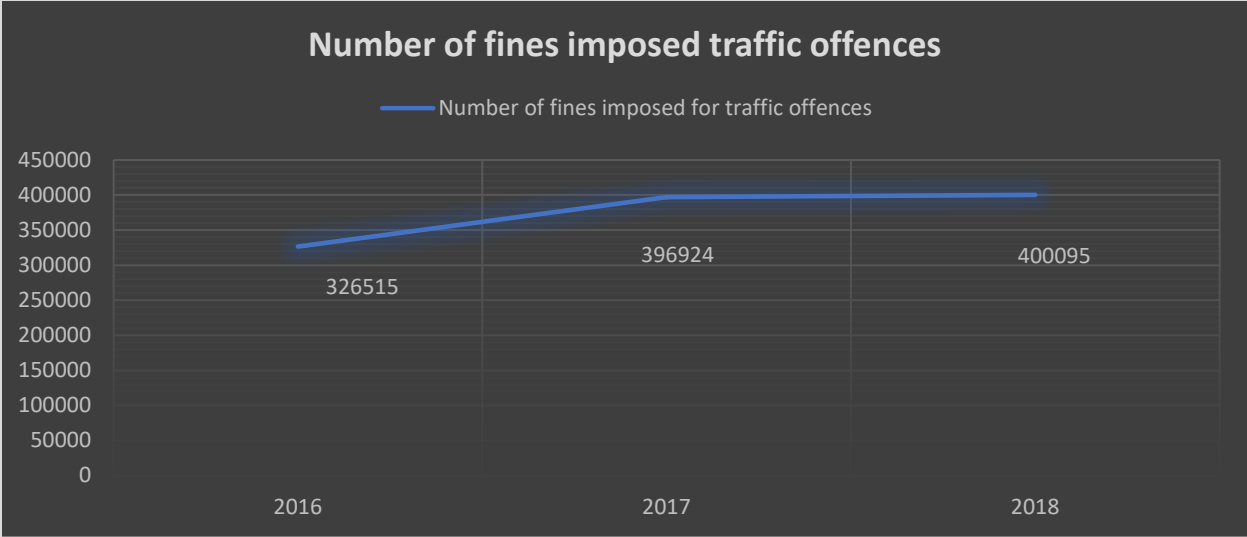
<sup>22</sup> Ibid. Article 56.

<sup>23</sup> Ibid. Article 61.

<sup>24</sup> *Number of accidents in traffic is increasing, punishments against the defendants are decreasing.* Betimi për Drejtësi. January 3, 2019. (Follow link <https://betimiperdrejtesi.com/numri-i-aksidenteve-ne-trafik-ne-rritje-denimet-ndaj-te-akuzuarve-me-renie/>)

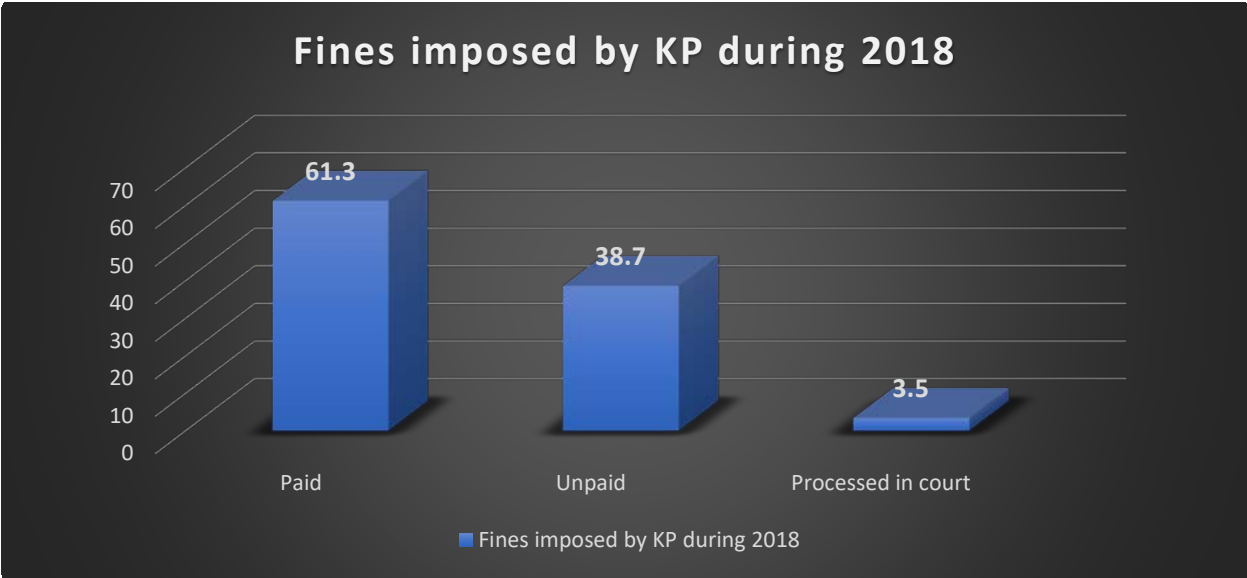
<sup>25</sup> Ibid.

<sup>26</sup> Communication through e-mail with the Informative and Public Relations Office of the Kosovo Police. January 22, 2019.



**Graph 1 – Number of fines imposed by Kosovo Police for traffic offences (2016, 2017 and 2018)<sup>27</sup>**

Of the 400,095 traffic offences imposed in 2018, KP has announced that 96.5% of them are mandatory fines. Of these, 61.30% are paid, 38.70% are unpaid, and 3.5% are processed in court. (see the graph below)



**Graph 2 – Status of fines imposed by the Kosovo Police during 2018<sup>28</sup>**

Out of these imposed fines, KP has announced that in 2018, 8,427,711.59 euros were collected. This amount is 140% more than the value collected in 2017.<sup>29</sup> As for their statutory limitation,

<sup>27</sup> Communication through e-mail with the Informative and Public Relations Office of the Kosovo Police. February 1, 2019.

<sup>28</sup> Ibid.

according to the KP's response, this is within the jurisdiction of the relevant courts and consequently they have no more detailed information on the matter.

## 4.2. Central and municipal inspectors

In addition to the Kosovo Police, inspectors of various central and municipal inspectorates have authorizations to impose fines. In this regard, based on research conducted by KLI, it turns out that these inspectorates have imposed the highest number of fines against environmental polluters and violators of the Law on Tobacco Control.

### 4.2.1. Fines against environmental pollutants

In recent years Kosovo has also been of the countries around the world that have intensified efforts to have a cleaner environment. In this regard, the Ministry of Environment and Spatial Planning and the organization "Let's Do It Kosova" had developed the project "Let's Clean Kosova".

Let's Do I is an organization that deals with the preservation and protection of the environment in Kosovo, the organization of citizens to address problems, their participation in various activities such as (cleaning actions, awareness campaigns and other volunteer activities).<sup>30</sup> In addition, this organization has also monitored the implementation of the Administrative Instruction on Mandatory Fines by environmental inspectors.

This Instruction was issued by the Ministry of Environment and Spatial Planning in October 2018, with the aim of preventing waste dumping outside designated waste disposal sites, eliminating or reducing pollution, protecting the environment and human health, protection of public and private areas from pollution through waste management.<sup>31</sup>

At the same time, this AI establishes procedures for imposing mandatory fines on natural and legal persons who dump waste outside designated waste disposal sites.<sup>32</sup>

Based on the monitoring process carried out by the organization "Let's Do it Kosova", it results that in November 2018, 89 mandatory fines for polluters were imposed in all municipalities of Kosovo. The Municipality of Pristina tops the list of municipalities with the most fines imposed, 35 in total, followed by the Municipality of Vushtrri where nine fines were issued by environmental inspectors. Of the seven fines imposed, the list goes on with the Municipality of Gjakova and Malisheva, followed by the Municipality of Prizren with five fines imposed on polluters, while in the Municipality of Peja, Istog and Obiliq four fines were imposed for

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<sup>29</sup> "The number of fatal accidents is concerning, the last year 8.5 million euros were collected due to the traffic fines". Telegrafi.com. March 17, 2019. (Follow link: <https://telegrafi.com/shqetesues-numri-aksidenteve-fatalitet-vitin-e-kaluar-jane-arketuar-rreth-8-5-milione-euro-nga-shqiptimi-gjobave-ne-trafik/>).

<sup>30</sup> *Who are we?* Let's Do It Kosova. January 22, 2019. (Follow link: <https://www.letsdoitkosova.org/>).

<sup>31</sup> Administrative Instruction MESP – Nr. 06/2018 on Penalties with Mandatory Fines. Article 1.

<sup>32</sup> Ibid.

environment pollution. Only two fines were imposed in Vitia municipality during November, while three were imposed in the municipality of Kamenica. But no single fine was imposed in the municipalities, such as: Rahovec, Fushë Kosova, Skenderaj, Podujeva, Mitrovica, Ferizaj, Kacanik, Hani i Elezit, Klina, Deçan, Junik, Shtime, Lipjan, Drenas and Dragash. Whereas, in Gjilan and Suhareka only a fine was imposed against polluters.<sup>33</sup>

Whereas, based on monitoring data for December 2018, it results that 84 mandatory fines for polluters have been imposed in all municipalities of Kosovo. In December, similar to November, the Municipality of Pristina continues to top the list of municipalities with the most fines imposed, 25 in total, followed by the Municipality of Mitrovica and Junik, where 10 fines were imposed by environmental inspectors. The list of municipalities continues with Peja, where 6 fines were imposed for polluters, and Prizren where 4 fines were imposed. The Municipality of Vushtrri, Malisheva, Deçan, Rahovec and Gjilan have three fines imposed. In the municipalities of Lipjan and Drenas only two fines were imposed for the polluters, while in the municipalities of Suhareka, Shtime, Istog, Gjakova and Obiliq only one fine was imposed for the polluters. But no single fine was imposed in the municipalities, such as: Fushë Kosovë, Skenderaj, Podujevë, Vitia, Kamenica, Kaçanik, Hani i Elezit and Klina.<sup>34</sup>

Both November and December are characterized by the same type of fines as the most common type – the one for throwing waste and construction materials out of designated places. During the monitoring process, conducted by the Let's Do It team, it turns out that, as in November and December, the challenge of implementing the Administrative Instruction on Mandatory Fines remains the non-equipment of Kosovo Police with mandatory fines and the lack of environmental inspectors in some of the municipalities.<sup>35 36</sup>

In the workshop “Environmental Policies and challenges in their implementation”, representatives of the organization “Let's Do It Kosova”, said that the main burden of implementing AI no.06/2018 falls on the inspectorate. There was also said that so far, 300 mandatory fines have been imposed by the inspectorate against those who polluted the environment.<sup>37</sup>

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<sup>33</sup> 89 fines against polluters only during November. Let's Do It Kosova. January 22, 2019. (Follow link: <https://www.letsdoitkosova.org/89-gjoba-per-ndotesit-vetem-gjate-muajit-nentor/>)

<sup>34</sup> 84 fines against polluters during December. Let's Do It Kosova. January 22, 2019. (Follow link: <https://www.letsdoitkosova.org/84-gjoba-per-ndotesit-e-mjedisit-gjate-muajit-dhjetor/>)

<sup>35</sup> 89 fines against polluters only during November. Let's Do It Kosova. January 22, 2019. (Follow link: <https://www.letsdoitkosova.org/89-gjoba-per-ndotesit-vetem-gjate-muajit-nentor/>)

<sup>36</sup> 84 fines against polluters during December. Let's Do It Kosova. January 22, 2019. (Follow link: <https://www.letsdoitkosova.org/84-gjoba-per-ndotesit-e-mjedisit-gjate-muajit-dhjetor/>)

<sup>37</sup> Until now have been imposed 300 fines against the ones who have polluted the environment. Gazeta Express. January 22, 2019. (Follow link <https://www.gazetaexpress.com/lajme/deri-me-tani-jan300-gjoba-ndaj-atyre-qe-ndoten-ambientin-618451/>).

Regarding the problems in handling cases of such nature, and above all the reasons for the delays in environmental cases handled by the Prosecution Offices and the Courts was discussed at the roundtable held on November 22, in Pristina, entitled “Preventing and fighting environmental problems”, organized by the Ombudsperson Institution and Kosovo Law Institute (KLI).

The Ombudsperson, Mr. Hilmi Jashari emphasized to the participants that the state of the environment is affecting Article 2 of the European Convention, the Right to Life, while delays in solving these cases affect Article 6, the Right a Fair Trial, of the European Convention on Human Rights, and Article 13, the Right to an Effective Remedy. The Ombudsperson stated that it is a positive obligation of the state to guarantee human rights to its citizens. Whereas, according to the Director of KLI, Mr. Ehat Miftaraj, prosecutors and judges should be trained in this field.<sup>38</sup>

The State Prosecutor’s Office reported that although the environment is a very important issue, the prosecutorial system does not have statistics on these cases and that environmental crimes are usually related to cases involving abusing official position or authority. While the Basic Court in Pristina stated that there are still no statistics on cases of this nature, but that the number of cases of this nature is small.<sup>39</sup>

Based on the discussions at this roundtable, it was realized that there are no statistics regarding these cases in the prosecution and courts, there are delays in these cases and that such cases do not fall under the priorities of the prosecutorial and judicial system.<sup>40</sup>

#### 4.2.2. Fines against violators of the Law on Tobacco Control

The Law on Tobacco Control had entered into force in 2013. According to this law, smoking indoors is strictly prohibited, otherwise different fines are imposed on violators of this law.

However, even after 6 years from the entry into force of this law, our country remains constantly challenged by its violators. Furthermore, this situation has been confirmed by the Sanitary Inspectorate of Kosovo. According to the head of this Inspectorate, Ibrahim Tershnjaku, there are some factors that are impeding the implementation of the law, above all he emphasizes the non – imposition of fines by the courts.

