



CHALLENGES IN JUDICIAL ADMINISTRATION



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ABOUT KLI

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

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Contents

1. Executive summary.....	4
2. Adoption of secondary legislation.....	5
3. Accountability in the judicial system and control mechanisms.....	6
4. Transparency of KJC and the judicial system.....	8
4.1. (Non) transparency of the KJC through e-meetings	9
5. (Non) realization of the Annual Work Plan.....	10
6. Election of new members and presidents of courts	11
7. "Merciful" discipline of judges.....	12
7.1. The illegal amnesty of sexist language in the decision of the Basic Court of Gjilan ...	12
7.2. "Regretful" judge that was released from disciplinary responsibility	13
8. (Bad) KJC's reaction to the Government's decision to reduce salaries	14
9. KJC budget challenges	15
9.1. Non establishment of new court branches	16
9.2. Lack of professional associates.....	16
9.3. Shortened functioning of the Commercial Court as a result of the low budget.....	18
10. (Non) Gender Equality in the KJC and the Court.....	18

1. Executive summary

Compared to the previous two years, the KJC has marked significant progress in the adoption of by-laws. Although the KJC has set a record compared to the previous two years in the adoption of by-laws, this institution has still failed to approve all the normative acts foreseen by the Work Plan as well as those arising as an obligation from the Law on the KJC and the Law for the Courts. Whereas, regarding the drafting of secondary legislation, it is to be appreciated the continuation of the positive practice applied by KJC for the involvement of the public in the drafting phase of normative acts. In the previous reports, KLI had recommended the formalizing this practice with sub-legal acts.

With regards to accountability from 17 disciplinary decisions, the most serious measure imposed is the permanent demotion and transfer of two judges. During 2022, the presidents of the courts submitted their written reports and they were invited to report to the members of the Council. Likewise, the KJC has fulfilled over 98% of the legal obligation for evaluating the performance of judges.

Handling requests for access to public documents remains one of the biggest problems of the KJC and the Courts on the way to advancing transparency. Out of 417 requests for information and access to public documents addressed by KLI, only 223 positive responses were received. In this regard, the KJC has approved a regulation for handling requests for access to public documents, but according to KLI, the same is inadequate, for the reason that the vast majority of this regulation is a description of the provisions of Law No. 06/L-081 on Access to Public Documents. During this year, the KJC continued the good practice of publishing decisions. A negative practice that continued during 2022 was the holding of eight (8) meetings through electronic communication by e-mail, and in none of them was the agenda made public, nor was a press release issued.

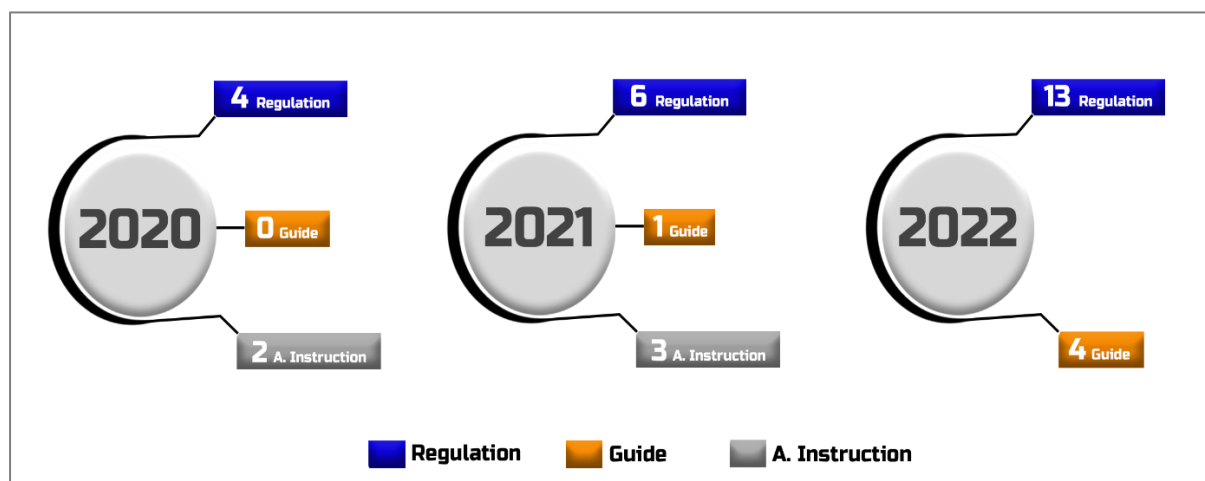
During 2022, the KJC managed to complete the processes of electing the president of the Basic Court in Prizren and the Court of Appeal, processes that were too long. On this occasion, KLI draws attention to the necessity for the Council to continuously take care that these positions do not remain vacant in any case, but that they are filled within the legal deadlines.

The KJC, through the release from disciplinary responsibility of the judging panel, has annested the sexist language used in the judgment of the Basic Court in Gjilan. Likewise, the non-reaction of the Council and the non-imposition of a disciplinary sanction against Judge Eroll Gashi gives a negative signal on the functioning of the internal mechanisms of this institution.

The pronounced lack of budget was reflected in the non-fulfillment of certain legal obligations, specifically in the non-establishment of new court branches, non-fulfillment of the obligation for each judge to have one (1) professional associate and in the non-providing of the capacities of complete for the Commercial Court and other needs of the judicial system.

2. Adoption of secondary legislation

The approval of by-laws is one of the most important duties and responsibilities of the KJC to ensure the smooth operation of this institution. During the year 2022, KJC has approved 13 regulations¹ and made two amendments/supplements to two basic regulations². Also, KJC has approved four guidelines³ and made amendments/supplementing to an administrative instruction⁴. Thus, compared to the previous two years, the KJC has marked significant progress in the adoption of by-laws. (See graph no.1).



Graph 1: Adoption of by-laws by KJC 2020-2022

Although the KJC set a record in 2022 compared to the previous two years in the approval of by-laws, this institution has not managed to approve all the normative acts provided for in the Work Plan for 2022, such as the Regulation for the handling of requests of access to public documents and classification of documents, the Action Plan for the Reduction of Civil Cases⁵, The Regulation on the Norm of individual judges, the Approval of the supplementing/amendment of the Regulation for the use of CMIS and the Regulation on the procedure for the appointment of judges. The reasons for the non-realization of the objectives foreseen in the work plan, according to KJC, were the requirements derived from the legislation, namely the Law on the Commercial Court and the decisions of the Council.⁶

¹ Regulation No. 01/2022, No. 03/2022, No. 04/2022, No. 06/2022, No. 07/2022, No. 08/2022, No. 09/2022, No. 10/2022, No. 11/2022, No. 12/2022, No. 13/2022, No. 14/2022 as well as the Regulation on the rights, obligations, performance, discipline and transfer of professional associates.

² Note: On June 24, 2022, the KJC supplemented/amended the Regulation on the Organization and Functioning of the Assembly of Court Presidents and Supervisory Judges as well as Regulation No. 02/2022.

³ Note: Basic reference guide for pre-investigative and investigative bodies, Guide for the transfer of cases to the Commercial Court, Guide for the procedure for sending documents from the Court and Guide for the Drafting and Public Consultation of Normative Acts of the Kosovo Judicial Council.

⁴ Note: Administrative Instruction No. 01/2022 for the Amendment and Completion of Administrative Instruction No. 011/2021 on Supplementing and Amending Administrative Instruction 04/2019 on Publishing Processed Judgments.

⁵ According to the KJC, this act is incorporated within the Strategic Plan for Improving Access to Justice (2022-2025), Efficiency and Prioritization of Cases Within the Judicial System.

⁶ KJC's comments regarding this Report. 6 April 2023.

Also, even during the year 2022, KJC has not succeeded in approving all the by-laws that it has an obligation under Law No. 06/L-055 for the KJC and Law No. 06/L - 054 for Courts ⁷. Apart from the Regulation for the KJC and the Regulation for Court Administrators, the KJC during 2022 did not approve other regulations deriving as obligations from the two aforementioned laws.⁸ In a response to KLI, the KJC has emphasized that the Council has approved all the by-laws that appear as a legal obligation, despite the fact that in the analytical report "*Administration of Justice by the Councils*", the KJC had given several reasons why it had not approved these regulations during the past years.⁹

In this regard, IKD recalls again that the regulations cited by KGjK were issued on the basis of an already repealed law. So that legal basis no longer exists. According to Article 42.3 of Law No. 06/L055 on the KJC, it is clearly defined that "*Until the approval of the by-laws defined by this Law, all by-laws issued by the Council continue to be implemented provided that they are not in conflict with the provisions of this Law*", while paragraph 1 of this same article stipulates that "*The by-laws defined in this Law will be issued within one (1) year after the entry into force of this Law*". So, according to the new law on the KJC, the regulations mentioned by the Council must be applied only until the approval of other acts, which according to the law, must be approved within a period of one (1) year from the entry into force of this law.

Regarding the drafting of secondary legislation, it is to be appreciated the continuation of the positive practice applied by KJC for involving the public in the drafting phase of normative acts. In the previous reports, KLI had recommended the formalization of this practice with a bylaw. In this regard, the KJC has already approved the Guide for the drafting and public consultation of the normative acts of the Kosovo Judicial Council.