“The fine has been delayed or has not been imposed by the court at all. And this phenomenon that emerges in the issue of the implementation of the law is taking other dimensions, maybe even thinking of how to supplement – amend this law”, Tershnjaku had stated once.<sup>41</sup>

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<sup>38</sup> “Ombudsperson Institution and Kosovo Law Institute organized the roundtable “Preventing and fighting environmental problems”. November 22, 2018. (Follow link: <https://www.facebook.com/216051828531479/posts/institucioni-i-avokatit-t%C3%AB-popullit-dhe-instituti-i-kosov%C3%ABs-p%C3%ABr-drejt%C3%ABsi-organiz/1382336171903033/>)

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

According to him, another problem is the lack of implementation of the law by the mayors. He says that the only municipality willing to fight this phenomenon is the Municipality of Drenas.<sup>42</sup>

This issue, rather than having fewer problems over time, in reality is only facing more and more obstacles over the years.

From the results of the monitoring of the Kosovo Advocacy and Development Center (KADC), it results that the biggest law violators are nightclubs, which violate the law 100% without exception, followed by cafes with 78% and restaurants with 60%.<sup>43</sup>

Officials from this organization also see one of the main reasons for not implementing the law being that courts do not properly handle cases of this nature. According to the KADC, the sanitary inspectorate feels that their authority has been impaired due to delays in dealing with cases lasting up to two and three years, due to the reduction of fines to insignificant amounts of money, and the dismissal of cases reasoned for lack of evidence.<sup>44</sup>

Likewise, KADC points out that another important fact is that recidivist offenders have not been punished even though they are known, which has led to the erroneous message that violating the law is not punished and has even contributed to increase unfair competition.<sup>45</sup>

Whereas, the Food and Veterinary Agency has announced that during the period January – December 2018, 66 official controls were carried out during the official working hours. Where violators have been found, they have been penalized, and 12 reports have been initiated and sent to the competent courts.<sup>46</sup>

However, despite the controls and some fines imposed, in reality the actual situation is not at all good. Therefore, the work of administrative bodies towards controls and fines should be stricter and effective, because otherwise there is no improvement nor actions in compliance with the law.

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<sup>41</sup> *Law on Tobacco control is not being implemented.* Koha.net. January 22, 2019. (Follow link: <https://www.koha.net/arberi/119223/ligji-per-kontrollin-e-duhanit-nuk-po-zbatohet/>).

<sup>42</sup> Ibid.

<sup>43</sup> *Scandal/Smoking invades bars all around Kosovo.* Syri.net. January 22, 2019. (Follow link: [https://www.syri.net/syri\\_kosova/sociale-lajme/4679/skandalozeose-duhani-pushton-lokalet-anembane-kosoves/](https://www.syri.net/syri_kosova/sociale-lajme/4679/skandalozeose-duhani-pushton-lokalet-anembane-kosoves/)).

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> Ibid.



## 5. Backlog of courts with minor offence cases during 2016, 2017 and 2018

The data in the table below are taken from the KJC's annual reports and reflect the total number of minor offence cases in all courts in the country.

Year	Cases unsolved at the beginning	Cases received at work	Cases solved	Cases unsolved at the end
2016	<b>210,983</b>	<b>355,865</b>	<b>377,114</b>	<b>189,734</b>
2017	<b>189,734</b>	<b>135,023</b>	<b>219,554</b>	<b>105,203</b>
2018	<b>104,713</b>	<b>34,812</b>	<b>93,975</b>	<b>45,550</b>

**Table 1. Status of minor offence cases in the Basic Courts of the Republic of Kosovo (2016, 2017 and 2018)**<sup>47 48 49</sup>

What stands out from the analysis of these statistics is the fact that 2018 has a significantly smaller number of cases received at work. This shows that the new Law on Minor Offences, with the authorization given to administrative bodies to impose fines, has reduced the number of cases of this nature in the domestic courts. However, despite this impact, the number of cases solved has shown the lowest number for the last three years.

KLI has analyzed all numbers – unsolved cases at the beginning of the year, new cases received during that year, unsolved cases at the end and solved cases, and this has led to the concrete outcome of the work of judges in all the basic courts of the country, which are graphically presented in the second part of this report.

In the following part of this report, these findings are also presented graphically, in order to more clearly reflect the real efficiency of each court, as well as the trend of unsolved cases at the end of each year. Also, KLI has requested from the KJC the data on the exact number of minor offence cases that have reached the statutory limitation period in each court during 2016, 2017 and 2018 and then analyzed all these data to present the findings below.

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<sup>47</sup> KJC, “Annual Statistical Court Report 2016”. Pristina, 2017. Pg. 11.

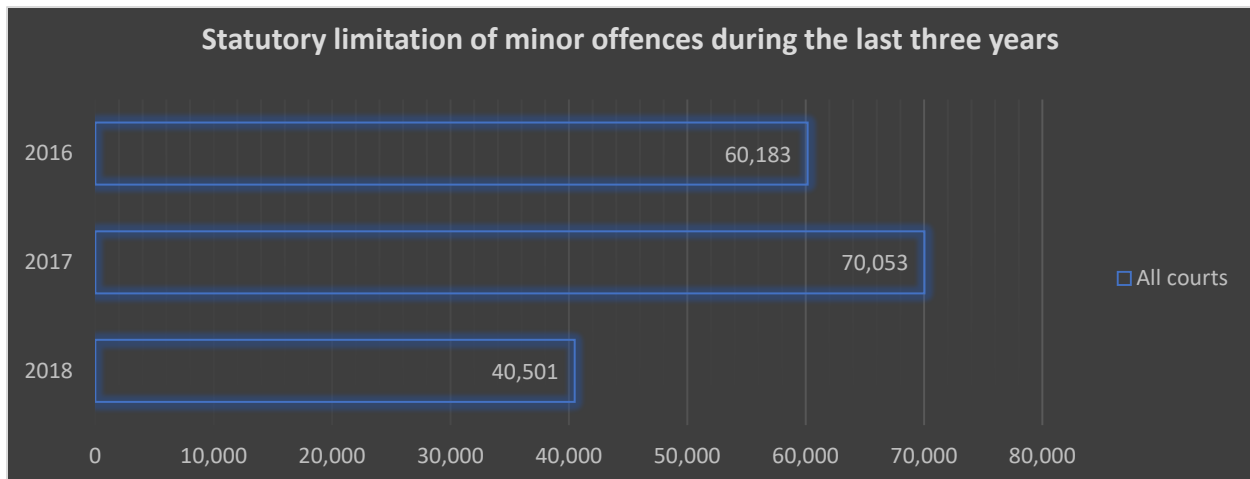
<sup>48</sup> KJC, “Annual Statistical Court Report 2017”. Pristina, 2018. Pg. 11.

<sup>49</sup> KJC, “Annual Statistical Court Report 2018”. Pristina, 2019. Pg. 11.

## 6. The statutory limitation of minor offence cases in the Basic Courts of Kosovo

Statutory limitation is one of the most concerning issues of the judicial system in the Republic of Kosovo, especially in the Minor Offences Division. Based on all the statistics presented below in this report, it is very clear that the number of cases that reach the statutory limitations period while in courts, indicates a very poor situation of the courts in this regard.

Based on data provided by the KJC, KLI has found that in the last three years there have been a significant number of cases that have reached the statutory limitations period in all courts. In the following graph, we have first presented the total value of minor offence cases that have reached the statutory limitations period in the courts over the last three years (see the graph below)



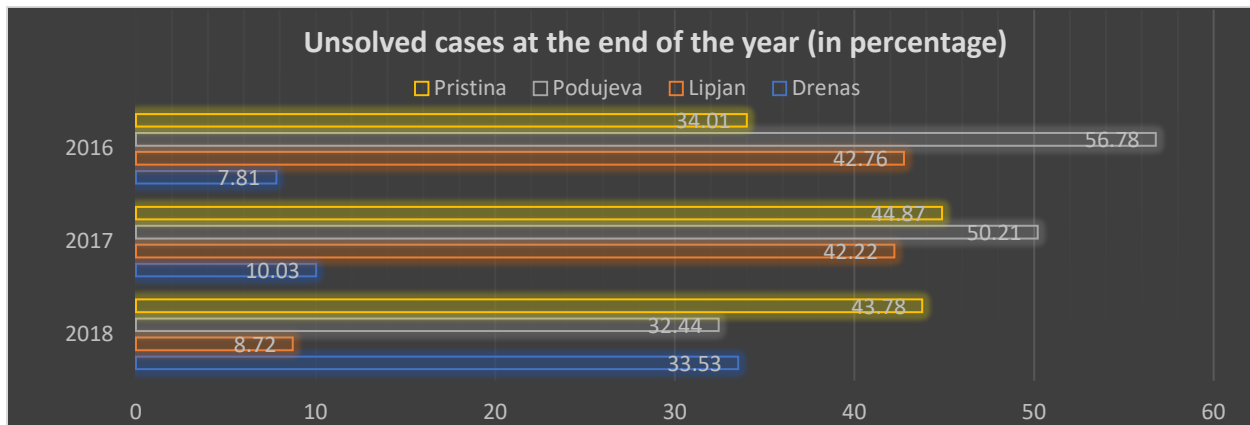
**Graph 3. The total number of Minor offence cases that have reached the statutory limitation period at all courts in the country<sup>50</sup>**

In order to come at specific findings on the causes that have led to a large number of minor offence cases to reach statutory limitations period over the last three years, the following report presents the status of minor offence cases in each Kosovo court and branch, based on the general data and then analyzing them to present specific findings and results on the efficiency and statutory limitation of such cases in the courts.

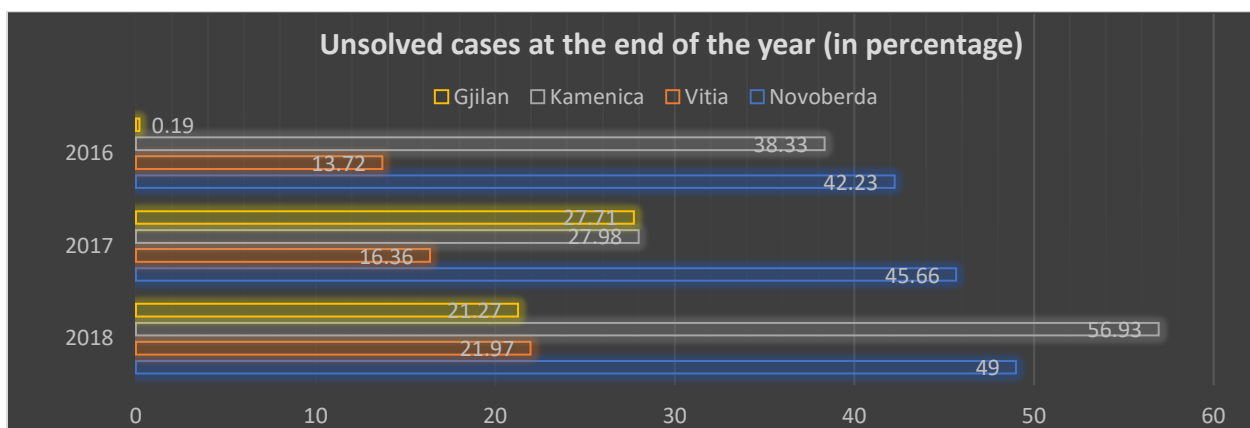
<sup>50</sup> Communication by e-mail with the Statistical Department of KJC. February 15, 2019.

### 6.1. Minor offence cases unsolved at the end in all courts during 2016, 2017 and 2018, expressed as percentage (%)

In order to present clearly the number of unsolved cases, KLI has calculated the number of unsolved cases at the beginning with the number of cases received in the same year, through which the number of pending cases has been obtained<sup>51</sup>. In relation to this number, it was calculated how many cases remained unsolved at the end and thus for each time period was expressed as a percentage the number of unsolved cases at the end of each respective year. (see the graphs below)

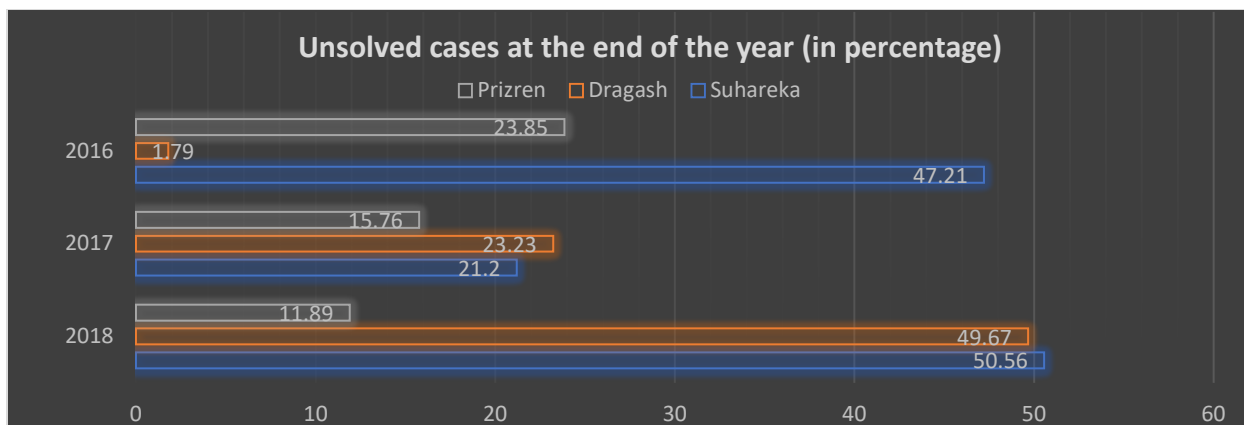


**Graph 4. Minor offence cases unsolved at the end of the year in the Basic Court in Pristina and its branches – Podujeva, Lipjan and Drenas (2016, 2017 and 2018), expressed as percentage (%)**