3. Accountability in the judicial system and control mechanisms

During 2022, the KJC has received 24 requests for the initiation of disciplinary procedures from the Competent Authorities. From these requests, the KJC established 23 Investigative Panels and took 17 disciplinary decisions, of which the most serious measure imposed was the permanent demotion and transfer of two judges, while in seven (7) decisions the judges were not found responsible by the KJC for violations disciplinary.¹⁰ In one (1) case, the

⁷ **Note:** The Law on the KJC and the Law on Courts provided for the adoption of the following normative acts by January 2020: Code of Ethics for Lay Judges, Code of Ethics for Administrative Staff, Regulation on the Duties and Responsibilities of the Permanent Commissions of the KJC (Article 16.4 of the Law on the KJC), the Regulation on the organizational structure and the functioning of the KJC, the Regulation on Court Administrators; Regulation for the Examination of Requests for the Establishment of New Court Branches; Regulation on Professional Activities of Judges and Regulation on Continuing Legal Education.

⁸ **Note:** In the comments provided for this report (April 6, 2023), the KJC said that due to the priorities and reasons of the Committee for Normative Affairs, it was not possible to include in the work plan all the by-laws originating from the Law on KJC and the Law on courts, but that he takes them into account during the following time.

⁹ Makshana, L; Thaqi, M: "*Administration of the justice system by the Councils*", Pristina. June 2022. Pg. 6-7.

¹⁰ KJC answers to KLI. 12 January 2023.

report of the Investigative Panel was rejected due to the absolute statute of limitations of the claim for disciplinary violation of the Competent Authority.¹¹

KGJK and the Secretariat during 2022 have successfully fulfilled the obligation to publish the annual report for 2021, the Statistical Report of the Courts for the year 2022 as well as the Statistical Report of the Courts for the first three months, the first six months and the nine months of 2022. Valid to re-emphasize that KLI also in the past annual monitoring reports of the KJC had emphasized that these statistical reports, in addition to statistical data, do not provide detailed data and also lack an analytical and comparative approach.¹² This approach was followed during 2022.

Based on Law no. 06/L-054 on Courts, the presidents of the courts on an annual basis send the Council a report on the success of the implementation of the previous annual plan for case management¹³ as well as send three (3) monthly written reports to the Council.¹⁴ In this regard, the presidents of the courts have submitted written reports and the same have been invited to report to the members of the Council.

Compared to 2021, the KJC has fulfilled over 98% of the legal obligation to evaluate the performance of judges. According to the KJC, the performance evaluation for only two (2) judges has not been completed because they were on vacation and it was not possible to monitor court hearings as one of the criteria for evaluation.¹⁵

The decision of the KJC on the establishment of the Commission for the monitoring, evaluation and reporting of the Strategic Plan for the Improvement of Access to Justice 2022 - 2025, as well as the Strategic Plan for the efficient resolution of cases of corruption and organized crime 2022 - 2024¹⁶, is one of the most positive decisions that KJC has taken in recent years. Despite the fact that during 2022 these plans have not found proper implementation,¹⁷ The KJC must ensure that during 2023 this control mechanism works and that the report of the commission to the KJC is made within the specified time limits¹⁸. The need for monitoring these strategies is also highlighted in the Progress Report for 2022.¹⁹

¹¹ KJC decision. No. 160/2022.

¹² Makshana, L; Thaqi, M: "Administration of the justice system by the Councils", Pristina. June 2022

¹³ **Note:** In article 14.2.4 it is stated that: "The president of the court on an annual basis sends to the Council a report on the success of the implementation of the previous annual plan for case management".

¹⁴ **Note:** According to Article 14.2.5, the President of the court sends the Council a quarterly written report, which addresses the work of the court, identifies any problems faced by the court, as well as proposes remedial steps to address the identified problems.

¹⁵ KJC's response to IKD on January 4, 2022.

¹⁶ KJC decision no.397/2022. 20 October 2022.

¹⁷ "The Plan for the efficient resolution of corruption and organized crime cases has not been fully implemented". Betimi për Drejtësi. 2 February 2023. (Available at: <https://betimiperdrejtesi.com/nuk-ka-gjetur-zbatim-te-plote-plani-per-zgjidhjen-efikase-te-lendeve-te-korrupsionit-dhe-krimit-te-organizuar/>). (Last accessed on 22 March 2023).

¹⁸ **Note:** According to KJC decision, Reporting on the strategies will be done every three (3) months, in the Council.

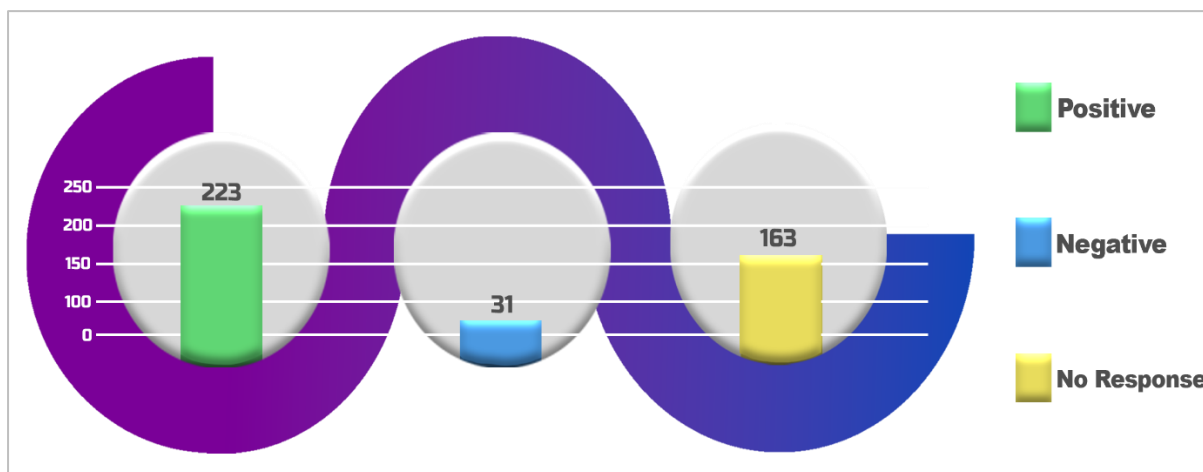
¹⁹ **Note:** According to the Progress Report: "During the reporting period, the Judicial Council approved the strategic plan for the efficient resolution of cases of corruption and organized crime, a communication strategy for 2022-2024 as well as the strategic plan for access to justice for 2022-2025. However, these plans do not

4. Transparency of KJC and the judicial system

Considering the low level of public trust in the judicial system, access to public information within the judicial system is a very important issue and is one of the indicators of the level of transparency and accountability towards citizens, civil society and the media. Although from year to year there is progress in the judicial system in terms of transparency, however, this area still leaves much to be desired. The main problems are evident in the handling of requests for access to public documents.

In this direction, out of 417 requests for information and access to public documents addressed by KLI to KJC and courts in Kosovo, 223 positive responses or about 54%, 31 negative responses and 163 requests remained unanswered. Only in KJC, during this period, KLI submitted 59 such requests, of which, in 23 cases (40%) received positive responses, in 3 cases (5%) negative and 33 requests (55%) remained unanswered.²⁰

The problem of handling requests for access to public documents is one of the biggest obstacles of the KJC in advancing the transparency of the judiciary. The KJC has begun the adoption of a regulation for handling requests for access to public documents, but that Draft Regulation as it was sent for public consultation and according to KLI it is inadequate, for the reason that the vast majority of this regulation is a description of the provisions of the Law NO. 06/L-081 for Access to Public Documents. The need for classification of documents, the increase of internal communication in terms of allowing access to public documents are urgent and very important issues that must be addressed by KJC so that requests for access to public documents can be handled efficiently and without obstacles.

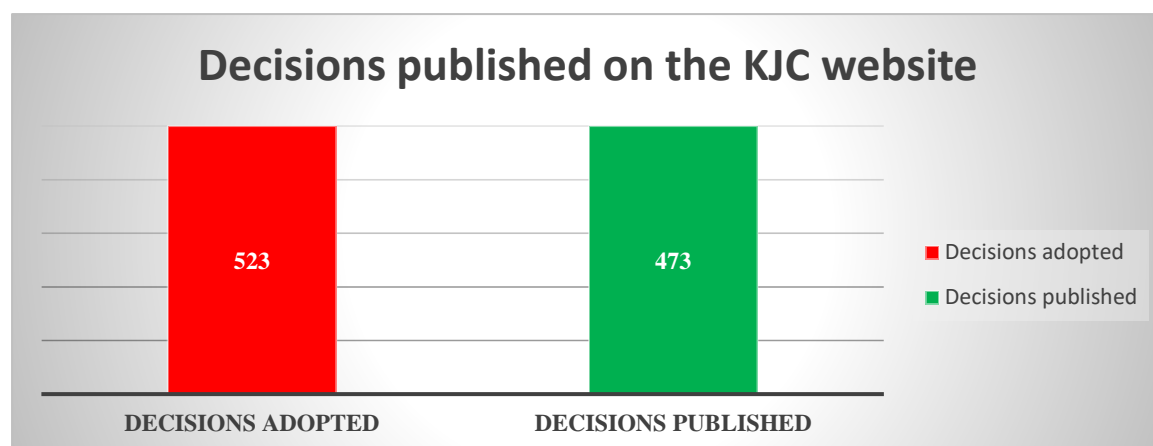


Graph 2: Transparency of the KJC and the courts in the requests of the KLI during the year 2022

always contain clear links to the respective strategies. The implementation of the strategies must be effectively monitored”.