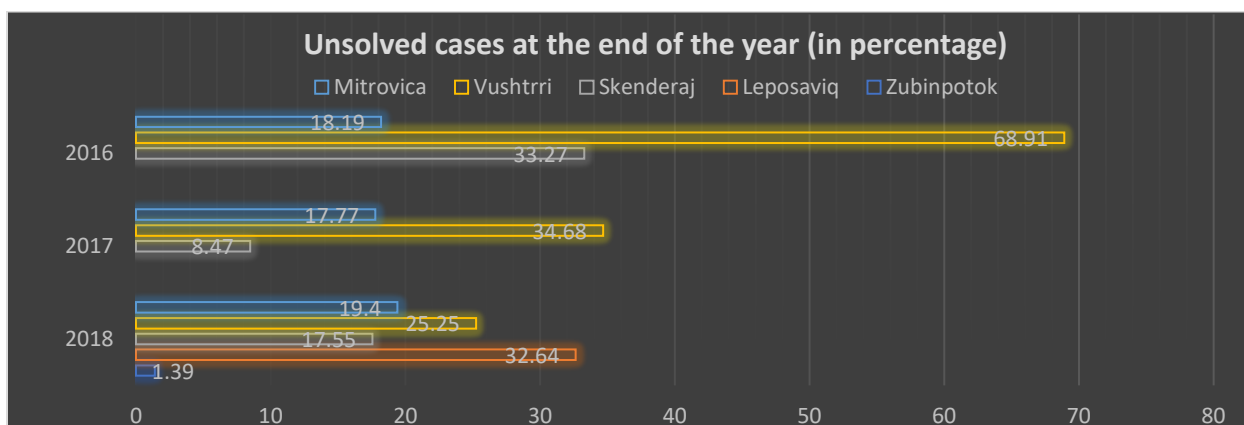


**Graph 5. Minor offence cases unsolved at the end of the year in the Basic Court in Gjilan and its branches– Kamenica, Viti and Novoberda (2016, 2017 and 2018), expressed as percentage (%)**

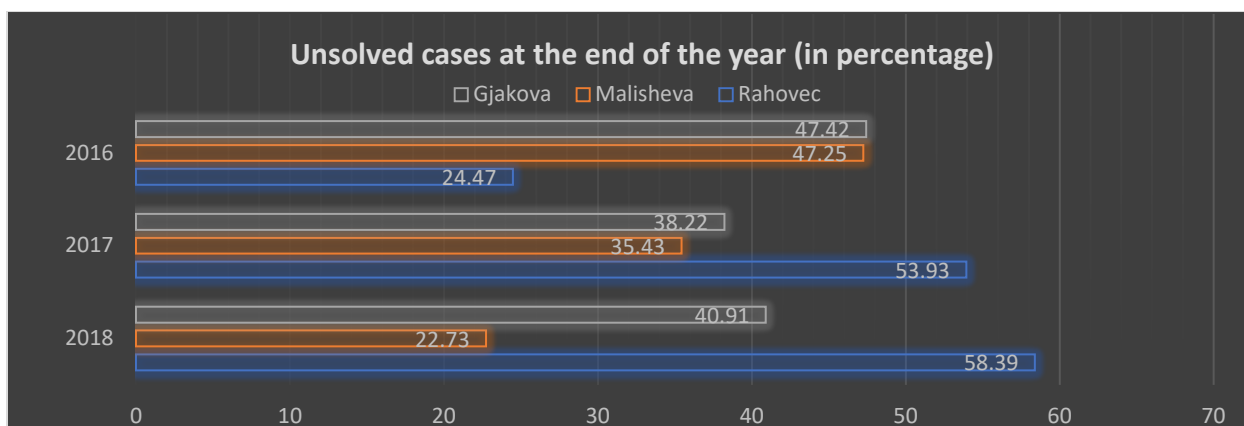
<sup>51</sup> Note: All the data were collected from the Annual Reports of the Courts, published by KJC (2016, 2017 and 2018).



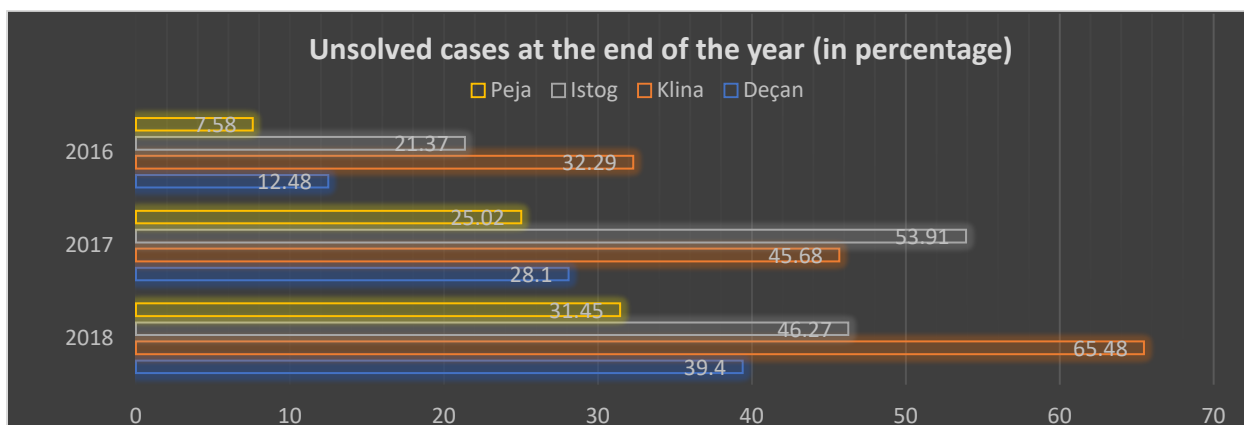
**Graph 6. Minor offence cases unsolved at the end of the year in the Basic Court in Prizren and its branches– Dragash and Suhareka (2016, 2017 and 2018), expressed as percentage (%)**



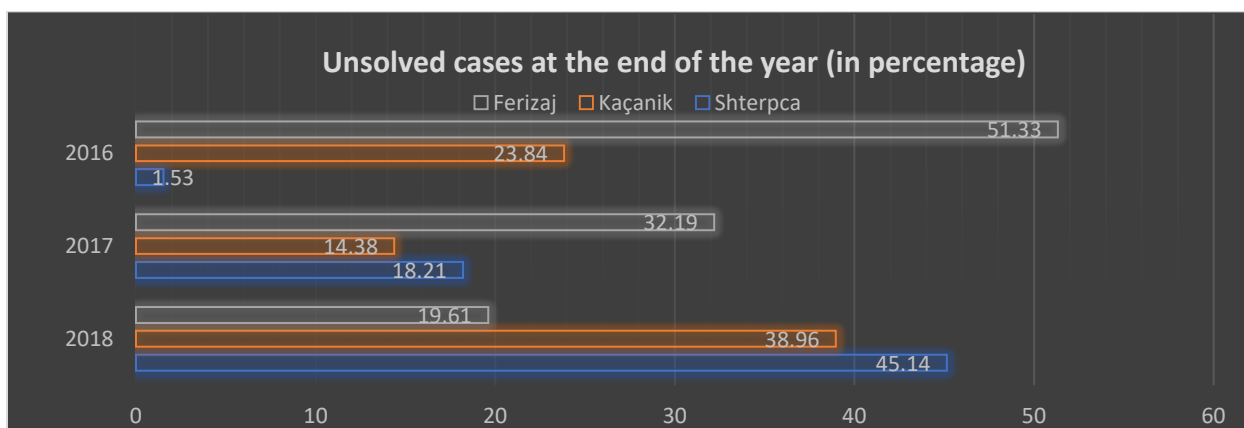
**Graph 7. Minor offence cases unsolved at the end of the year in the Basic Court in Mitrovica and its branches – Vushtrri and Skenderaj (2016, 2017 and 2018), expressed as percentage (%)**



**Graph 8. Minor offence cases unsolved at the end of the year in the Basic Court in Gjakova and its branches – Malisheva and Rahovec (2016, 2017 and 2018), expressed as percentage (%)**



**Graph 9. Minor offence cases unsolved at the end of the year in the Basic Court in Peja and its branches – Istog, Klina and Deçan (2016, 2017 and 2018), expressed as percentage (%)**



**Graph 10. Minor offence cases unsolved at the end of the year in the Basic Court in Ferizaj and its branches – Kaçanik and Shterpca (2016, 2017 and 2018), expressed as percentage (%)**

## 6.2. The efficiency of the courts in dealing with minor offence cases

Based on the annual report published by the KJC, the part dealing with the performance of judges covers all courts and branches of basic courts in Kosovo. The method used to calculate the efficiency of the court, based on this report, shows very positive results, since it presents the ratio between the cases solved and those received at work during that year. (see the table below)

	The average of backlog of a judge with new cases for a month	% Court efficiency (solved cases / new cases)	Average of solved cases by a judge for a month	Unsolved cases		% (+) increase or (-) decrease in the reporting period
				At the beginning of the reporting period	At the end of the reporting period	
2016	<b>587.2</b>	<b>106%</b>	<b>622.3</b>	<b>210,983</b>	<b>189,734</b>	<b>-10.07%</b>
2017	<b>967.9</b>	<b>163%</b>	<b>1573.9</b>	<b>189,734</b>	<b>105,203</b>	<b>-44.55%</b>
2018	<b>65.4</b>	<b>271%</b>	<b>177.2</b>	<b>104,713</b>	<b>46,352</b>	<b>-55.73%</b>

**Table 2. Backlog of judges and average of solved cases for a judge, as well as pending cases in Basic Courts (2016, 2017, 2018)<sup>52 53 54</sup>**

Based on the KJC's annual reports, the minor offence division always exceeds 100% efficiency, due to the method used to calculate it, because it's analyzed the number of cases received and cases solved at the end of each year, which results in judges almost every year solving more cases than they receive during that year.

But at a time when court cases are decreasing, as is the case in 2018, there is also a decrease in the number of cases solved by a judge per month. This makes one think that judges work only about exceeding the number of cases received for that year, and not entirely resolving the cases at the same pace as in previous years.

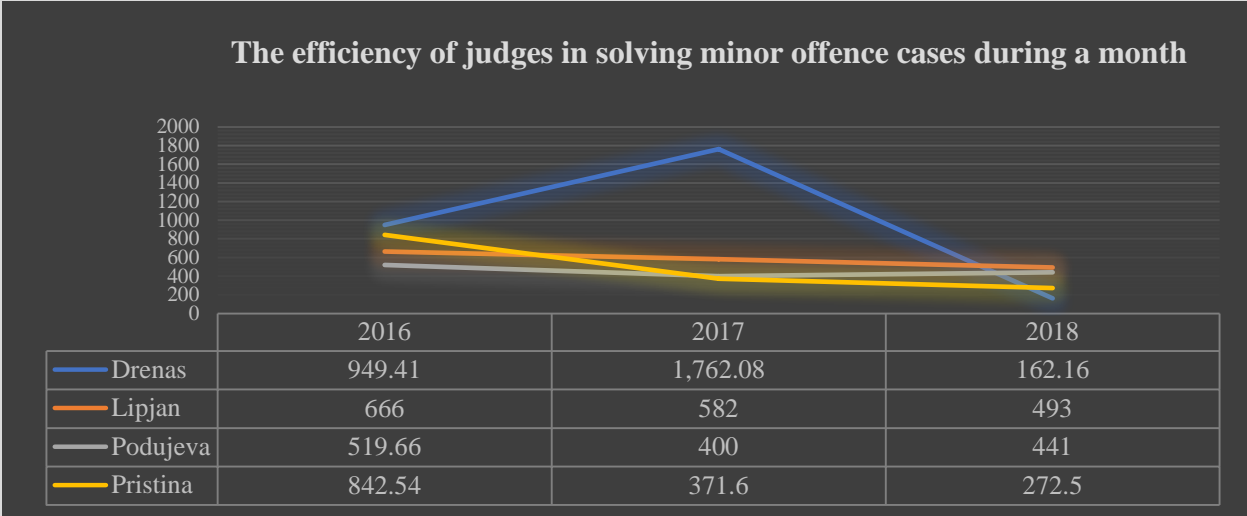
Consequently, not enough cases are solved in the end and many of them that are received are left unsolved.

In this regard, KLI has managed to find the average number of cases solved by one judge, during one month, for each year (2016, 2017 and 2018), based on individual calculations for the respective court, taking into account the number of cases solved by the respective court and the number of judges of that court who have been assigned cases of this nature throughout the respective year. In this way we consider that the real efficiency of the work of the judges of each basic court and its branches in the country is shown and at the same time the discrepancies in the quantitative aspect of the judge's work from year to year are clearly shown too.

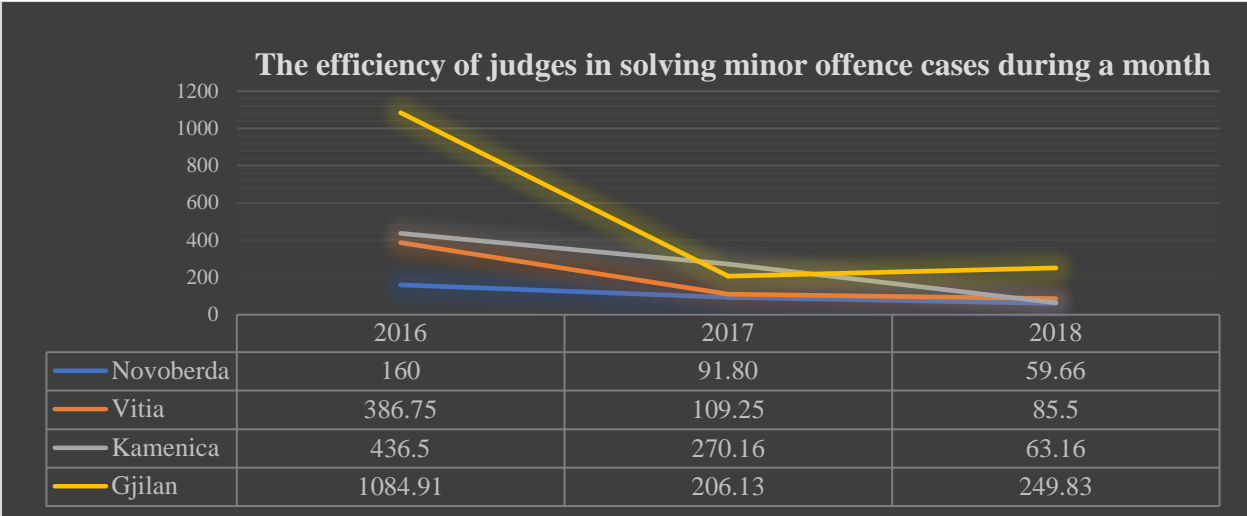
<sup>52</sup> KJC, "Annual Statistical Court Report 2016". Pristina, 2017. Pg. 3.