²⁰ **Note:** Sipas të dhënave të Zyrës për Informim të KGJK-së janë të evidentuara 25 kërkesa pa përgjigje për IKD. According to the data of the Information Office of the KJC, 25 unanswered requests for KLI have been recorded. In this regard, the KLI emphasizes the fact that not all requests have been addressed to this office, as among these requests for information there have been some of them sent to certain officials within the KJC who are responsible for various areas within this office. the institution, but since the same no answers have been received.

Out of 40 meetings held by the KJC²¹, 523 decision were issued while 473 have been published, including disciplinary ones, or 90%.²² Through a response, the KJC has shown that some of the decisions that have not been published are related to disciplinary issues and some others are in the publication phase.²³ The KJC has continued to publish its decisions in the Serbian language, but there are still such decisions that have not been published in the Serbian language.²⁴



Graph 3: Transparency of KJC in the publication of decisions during 2022

Of the three (3) closed meetings only one of them, respectively the meeting held on December 2, 2022, The KJC issued a press release which informed the public of what was discussed during the meetings, whereas in two (2) other meetings, there was no agenda and the public were not notified via a press release.

Also, despite the fact that there is a special window/tab for the Permanent Commissions of the Council, where data about the Commission, members, decisions, reports and work plans are supposed to be, this data has never been published by these commissions, except for the data basic for the function of the commission and the composition of its members. This makes it impossible for the public to be informed about the work of these commissions even though the KJC website shows the windows/tab of these commissions and other information and data should have been published.

4.1. (Non) transparency of the KJC through e-meetings

According to Law No. 06/L-055 on KJC [Article 14], Council meetings are open to the public except for the cases defined in paragraph 3 of Article 14 of this law. The public nature of Council meetings is also regulated by Regulation No. 03-2020 on the Organization and Activity of the Kosovo Judicial Council.²⁵ In any case when the Council takes a decision to

²¹ **Note:** According to the KJC's response to KLI, on January 19, 2023, the KJC during 2022 held 27 regular meetings, 4 extraordinary meetings, 1 informal meeting and 8 meetings via e-mail.

²² **Note:** The last data related to the publication of decisions were released on January 24, 2023.

²³ KJC's response to KLI. February 16, 2023.

²⁴ **Note:** The last data related to the publication of the decisions were released on January 24, 2023.

²⁵ Regulation no. 03-2020 on the organization and activity of the Kosovo Judicial Council, article 36.

close the meetings, the decision regarding the closure will be public and justified, according to the law in force.

For several years, the KJC has continued the practice of holding meetings through electronic communication by e-mail, for which meetings the public is not notified, the agenda is not published, and no press release was issued to the media. This negative practice represents a lack of transparency in relation to the public. During 2022, KJC held eight (8) such meetings. This despite the fact that with the Law on KJC [article 14, par 2] and the Regulation on the Organization and Activity of the Kosovo Judicial Council [article 38, par 4], the agenda of the Council must be publicly open at least forty-eight (48) hours before the meeting.

KLI recommends to the KJC not to continue such a practice during 2023, but to undertake all concrete actions so that the agenda for these meetings is also made public according to the legal deadline. This would have the effect of increasing transparency and accountability in relation to the public and stop the negative practices that have already been established.

5. (Non) realization of the Annual Work Plan

On December 29, 2021, the KJC approved the work plan for 2022. However, some of the objectives that the Council has foreseen in this work plan have failed to be fulfilled during the past year. Among them was the approval of three (3) regulations and two (2) additions/changes to the regulations.²⁶ Likewise, the KJC has failed to approve the Action Plan for the Reduction of Civil Cases. Regarding this Plan, KJC has emphasized that it has been incorporated into the Strategic Plan for Improving Access to Justice (2022-2025). Although the same has been a unique act within the planning of the Work Plan for 2022.

It is the third year in a row that the KJC has failed to approve the Regulation on the handling of requests for access to public documents and the classification of documents. A reminder that the approval of this regulation was planned to be done by the Council in the work plan during 2020, but even then it failed to be approved.²⁷ Then, the KJC planned to approve the same during the months of November-December 2021, but the same was not approved again, being carried over to the following year, and until December 31, 2022, the same has failed to be approved.²⁸ The same situation is also regarding the non-approval of the Regulation on the

²⁶ **Note:** Until December 31, 2022, the KJC has not approved these regulations planned with the Work Plan, such as: 1). The regulation for handling requests for access to public documents and classification of documents, 2). Regulation on the Rate of Judges, 3). Regulation on the procedure for promotion of judges. Also, two (2) additions/changes to the regulations planned by the KJC have not been made, such as: 1). Approving the completion/amendment of the Regulation for the use of CMIS, 2). Completion/Amendment of the Regulation on the Internal Organization of the Courts to ensure its harmonization with the new Regulation on Advancement, regarding the conditions that must be met by the judge before the advancement/transfer in order to avoid the need to restart the case after the advancement/ transfer.

²⁷ “KJC Annual Work Plan for 2021”. Pg.4, (Available at: https://www.gjyqesori-rks.org/wp-content/uploads/reports/95135_KGJK_Plani_Punes_2021.pdf).

²⁸ **Note:** At the end of December, KJC published this Draft Regulation in public consultation, but nevertheless, according to the Work Plan for 2022, it had to be approved in the last three months of 2022. This regulation was only approved in March 2023.

norm of individual judges, as this regulation was also set in the objectives of the Work Plan during the years 2020, 2021 and 2022 but failed to be approved.²⁹

Despite the fact that a number of the KJC's objectives in the Work Plan for 2022 were not fulfilled, the KJC managed to complete a large number of plans within this period, such as: the approval of eight (8) regulations and two (2) guidelines.³⁰

6. Election of new members and presidents of courts

During 2022, three new members were elected to the KJC. Specifically, judges Fahret Velija and Nikolla Kabashiq were elected from the ranks of the judiciary.³¹ Meanwhile, member Adriana Miletqi was elected from among the non-judge members.³² Also during this year, the KJC managed to complete the processes of electing the president of the Basic Court in Prizren and the Court of Appeal, processes that were too long.³³ Also, during this year, KJC has elected the president of the Commercial Court and the President of the Basic Court in Gjilan.

After nearly two (2) years that the BC in Prizren was led by an acting president, the KJC finally managed to elect the first president of this court in 2022, as the judge Shpresa Emra was elected to this position on May 5, 2022.³⁴ Also, on May 5, 2022, the KJC elected judge Valon Totaj as the head of the Court of Appeal, his election to this position came after a prolonged process for more than nine (9) months.³⁵ KJC as the reason for not completing this process quickly had mentioned the process of evaluating the performance of the candidates for President of the Court of Appeal to which some of the candidates had been subjected.³⁶ The process of interviewing candidates for this position began on April 4, 2022, or when more than 9 months had passed since the announcement of this competition.³⁷ In contrast to the two extremely long recruitment processes mentioned above, the KJC managed to

²⁹ **Note:** This Regulation has also been published for comments in public consultation, but it has not been approved until December 31, 2022. The same was approved in April 2023.

³⁰ “KJC Annual Work Plan for 2022”. Objective 7. (Available at: https://www.gjyqesori-rks.org/wp-content/uploads/reports/99914_KGJK_Plani_Punes_2022.pdf). (Last accessed on 12.01.2023).

³¹ **Note:** Nikolla Kabashiq submitted his resignation to the KJC.

³² “Two new members from the ranks of the Serbian community are added to the Kosovo Judicial Council”. *Betimi për Drejtësi*. 26 May 2022. (Available at: <https://betimiperdrejtesi.com/keshillit-gjyqesor-te-kosoves-i-shtohen-edhe-dy-anetare-te-rinj-nga-radhet-e-komunitetit-serb/>). (Last accessed on 26 January 2023)

³³ Makshana, L; Thaqi, M: “Administration of the justice system by the Councils”, Prishtinë. June 2022. Pg. 10-11.

³⁴ “Shpresa Emra is appointed president of the Basic Court in Prizren”. *Betimi për Drejtësi*. 5 May 2022. (Available at: <https://betimiperdrejtesi.com/shpresa-emra-emerohet-kryetare-e-gjykates-themlore-ne-prizren/>). (Last accessed on 26 January 2023).

³⁵ “KJC elects judge Valon Totajn, president of the Court of Appeal”. *Betimi për Drejtësi*. 5 May 2022. (Available at: <https://betimiperdrejtesi.com/kgjk-zgjedh-gjyqtarin-valon-totajn-kryetar-te-gjykates-se-apelit/>). (Last accessed on 26 January 2023).

³⁶ Përgjigje nga KGJK për IKD. 22.12.2021.