<sup>53</sup> KJC, "Annual Statistical Court Report 2017". Pristina, 2018. Pg. 3.

<sup>54</sup> KJC, "Annual Statistical Court Report 2018". Pristina, 2019. Pg. 3.

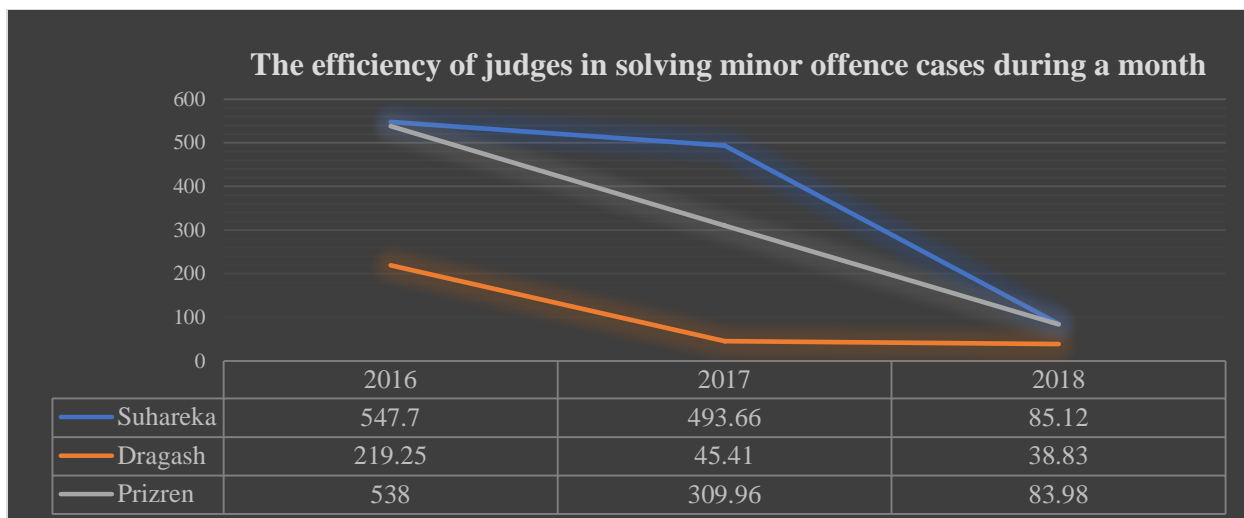


**Graph 11. The average of efficiency of Judges in solving minor offence cases for a month at the Basic Court in Prishtina and its branches Podujeva, Lipjan and Drenas (2016, 2017 and 2018)<sup>55</sup>**

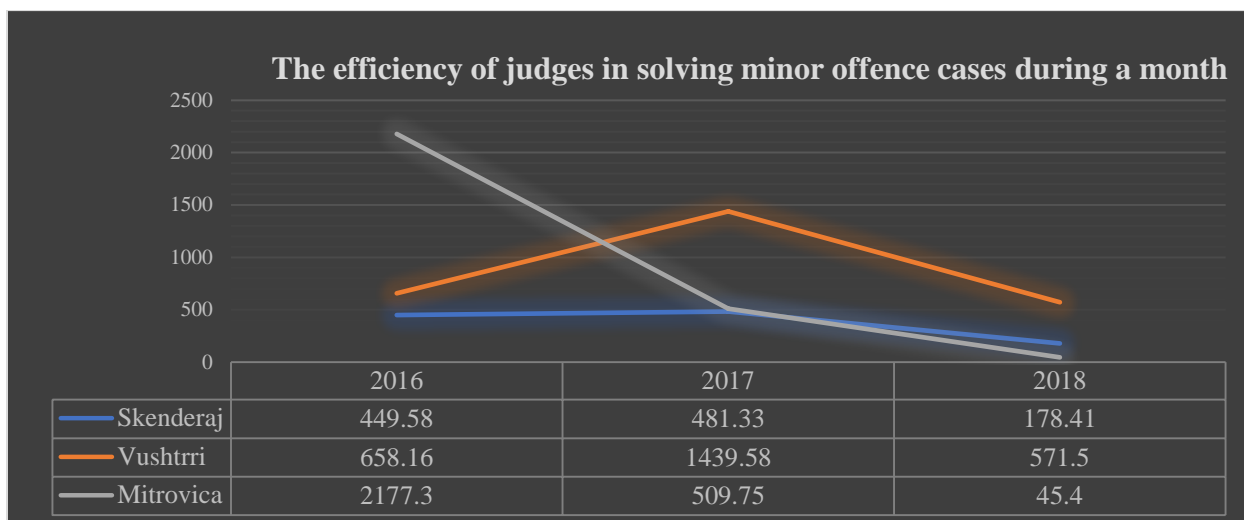


**Graph 12. The average of efficiency of Judges in solving minor offence cases for a month at the Basic Court in Gjilan and its branches–Kamenica, Viti and Novoherda (2016, 2017 and 2018)**

<sup>55</sup> Note: Based on the KJC’s data, the branch in Gracanica does not handle minor offence cases at all.

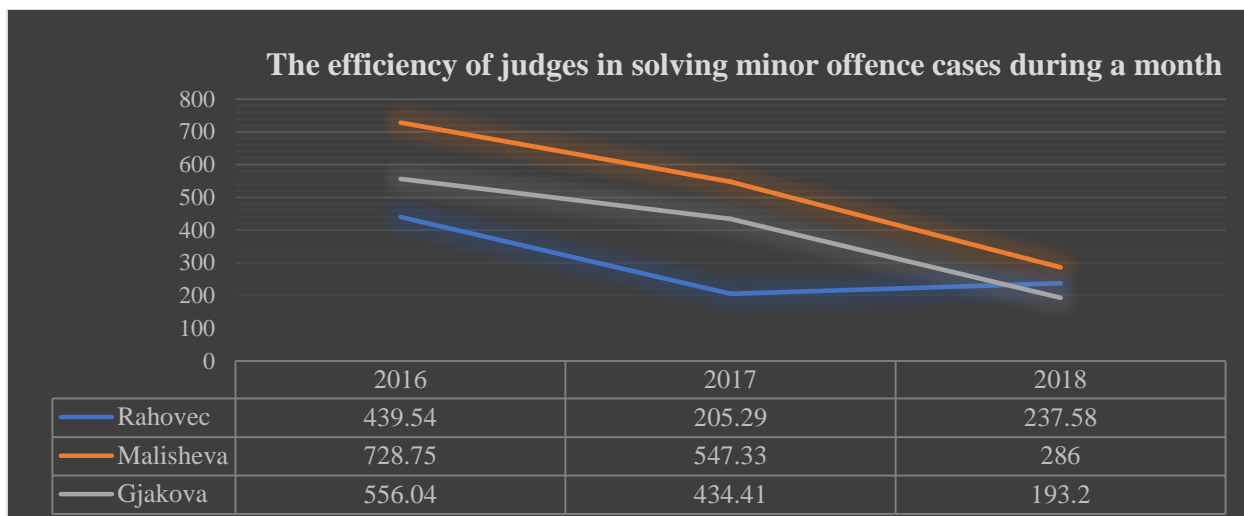


**Graph 13. The average of efficiency of Judges in solving minor offence cases for a month at the Basic Court in Prizren and its branches Dragash and Suhareka (2016, 2017 and 2018)**

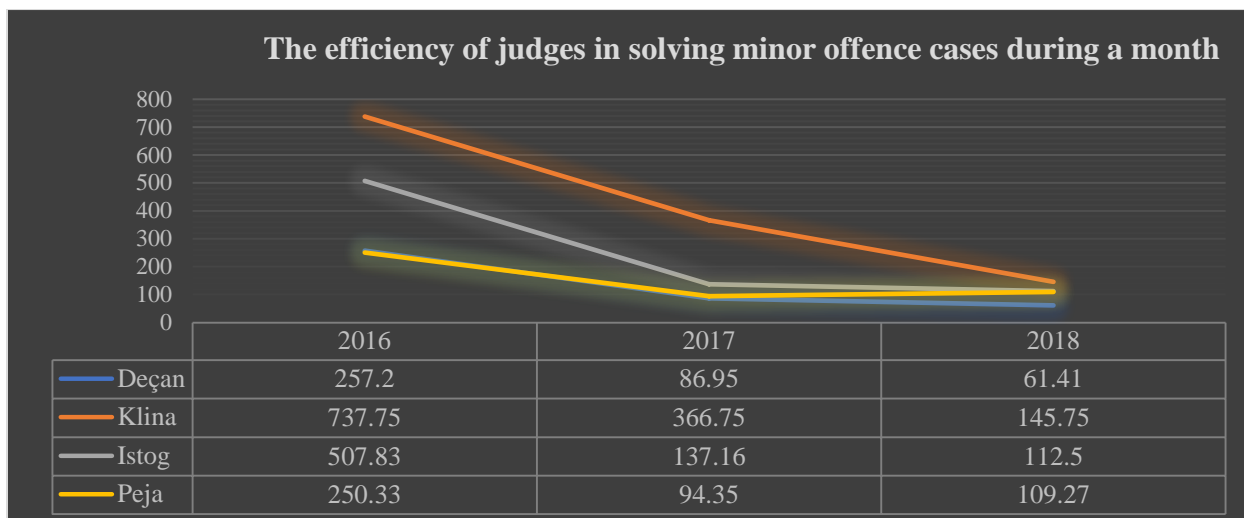


**Graph 14. The average of efficiency of Judges in solving minor offence cases for a month at the Basic Court in Mitrovica and its branches– Vushtrri and Skenderaj (2016, 2017 and 2018)**

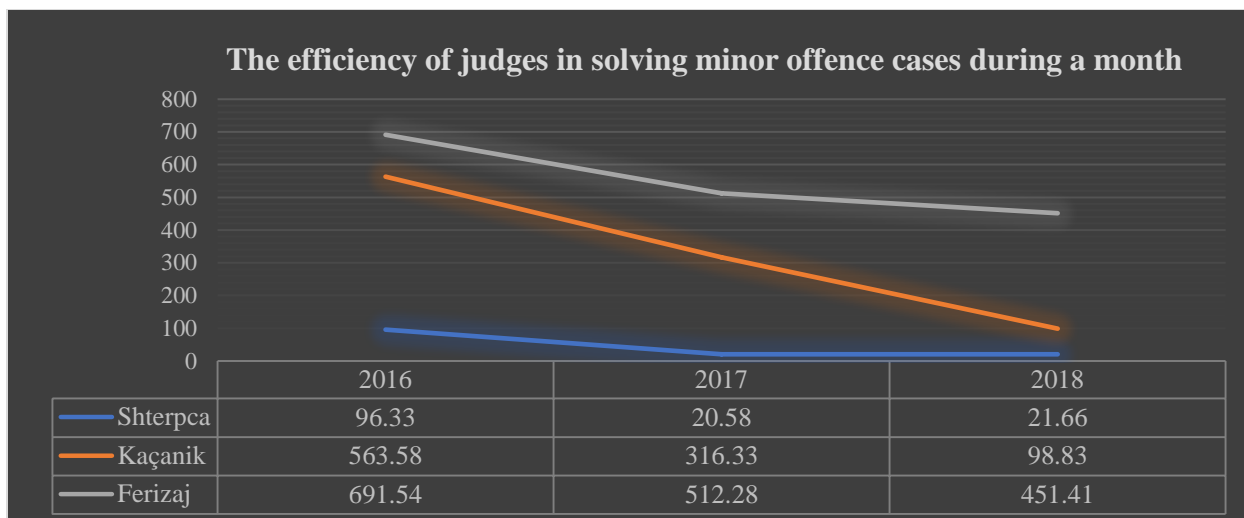




**Graph 15. The average of efficiency of Judges in solving minor offence cases for a month at the Basic Court in Gjakova and its branches– Malisheva and Rahovec (2016, 2017 and 2018)**



**Graph 16. The average of efficiency of Judges in solving minor offence cases for a month at the Basic Court in Peja and branches Istog, Klina and Deçan (2016, 2017 and 2018)**



**Graph 17. The average of efficiency of Judges in solving minor offence cases for a month at the Basic Court in Ferizaj and its branches– Kaçanik and Shterpca (2016, 2017 and 2018)**

### 6.3. Number of minor offence cases that have reached statutory limitation period during 2016, 2017 and 2018

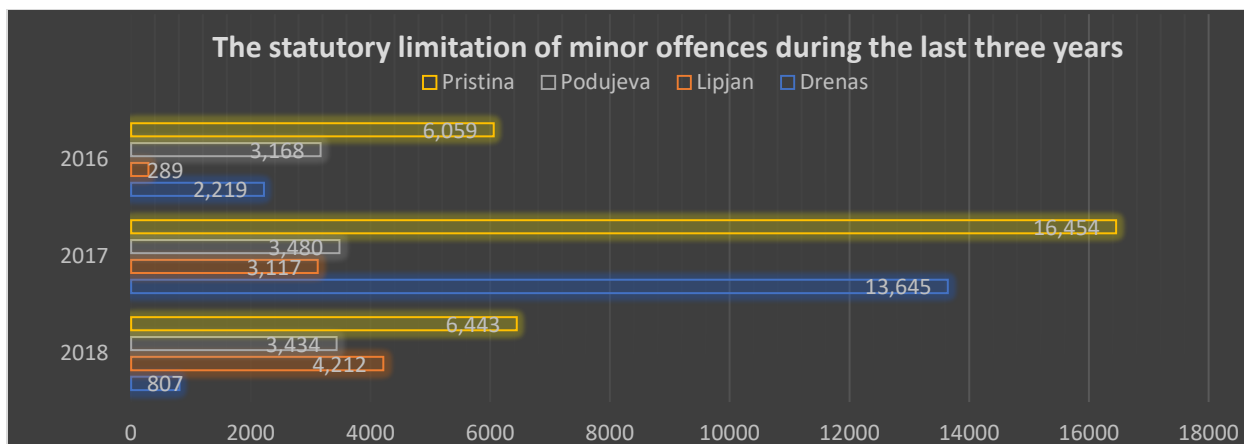
Based on the data received by the KJC on the number of minor offence cases that have reached the statutory limitation period while in all Basic Courts and their branches, during 2016, 2017 and 2018, is graphically presented below for each court with its branches separately.<sup>56</sup>

Based on these statistics, it is clear that minor offence cases face a large number of statutory limitations over the years, varying widely from one court to another, but apparent fact is that the highest rate of statutory limitations in courts is marked in 2017.