³⁷ “One candidate withdraws from the race for President of Appeal, for five others KJC completes the interviews”, *Betimi për Drejtësi*, 4 April 2022 (Available at: <https://betimiperdrejtesi.com/nje-kandidat-terhiqet-nga-gara-per-kryetar-te-apelit-per-pese-te-tjere-kgjk-perfundon-intervistat/>). (Last accessed on 26 January 2023).

complete the process for the election of the president of the BC in Gjilan and that of the Commercial Court in record time³⁸.

On this occasion, KLI draws attention to the necessity for the Council to continuously take care that these positions do not remain vacant in any case, but that they are filled within the legal deadlines.

7. "Merciful" discipline of judges

7.1. The illegal amnesty of sexist language in the decision of the Basic Court of Gjilan

The Basic Court in Gjilan, dismissed from accusations five suspected of the rape of a 19 year old women, by using sexist language and absurd reasoning. In its reasoning, the Court stated that *“the victim accepted to travel with the accused, against the fact that she knew that he was of the male gender”*, thus classifying the victim as *“a person with not so good mannerisms especially in the moral aspect”*. Furthermore, the Court found that *“to be in a living environment with new people, automatically means that the victim accepted that there can be sexual adventures”*.³⁹

KLI through *“Betimi për Drejtësi”* on December 4, 2021 published their investigation *“Sexism in the decision of the Court of Gjilan”*, where through this investigation without going into the merits of the case, showed the language used in which the decision was reasoned, was a prejudice language, sexist and offensive for the damaged party. Regarding this case, the former President of the Supreme Court, Enver Peci initiated to the KJC a request for initiating disciplinary investigations against the president of the panel (*whom drafted the decision*) Aziz Shaqiri and two members of the trial panel, Ramiz Azizi and Naser Maliqi.

Yet, the KJC on April 28, 2022 unlawfully dismissed this case, with the reasoning that this supposed disciplinary violation reached absolute statutory of limitation.⁴⁰

KLI on July 23, 2022, through a public reaction called this KJC decision as unlawful. In this reaction it stated that Law No.06/L-057 on Disciplinary Responsibility of Judges and Prosecutors entered into force on January 10, 2019. This Law [article 10] defines that the deadline for statute of limitation of disciplinary violation is 5 years. It is exactly this provision that should be applied to this concrete case, and not the provision that is now abolished and of which the KJC refers to. This, since this Law [article 17.4] stipulates that *“[with] the entry into force of this law, all other complaints regarding supposed disciplinary violations, **including those that are allegedly finished prior to the entry into force of this law**, but of which investigations have not started, after the*

³⁸ “Judge Mahir Tutuli elected as President of the Commercial Court”. Betimi për Drejtësi. 20 April 2022. (available at: <https://betimiperdrejtesi.com/gjyqtari-mahir-tutuli-zgjedhet-kryetar-i-gjykates-komerciale/>). (Last accessed on 26 January 2023).

³⁹ “Sexist reasoning of the Court of Gjilan”. Betimi për Drejtësi. 4 December 2021. (Available at: <https://betimiperdrejtesi.com/arsyetimi-seksist-i-vendimit-te-gjykates-se-gjilanit/>). (Last accessed on 13 January 2023).

⁴⁰ KJC decision. No.160/2022. 28 April 2022.

entry into force of this law, **will be proceeded by the competent authority and councils in accordance with this law**".⁴¹

Hence, in this concrete case, the law is very clear, that even in cases where supposed disciplinary violation have occurred prior to the entry into force of the new law of which proceedings have not started (*as is in the concrete case*) the provisions of the new law apply, where the deadline for the state of limitation is also a part of. In this manner, the KJC through such a decision has amnestied the sexist language used in the decision of the Basic Court of Gjilan. KJC does not give any reason to why the legal provision in force, which foresees the statutory limitation deadline of five years, was not implemented.

This KJC decision, in unlawful, arbitrary and presents the opposite of accountability. All this in the face of complete clarity of the legal provisions. This form of action of the KJC in the present case represents a failure of the internal control mechanisms and a loss of public trust in these mechanisms. Moreover, according to the Kosovo Progress Report 2022, it emphasizes that although there are efforts to implement the appropriate legal framework regarding disciplinary procedures, however, a lot of will, diligence and work is needed to ensure the sustainable and effective implementation of the disciplinary procedures.⁴²