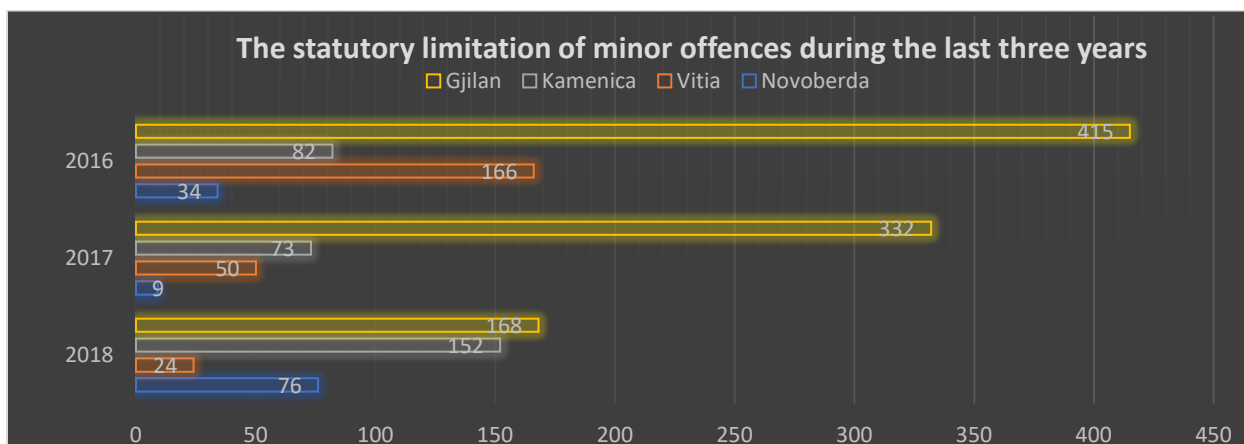
Whereas, it is worth mentioning that the Court of Mitrovica leads with the highest number of statutory limitations for the period 2016 – 2018, with a total of 40,582 statutory limitations. After that comes Ferizaj with 39,578 statutory limitations for 3 years. Whereas, Pristina ranks third in this regard, with 28,956 cases that have reached statutory limitation period during 2016, 2017 and 2018.

On a positive note are worth mentioning especially Dragash and Vushtrri, as two branches that have not left any minor offence cases over the last three years to reach statutory limitation period. Whereas, the Basic Court of Peja stands best, with a total of 5 minor offence cases that have reached the statutory limitation period during these three years – 0 in 2016, 1 in 2017 and 4 in 2018.

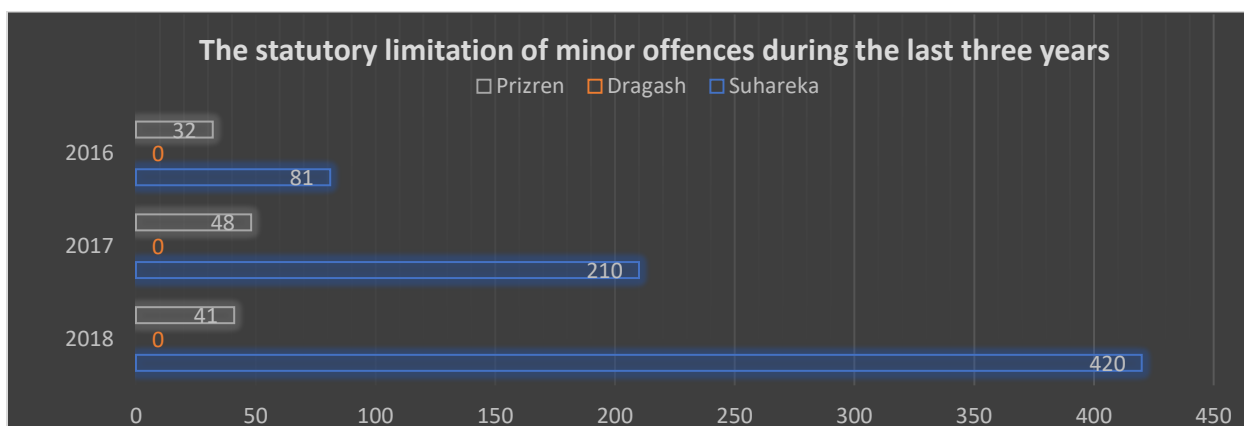
<sup>56</sup> Communication by e-mail with the Statistical Department of KJC. February 15, 2019.



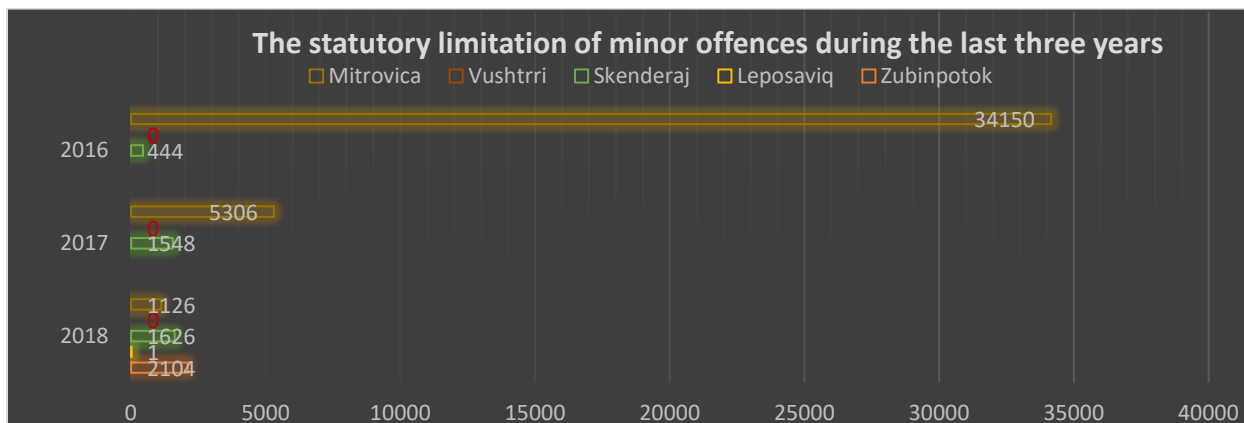
**Graph 18. The total number of Minor offence cases that have reached the statutory limitation period at the Basic Court in Pristina and its branches Podujeva, Lipjan and Drenas (2016, 2017 and 2018)**



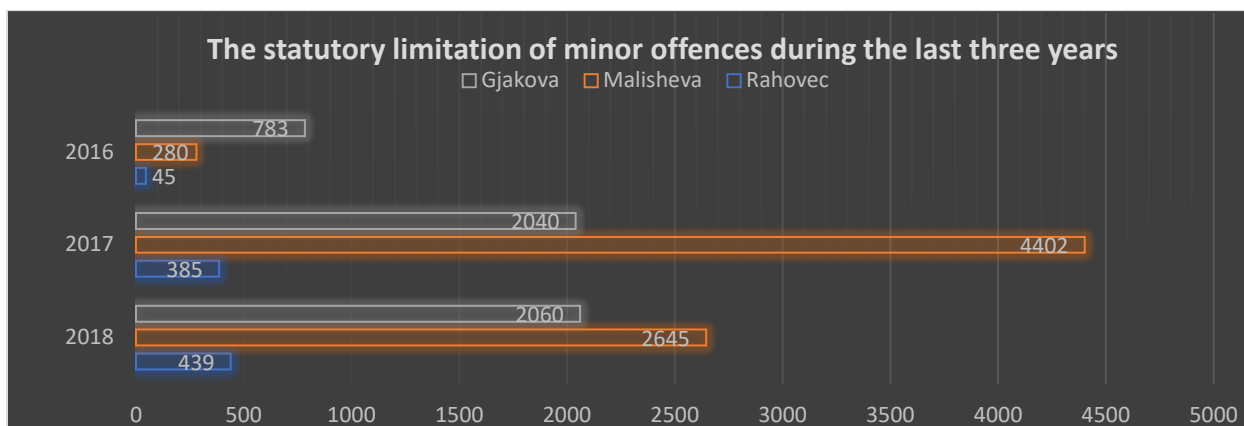
**Graph 19. The total number of Minor offence cases that have reached the statutory limitation period at the Basic Court in Gjilan and its branches–Kamenica, Viti and Novoberda (2016, 2017 and 2018)**



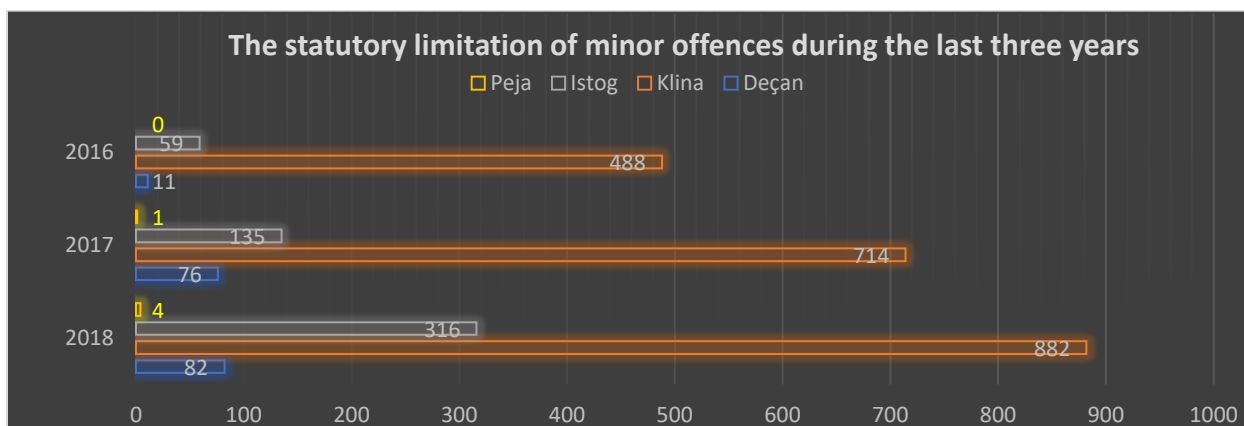
**Graph 20. The total number of Minor offence cases that have reached the statutory limitation period at the Basic Court in Prizren and its branches– Dragash and Suhareka (2016, 2017 and 2018)**



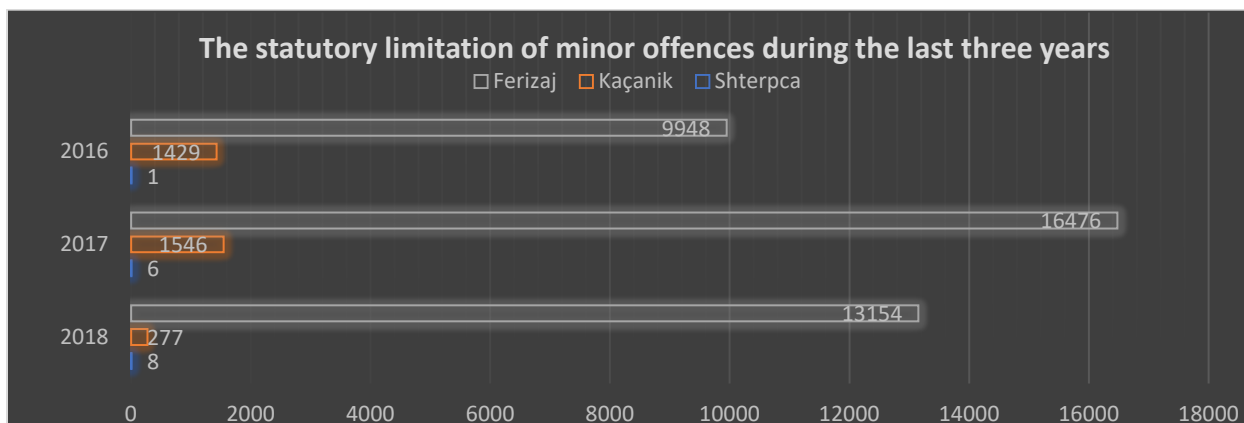
**Graph 21. The total number of Minor offence cases that have reached the statutory limitation period at the Basic Court in Mitrovica and its branches– Vushtrri and Skenderaj (2016, 2017 and 2018)**



**Graph 22. The total number of Minor offence cases that have reached the statutory limitation period at the Basic Court in Gjakova and its branches– Malisheva and Rahovec (2016, 2017 and 2018)**



**Graph 23. The total number of Minor offence cases that have reached the statutory limitation period at the Basic Court in Peja and its branches–Istog, Klina and Deçan (2016, 2017 and 2018)**



**Graph 24. The total number of Minor offence cases that have reached the statutory limitation period at the Basic Court in Ferizaj and its branches– Kaçanik and Shterpca (2016, 2017 and 2018)**

#### 6.4. Number of minor offence cases that have reached statutory limitation period during one business day at courts

KLI has also calculated the number of cases that have reached statutory limitation period in the Minor Offences Division within one business day only. Thus, to calculate how many minor offence cases have reached statutory limitation period during one day in our courts, we took into account the number of cases that have reached statutory limitation period during a year and the number of business days during that same year.

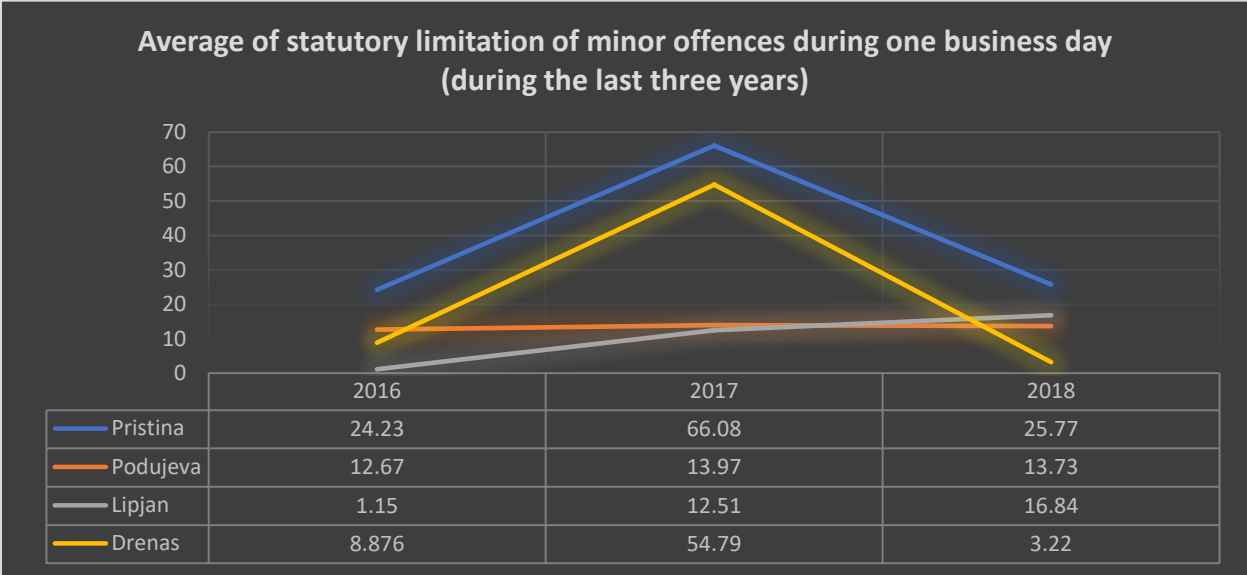
Thus, in 2016 out of 366 days of the year, 105 of them were weekends (Saturday and Sunday), and 11 were official holidays<sup>57</sup>, meaning that in total there were 250 business days during that year. By the same calculation, in 2017 turns out to have been 249 business days. Of the 365 days of that year, we have taken away 105 days of the weekend and 11 days of official holidays<sup>58</sup>. Whereas in 2018, out of 365 days of the year, 104 were weekends and 11 official holidays<sup>59</sup>, meaning there were 250 business days in total.

Subsequently, the number of minor offence cases that have reached statutory limitation period for each court (provided by the KJC Statistics Department) was divided with the number of business days for each respective year and you can find the results in the graphs below.

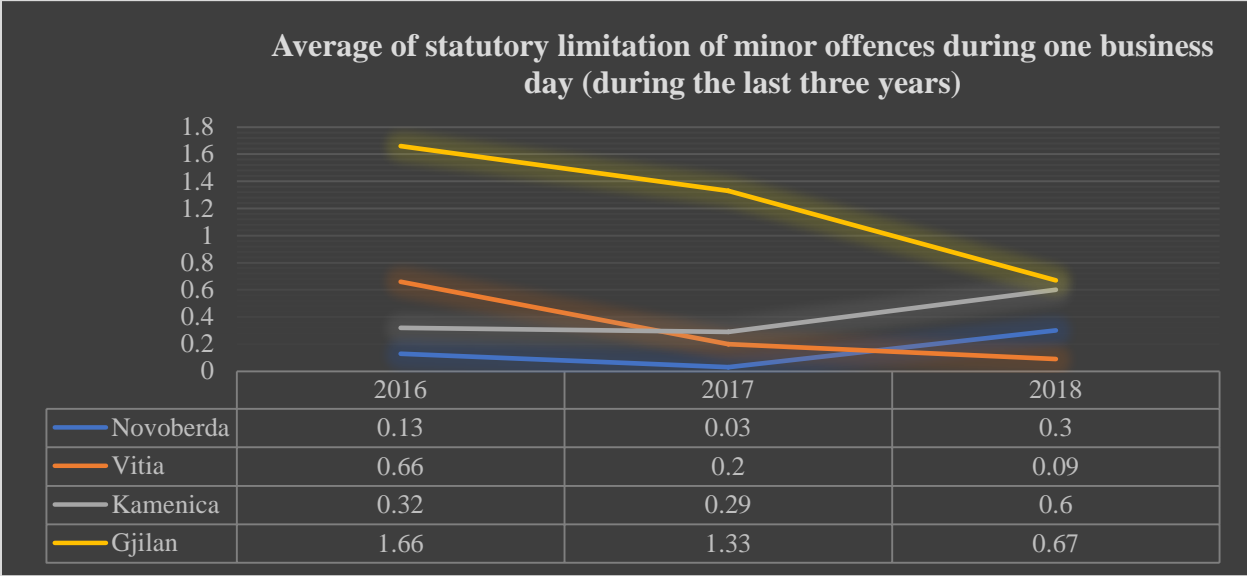
<sup>57</sup> Ministry of Public Administration of the Republic of Kosovo. “Official Holiday’s Calendar 2016”. (Follow link <https://map.rks-gov.net/institucion/Calendar-of-Official-Holidays/Kalendari-i-festave-2016.aspx>)

<sup>58</sup> Ministry of Public Administration of the Republic of Kosovo. “Official Holiday’s Calendar 2017”. (Follow link <https://map.rks-gov.net/institucion/Calendar-of-Official-Holidays/Kalendari-i-festave-2017.aspx>)

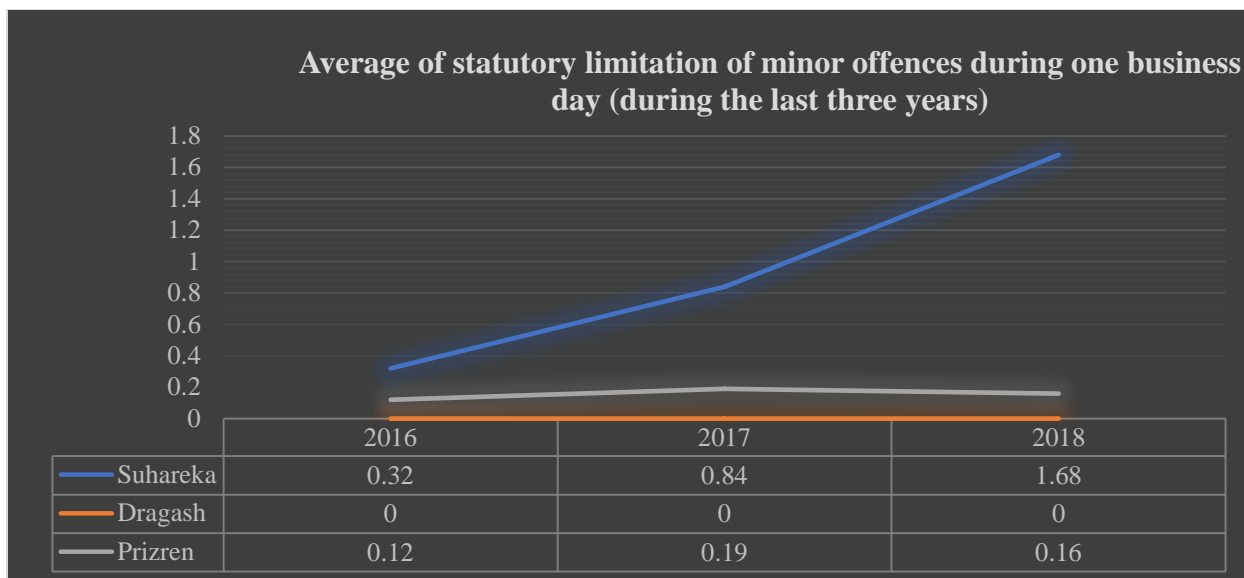
<sup>59</sup> Ministry of Public Administration of the Republic of Kosovo. “Official Holiday’s Calendar 2018”. (Follow link [https://map.rks-gov.net/institucion/Calendar-of-Official-Holidays/Kalendari-i-festave-2017-\(1\).aspx](https://map.rks-gov.net/institucion/Calendar-of-Official-Holidays/Kalendari-i-festave-2017-(1).aspx))



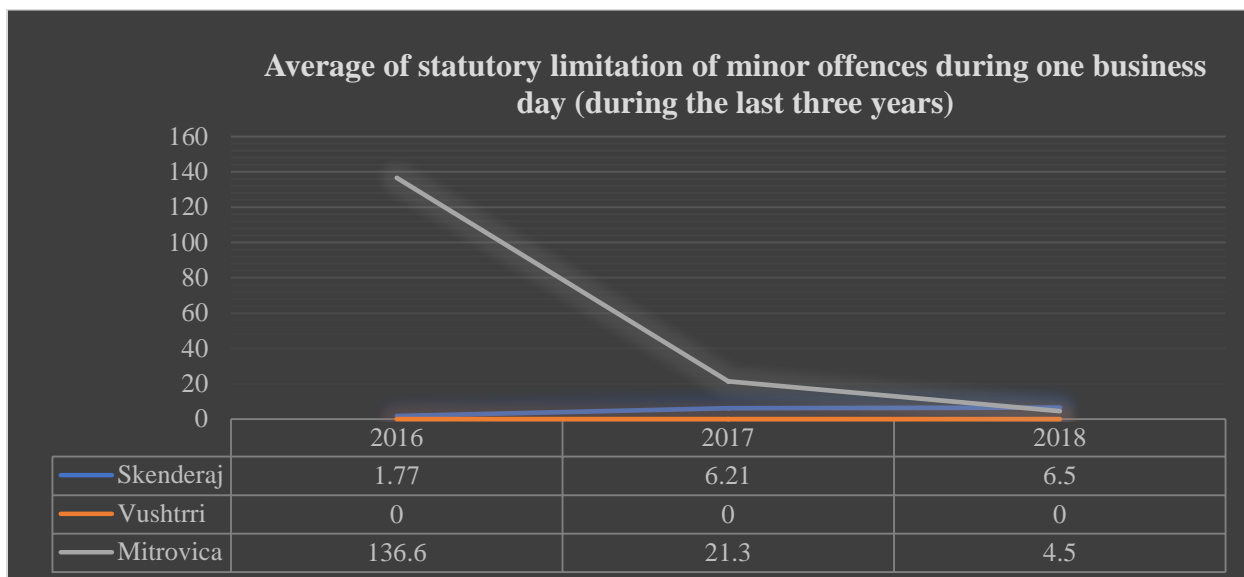
**Graph 25. The average of minor offence cases that reach the statutory limitation period within a day at the Basic Court in Pristina and its branches Podujeva, Lipjan and Drenas (2016, 2017 and 2018)**



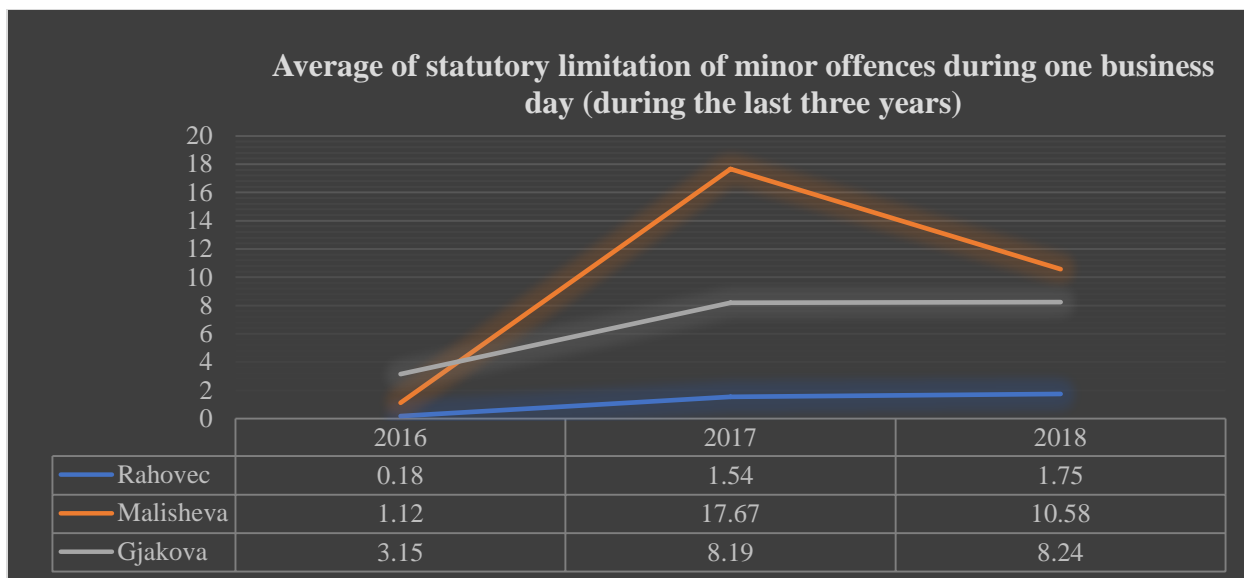
**Graph 26. The average of minor offence cases that reach the statutory limitation period within a day at the Basic Court in Gjilan and its branches–Kamenica, Viti and Novoherda (2016, 2017 and 2018)**



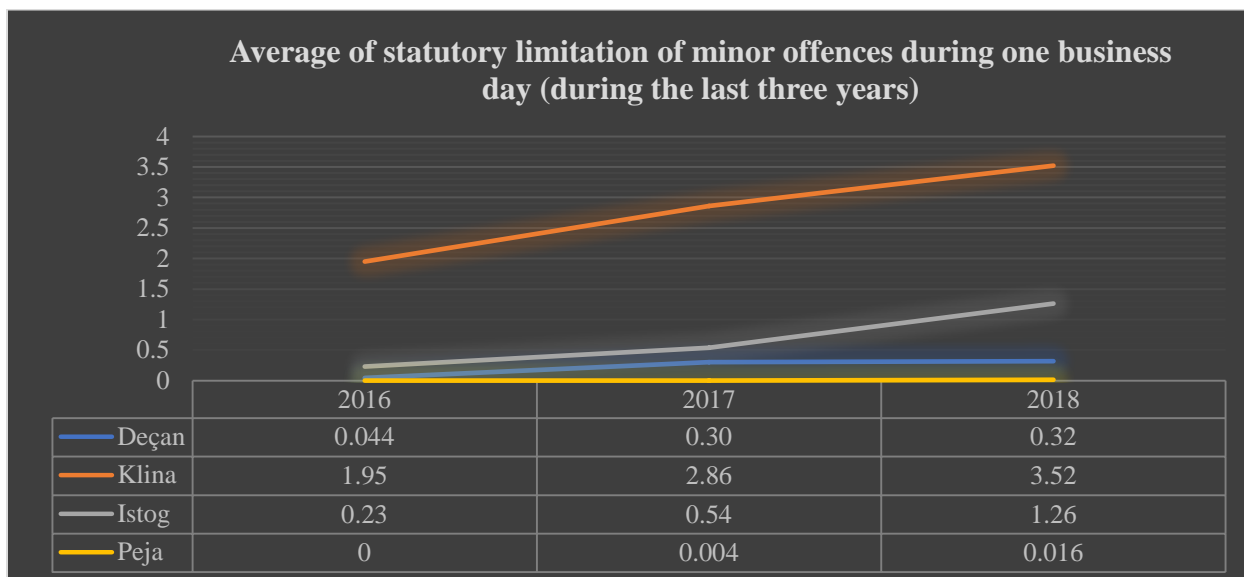
**Graph 27. The average of minor offence cases that reach the statutory limitation period within a day at the Basic Court in Prizren and its branches Dragash and Suhareka (2016, 2017 and 2018)**



**Graph 28. The average of minor offence cases that reach the statutory limitation period within a day at the Basic Court in Mitrovica and its branches– Vushtrri and Skenderaj (2016, 2017 and 2018)**

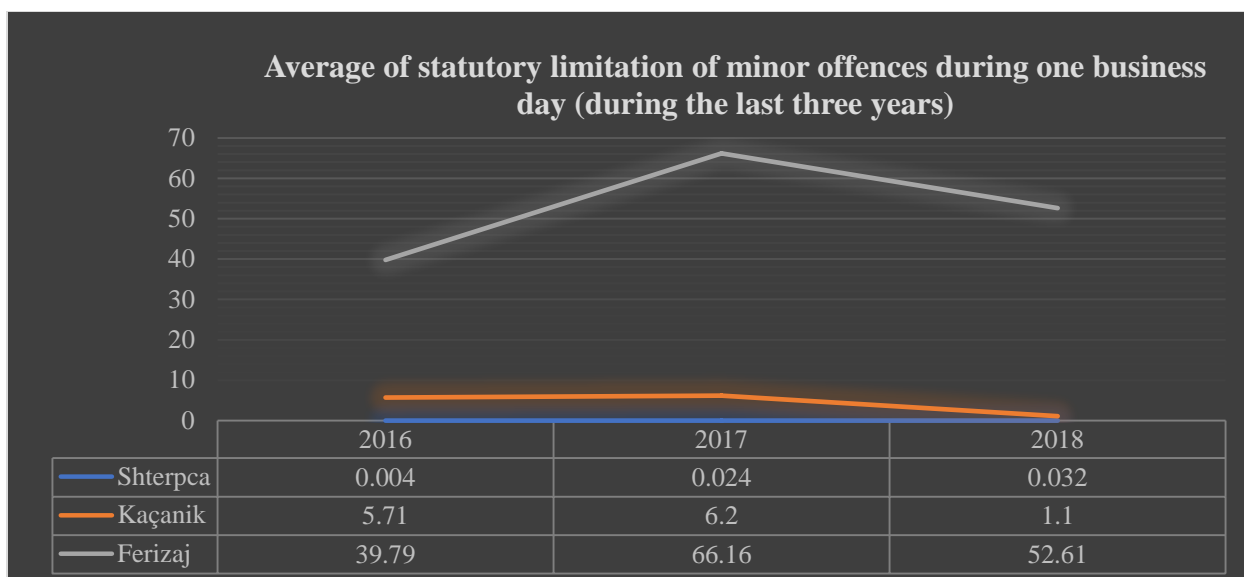


**Graph 29. The average of minor offence cases that reach the statutory limitation period within a day at the Basic Court in Gjakova and its branches– Malisheva and Rahovec (2016, 2017 and 2018)**



**Graph 30. The average of minor offence cases that reach the statutory limitation period within a day at the Basic Court in Peja and its branches Istog, Klina and Deçan (2016, 2017 and 2018)**





**Graph 31. The average of minor offence cases that reach the statutory limitation period within a day at the Basic Court in Ferizaj and its branches– Kaçanik dhe Shterpca (2016, 2017 and 2018)**

### 6.5. KJC's role and measures taken against the statutory limitation of minor offences

Regarding the statutory limitation, as a very prominent issue for the justice system, at the 194<sup>th</sup> meeting of the Kosovo Judicial Council, held on December 13, 2017, it was discussed to close the minor offence cases which have reached the statutory limitation period, but still remain part of the pending inventory cases, as open ones. During this discussion it was said that the statistics of the Kosovo judiciary are unjustly inflated with a number of pending cases, especially of minor offences. Therefore, it was requested that all minor offence cases which have reached the statutory limitation period, both for prosecution and enforcement of the offence sanction, be closed, be completed and removed once and for all, and not recognized as open – active subjects.<sup>60</sup>

At the end of this meeting was approved the Decision no.358/17, which included 6 points:<sup>61</sup>

- I. The Judges of the Minor Offence Division should close all minor offence cases that have reached the statutory limitation period, which are still recorded in the pending cases inventory (as open cases).
- II. The final deadline to close minor offence cases under paragraph I of this Decision is February 28, 2018.

<sup>60</sup> The discussion held on the KJC's meeting no. 194, held on December 13, 2017.

<sup>61</sup> KJC. "Decision no. 358/17". Pristina, December 13, 2019.

- III. To implement this Decision, judges must receive assistance from court practitioners and supporting staff.
- IV. The Judges of the Minor Offence Division shall report on a weekly basis to the President of the Court, respectively the Supervising Judge of the Branch, on the progress achieved.
- V. The Presidents of the Courts and the Supervising Judges of the Branches shall report to the Court Administration Committee of the Judicial Council on the results achieved in the implementation of this Decision, by March 15, 2018 at the latest.
- VI. The Court Administration Committee is obliged to supervise the implementation of this Decision and to submit a comprehensive report to the Kosovo Judicial Council by March 31, 2017.

Meanwhile, the reasoning of this decision too, shows precisely the situation of minor offence cases, which states “over the past years, the number of minor offence cases has steadily increased. The large number of these cases has, among other things, affected the image of the judiciary, increasing the total number of cases pending to be solved”.<sup>62</sup>

According to the heads of courts, this decision of the KJC is fully respected.<sup>63</sup>

In addition to analyzing the numbers, KLI has attempted to find out the reasons for such a situation of the statutory limitations and has therefore sent questions to interview all the heads of the seven basic courts in the country.<sup>64</sup>

In this regard, one of the reasons given was directly related to the new Law on Minor Offences. Despite the fact that this law is said to have eased the work of supervisory judges, it seems, however, that in terms of enforcement of fines it has simply made work even more difficult. The fact that the new law provides for the abolition of the imprisonment sentence and the possibility of replacing the fine with this type of punishment is said to have left the execution of the fines at the mercy of the perpetrators themselves.

“Following the entry into force of the Law on Minor Offences (Law no.05/L-087), which does not provide for an imprisonment punishment and the possibility of replacing the fine with an imprisonment punishment for a minor offence, a chaotic situation has arisen because the punishments – fines imposed by the courts for natural persons and responsible persons of legal persons are not executed unless they are paid voluntarily. Since the entry into force of this law thousands of cases have reached the statutory limitation while waiting to execute, the offenders remain free (without paying the fines), the number of recidivists has increased drastically, and the work of the prosecution bodies is in vain. as well as the work of the courts... I think that the abolition of the imprisonment punishment for minor offences and the possibility of replacing the

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<sup>62</sup> Ibid.

<sup>63</sup> Interview with the Presidents of the Courts/Supervising Judges of the Minor Offences Division in the Basic Courts.

<sup>64</sup> Regarding these questions, KLI has not received any answers from the Basic Court in Mitrovica, the Basic Court in Prizren and neither from the Basic Court in Ferizaj.

fine with imprisonment punishment that was enforced when the Law on Minor Offences was adopted, thinking that it is in violation of the constitution, has brought such a chaotic situation.”<sup>65</sup>

A similar opinion was expressed by the Head of the Minor Offences Division in the Basic Court in Peja, according to whom “cases reach the statutory limitation period mainly due to the impossibility of forcible execution for natural persons, whereas for legal entities when they have funds in bank accounts the execution is successful”.<sup>66</sup>

But as a reason for the statutory limitation of cases, apart from the new situation created by the new law on minor offences, seems to be the small number of judges responsible for cases of this nature.

According to the President of the Basic Court in Gjakova, the statutory limitation of cases comes due to “the large number of cases, compared to the small number of judges”.<sup>67</sup>

Whereas, the President of the Basic Court in Gjilan has estimated that this number is no longer a concern, since, according to him, it has decreased, but he says that the main reason statutory limitation of such cases is the non – localization of the offenders of this nature.

“In previous years we have had more cases that had reached statutory limitations period, while now in the last two or three years the number of statutory limitation cases in the Minor Offences Division has been significantly decreased. As far as statutory limitation is concerned, there are several factors, but the most common are when the party cannot be found or is found abroad, and the case reaches the statutory limitation period.”<sup>68</sup>

The Ombudsperson has also been concerned about this issue since 2016, when it had published a report with recommendations on statutory limitation and enforcement of Basic Court rulings in minor offence cases.

According to the Ombudsperson, the problem of statutory limitation of minor offence cases has harmful consequences in respecting the human rights set forth in the Constitution of the Republic of Kosovo. The Republic of Kosovo has a constitutional obligation, under the ECHR and Article 53 of the Constitution, to ensure the effective implementation of legal provisions, through the enforcement of sanctions, to prevent and discourage offences that endanger the life and safety of the citizens of the Republic, especially in the field of road traffic. Police statistics show that the risk of road traffic is increasing alarmingly.<sup>69</sup>

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<sup>65</sup> Interview with the Supervising Judge of the Minor Offences Division at the Basic Court in Pristina, Mr. Mustafë Selimi. February 28, 2019.

<sup>66</sup> Interview with the Supervising Judge of the Minor Offences Division at the Basic Court in Peja, Mr. Kadri Prekaj. March 6, 2019.

<sup>67</sup> Interview with the President of the Basic Court in Gjakova, Mr. Vatou Durguti. March 12, 2019.

<sup>68</sup> Interview with the President of the Basic Court in Gjilan, Mr. Ramiz Azizi. March 5, 2019.

<sup>69</sup> The Ombudsperson Institution. “*Report with recommendations Ex officio nr. 239/2016 – Report regarding the statutory limitation of court proceedings and the execution of judgments of the Basic Courts in minor offence*”

The fact that nearly 20% of minor offence cases end up in statute of limitations means that irresponsible drivers are remaining unpunished and completely free to continue their dangerous behavior on the streets of the Republic. In these circumstances, the preventive effect of “sanctioning violations of [legal] provisions” for these drivers, as well as the discouraging effect of these sanctions on drivers in general, are not working properly. For this reason, the statutory limitation of minor offence cases, either at the stage of judicial proceedings or at the stage of execution of sanctions, not only has a major impact on the state budget, but also obstructs the Republic of Kosovo in fulfilling its “primary” obligation to ensure the right to life and safety of its citizens and residents, ensuring the preventive and discouraging effect of the minor offence and traffic rules.<sup>70</sup>

Also, according to the published report, the statutory limitation of minor offence cases largely represents a violation of the property rights of those who pay the fine because, in the present circumstances, where approximately 20% of the imposed fines reach the statutory limitation period, who pays the imposed fine and who doesn't, becomes completely arbitrary. Suppose as a hypothetical case, that three people are fined by the Police for the same offence on the same date, but in different regional centers of the Republic. The case of the first person is adjudicated by the relevant Basic Court, the fine is affirmed by the Court and the fined person pays the fine without delay. The second person's case is also adjudicated by the Basic Court in the regional center where he resides and, just as in the first person's case, the fine is affirmed by the Court. However, the fined person in this case does not pay the fine on his own initiative and, moreover, does not have a correct address. For this reason, the Police cannot find him, one year passes and the fined person is acquitted from paying the fine due to the statutory limitation of the execution of the sanction. Whereas, the case of the third person remains unadjudicated by the court for more than a year, because the Basic Court in the region where it resides is overloaded with minor offence cases. Consequently, the case is not adjudicated, it reaches the statutory limitation period in the procedural phase and the third person, as the second person, is acquitted from paying the imposed fine. This hypothetical case clearly demonstrates that the punishment of a fine, when the statutory limitation of a minor offence occurs as in the current circumstances of the Republic of Kosovo, is arbitrary and, as such, does not meet the legal security criteria. Therefore, the problem of statutory limitation prevents the full respect of the right of property not to be arbitrarily deprived of property.<sup>71</sup>

KLI has also requested from the KJC to know if during this three-year period has there been any disciplinary action due to statutory limitation of cases, against any of the judges of the General Department – Minor Offences Division.

The response received stated that no relevant measures were taken by the relevant institutions. Moreover, during 2016, the KJC Disciplinary Committee did not conduct any disciplinary proceedings against judges of the General Department – Minor Offence Division.

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*cases*”. Pristina. April 25, 2016. (Follow link: <https://dokumen.tips/documents/institutivioni-i-avokatit-t-popull-e-raporteve-me-rekomandime-2-raport-lidhur.html>)

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

In 2017 the Disciplinary Committee after receiving the final report from the Office of Disciplinary Counsel alleging the misconduct of a former Supervisory Judge of a Basic Court, where as a result of the Court's branch management negligence, did not act in accordance with administrative responsibilities relate to the registration of more than eight thousand (8000) cases of minor offence nature of 2016.

The Disciplinary Commission, having administered all the evidence in the case file, the submissions submitted by the ODC which were not attached to the final report, examined and analyzed all the evidence and the statement of the judge concerned and found that there is heavy disciplinary responsibility of the judge. According to the Commission's assessment, the ODC's report is proven that the former Supervisory Judge in that Branch should, with greater commitment, seek supporting staff as it did in early 2017, where all cases have been registered.

At the negotiations and voting session, the Commission unanimously ruled that this judge is responsible for the misconduct of a judge under Article 34, paragraph 1, point 1.2 – negligence in performing his duties, failure to perform, or abuse of judicial office, and 1.4 – violation of applicable codes of ethics. In this regard, the Commission unanimously imposed a disciplinary measure of a Provisional Reduction of the Salary by 25% for a period of four (4) months.

In 2018, the KJC's Disciplinary Committee has conducted disciplinary proceedings against a Judge of the Minor Offences Division. Having held the hearing, heard the ODC's representative and the Judge, analyzed all the evidence attached to the ODC's final report, the Judge's statement, at the negotiation and voting session, the Commission unanimously decided that this judge was responsible for misconduct of a judge, pursuant to Article 34, paragraph 1, point 1.2 – negligence in performing his duties, failure to perform and violation of the Code of Professional Ethics for Judges, point II of the preamble, point 1, 1.4, point 5, designated as minor misconduct of Section 4 in conjunction with Section 6 of Regulation No.04/2016 On Determining Misconduct. In regard to this finding, the Commission unanimously imposed the disciplinary measure Provisional Reduction of the Salary by 20% for a period of three (3) months.<sup>72</sup>

## 7. State's losses due to the statutory limitation of minor offence cases

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<sup>72</sup> Communication by e-mail with the KJC, March 4, 2019.

Another very disturbing fact in all this is the loss of millions of investments from the state budget as a result of the statutory limitation of cases. To reflect exactly this situation, KLI has calculated and presented an average of the lost value as a result of statutory limitation of cases in all of the courts.

To be able to calculate all this, KLI has sought answers from the 7 basic courts in the country on the correct value, or an average value of fines imposed in minor offence proceedings, during 2016, 2017 and 2018. However, we have received complete data only from the Basic Court in Pristina and the one in Gjilan.<sup>73</sup>

Consequently, unable to calculate the total value of the amount of money lost due to statutory limitation of cases, KLI has calculated such a value, based solely on the data received by the Basic Court in Pristina, as the most representative court in Kosovo.

In 2018, out of 93,975 cases solved by all courts of the country, 32,791 fines were imposed, while 40,501 cases reached the statutory limitation period<sup>74</sup>. Thus, if of the 93,975 cases, on 32,791 of them were imposed fines, that would mean that in about 35% of the cases solved were imposed fines (the rest were solved in other manners). Now, out of the 40,501 cases that have reached the statutory limitation period, if we say that in 35% of these cases fines would be imposed, it is likely that at least in 14,175 cases would be imposed fines.

In the case of the Basic Court in Pristina, during 2018, out of 6,491 fines imposed<sup>75</sup> were collected 551,636.88€<sup>76</sup>. This means that the average value of a fine imposed this year was around 85€

Consequently, if we take into account the value of 85€ as a representative value of the fines imposed by our country's courts during 2018 in minor offence cases, it is understood that in 2018 as a result of the statutory limitation of minor offence cases, the state's budget lost 1,204,875.00€

In 2017, 219,554 cases were solved by all courts in the country, 90,725 fines were imposed, and 70,053 cases were reached the statutory limitation period<sup>77</sup>. This means that in the courts of our country, in this year, in 41% of the cases fines were imposed. So, if out of 70,053 cases in 41% of them would be imposed fines, then in 28,721 cases would be imposed fines.

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<sup>73</sup> KLI has not received any answers from the Basic Court in Mitrovica, the Basic Court in Prizren and neither from the Basic Court in Ferizaj. Whereas, the Basic Court in Gjakova replied by stating that they do not have such information.

<sup>74</sup> Communication by e-mail with the Statistical Department of KJC. February 15, 2019.

<sup>75</sup> Ibid.

<sup>76</sup> Interview with the Supervising Judge of the Minor Offences Division at the Basic Court in Pristina, Mr. Mustafë Selimi. February 28, 2019.

<sup>77</sup> Communication by e-mail with the Statistical Department of KJC. February 15, 2019.

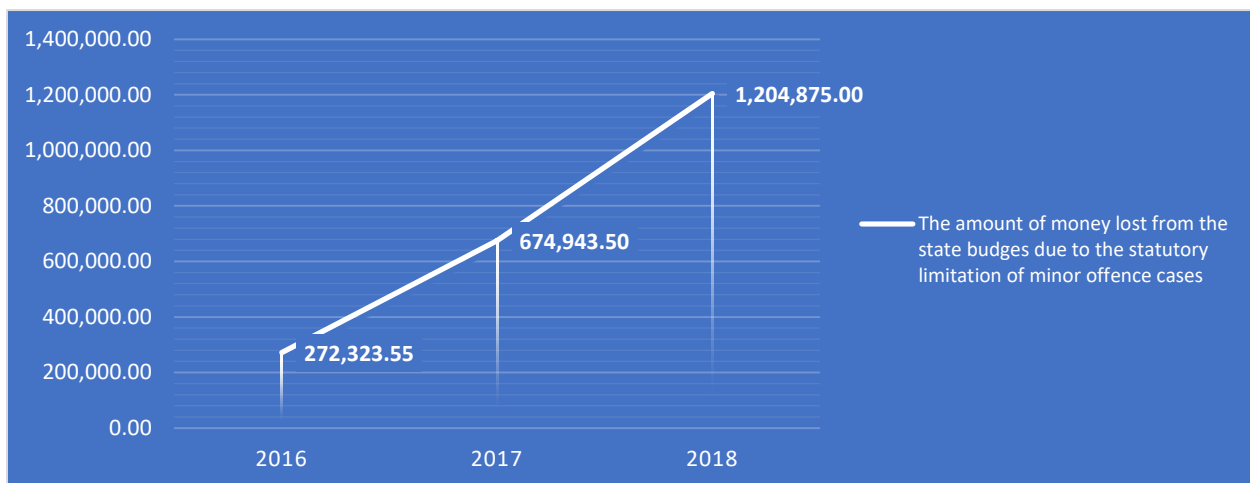
Based again on the Court in Pristina’s data, secured by KLI, it results that during 2017, this Court imposed 10,650 fines<sup>78</sup> out of which 250,222.00€<sup>79</sup> were collected. This means that the average value of a fine imposed this year was 23.5€

Consequently, considering the value of 23.5€ as a representative value of the fines imposed by the courts of our country during 2017 in minor offence cases, it means that during 2017 due to the statutory limitation of minor offence cases, the state’s budget lost 674,943.5€

Whereas, in 2016, 377,114 cases were solved in all courts of the country, and 188,053 fines were imposed, while 60,183 cases reached the statutory limitation period<sup>80</sup>. This means that the courts of our country have imposed fines in about 50% of cases during this year. So if out of 60,183 cases, in 50% of them would be imposed fines, then we would have 30,091 cases where fines would be imposed.

Based on the data provided to KLI by the Basic Court in Pristina, it results that during 2016, this court imposed 35,569 fines<sup>81</sup> out of which 322,201.50€ were collected<sup>82</sup>. This means that the average value of a fine imposed this year was around 9.05€

Consequently, if we consider the value of 9.05€ as a representative value of the fines imposed by the courts of our country during 2016 in minor offence cases, it means that in 2016 as a result of statutory limitation of cases, the state budget lost 272,323.55€



**Graph 32. The amount of money lost from the state budget due to the statutory limitation of minor offence cases (2016, 2017 and 2018)**

<sup>78</sup> Ibid.

<sup>79</sup> Interview with the Supervising Judge of the Minor Offences Division at the Basic Court in Pristina, Mr. Mustafë Selimi. February 28, 2019.

<sup>80</sup> Communication by e-mail with the Statistical Department of KJC. February 15, 2019.

<sup>81</sup> Ibid.

<sup>82</sup> Interview with the Supervising Judge of the Minor Offences Division at the Basic Court in Pristina, Mr. Mustafë Selimi. February 28, 2019.

The above graph represents the monetary value of the statutory limitation of minor offence cases in all courts in the country, throughout the period of the last three years. Whereas, if we sum up all three of these values to present the total value of the amount lost during the last three years, then we can say that the state budget has lost about 2,152,142.05€ likely to be collected.

## 8. Findings regarding the handling of minor offence cases by courts in our country

1. **The year 2018 shows a (quantitative) decrease in the number of minor offence cases received in the courts** – Based on all the data analyzed and presented graphically in this report, it is clear that in 2018, the number of cases received in the basic courts of the country has seen a significant decline.

This shows that the new Law on Minor Offences, with the authorization given to administrative bodies to impose fines, has reduced the number of cases of this nature all over the courts. However, despite this impact, the efficiency has been at its lowest level for the last three years.

2. **The trend of the efficiency of the work of the courts in the country gives the impression that judges work for statistics only** – in the KJC's annual reports, the Minor Offence Division always exceeds 100% efficiency, due to the method used to calculate, because if we look at the number of cases received and the cases solved at the end of each year, it turns out that judges almost each year solve more cases than they receive during that year. But at a time when cases received by the court have declined, so has the number of cases handled by a judge within a month. This makes one think that judges work only about exceeding the number of cases received for that year, and not entirely resolving the cases at the same pace as in previous years. Consequently, not enough cases are solved at the end and many of them are left unsolved.

3. **Failure/delay in solving minor offence cases adversely affects other responsible bodies of this nature** – practice has shown that despite the will and dedication of other competent institutions, in certain cases, the failure of the judiciary has led to fail their work too.

According to the responsible persons of these institutions, treated in the first part of this report, the delay in handling and resolving cases by the court, or even failure to impose fines by the courts, has damaged their authority and lost the purpose of handling these cases. Furthermore, according to them, even if a fine is imposed, practice has shown that



courts have reduced fines to insignificant amounts of money in relation to the offence and the offender.

- 4. A large number of minor offence cases have reached statutory limitation period in Kosovo courts during 2016, 2017 and 2018** – the issue of statute of limitations is always one of the most discussed topics when it comes to the justice system in Kosovo. Various reasons come from the main stakeholders as to why this phenomenon occurs. However, it is known that minor offence cases face a large number of statutory limitations over the years, which varies widely from one court to another, but that the highest rate of statutory limitations in courts has been recorded in 2017. In this regard, in that year alone, 70,053 minor offence cases were filed. In the previous year, 2016, 60,183 cases have reached statutory limitation period, while in 2018, 40,501 minor offence cases reached the statutory limitation period.

It is worth mentioning that the Court of Mitrovica leads with the highest number of statutory limitations for the period 2016 – 2018, with a total of 40,582 statutory limitations. After that comes Ferizaj with 39,578 statutory limitations for 3 years. Whereas, Pristina ranks third in this regard, with 28,956 cases that have reached statutory limitation period during 2016, 2017 and 2018.

On a positive note are worth mentioning especially Dragash and Vushtri, as two branches that have not left any minor offence cases over the last three years to reach statutory limitation period. Whereas, the Basic Court of Peja stands best, with a total of 5 minor offence cases that have reached the statutory limitation period during these three years – 0 in 2016, 1 in 2017 and 4 in 2018.

- 5. The new law on minor offenses has had a negative impact on the enforcement of fines** – Although this law has been widely discussed and despite the fact that exactly what has been discussed – additional authorizations for administrative bodies have in fact significantly eased the work of judges, however the fact that the new law abolished imprisonment had a major impact. This amendment has made the execution of fines to remain at the mercy of the offenders themselves. Consequently, according to Minor Offence Judges, a large number of cases reach the statutory limitation period while waiting to execute, and this makes the number of recidivists to increase and the work of certain institution to fail.
- 6. Losses caused to the state due to the statutory limitation of minor offence cases** – The number of cases that have reached the statutory limitation period and the decrease in efficiency make the investments and other state initiatives in dealing with minor offences

completely fail. According to the calculations made, it results that during 2018, due to the statutory limitation of minor offence cases, the state budget lost about 1,204,875.00€ In 2017 it lost about 674,943.5€ while in 2016 it lost about 272,323.55€ Or in total over these three years around **2,152,142.05€** KLI has calculated this value based only on data received from the Basic Court in Pristina, as the most representative court in the country.

## 9. Recommendations

1. To increase the efficiency of the work of judges by making use of amendments to the law on minor offences, therefore the lower number of cases received, and consequently the lower number of cases at work;
2. Using the increasement of the efficiency, to avoid the statutory limitation of cases and encourage other bodies to be more efficient;
3. In order to administer justice fairly and safeguard the budget of the Republic of Kosovo, the KJC should seriously engage in combating the phenomenon of statutory limitation of minor offence cases;
4. Administrative bodies to use the amendments to the new Law on Minor Offences and fulfill their obligations independently;
5. To make maximum use of the forms and opportunities provided by the positive legislation in Kosovo in order to execute imposed fines.