7.2. "Regretful" judge that was released from disciplinary responsibility

On February 3, 2022, the judge of the General Department of the Basic Court in Pristina, Eroll Gashi, had issued an order for forced presence against Xelal Sveçla, now the Minister of Internal Affairs, who had been absent from the hearing even though he had been invited by regular summons. The details of the development of this court hearing were reported by the "Betimi për Drejtësi", where the statements of judge Gashi were quoted.⁴³ After this report, the judge of the case was pronounced in an online media denying the issuance of an ordinance. After that, the BC in Pristina, through a reaction, had denied the issuance of this ordinance against Minister Sveçla.⁴⁴

Pursuant to the minutes of the hearing and audio recording that was published by "*Betimi për Drejtësi*", resulted that the statement of Judge Gashi and press release of the Court were in full contradiction with what actually happened in the hearing. Since in the hearing, never was it said that the order for forced presence was issued only if the defendants were not present in

⁴¹ "KLI: KJC unlawfully amnestied sexist language in a decision of the Basic Court of Gjilan". Kosovo Law Institute. 23 July 2022. (available at: <https://kli-ks.org/ikd-kgjk-kunderligishem-amnistion-gjuhen-seksiste-ne-vendimin-gjyqesor-te-gjykates-themelore-ne-gjilan/>). (Last accessed on 13 January 2023).

⁴² Kosovo Progress Report 2022.

⁴³ "Minister Sveçla is ordered to be brought with force in the case where together with 12 others are accused of violent offences in the 2013 protest". Betimi për Drejtësi. 3 February 2022 (Available at: <https://betimiperdrejtesi.com/urdherohet-te-sjellat-me-force-ministri-svecla-ne-rastin-ku-se-bashku-me-12-tetjere-po-akuzohet-per-veprime-te-dhunshme-ne-protesten-e-2013-es/>). (Last accessed on 13 January 2023).

⁴⁴ "The basic Court in Pristina said that they did not issue an order to be brought with force of Minister Sveçla". Betimi për Drejtësi. 3 February 2022 (Available at: <https://betimiperdrejtesi.com/gjykata-themelore-neprihtine-thote-se-nuk-eshte-leshuar-urdherese-per-sjellje-me-detyrim-ndaj-ministrit-svecla/>). (Last accessed on 13 January 2023).

the following hearing, but this was stated only in the statement of Judge Gashi, published on online media.⁴⁵

The KJC, with the decision of July 15, 2022, had decided on the release from disciplinary responsibility of judge Eroll Gashi on the grounds that with the information given by judge Gashi to the online medium, according to this decision, this information would not damage the judicial process.⁴⁶

However, such a decision of the KJC is unfounded despite the facts and evidence administered by the investigative panel, since according to the Law on Disciplinary Responsibility, article 5, par 2, point 2.10, the judge consumes the disciplinary offense in the case where: *“makes public statements during ongoing proceedings which may, or appear to adversely affect fair trial and equal treatment of the parties to the proceedings or which could harm the credibility and reputation of the court, or otherwise communicates to the public information on the composition of court panels, evidences and decisions related to any cases, unless the disclosure of such information is required by Law”*. Therefore, the provisions of the Law in this particular case are clear and this is reinforced even more by the fact that Judge Gashi was not authorized by the President of the BC Pristina to speak to the media, but he had decided to speak to the online media regarding the aforementioned case. Such an action contradicts the Code for Professional Ethics of judges, namely Article 6, par 2.⁴⁷

The KJC instead of holding Judge Gashi responsible, who has already lost credibility for handling this media case involving a minister, the latter freed him from disciplinary responsibility. The non-reaction of the Council and the non-imposition of a disciplinary sanction against Judge Gashi gives a negative signal about the functioning of the internal mechanisms.

8. (Bad) KJC's reaction to the Government's decision to reduce salaries

The Government of the Republic of Kosovo in November 2022 decided to reduce the salaries of judges and prosecutors.⁴⁸ Such a decision was not welcomed by Civil Society Organizations. This decision had caused the KJC to boycott work in the judiciary, which violated the rights of many citizens of the Republic of Kosovo, since the latter did not follow the legal paths to challenge the Government's decision.

⁴⁵ “The editorial staff of “Betimit për Drejtësi reacts to the untrue statement of judge Eroll Gashi and the Basic Court in Pristina”. Betimi për Drejtësi. 3 February 2022 (Available at: <https://betimiperdrejtesi.com/redaksia-e-betimit-per-drejtesi-reagon-ndaj-deklarates-se-pavertete-te-gjykatesit-eroll-gashi-dhe-gjykates-themelore-ne-prishtine/>). (Last accessed on 13 January 2023).

⁴⁶ See: Decision no. 319/2022 of KJC

⁴⁷ Note: Based on article 6, par 2 of the Code of Ethics, it is stated that: *“The judge has the obligation to refrain from any explanation to the media and other interested parties regarding specific cases, unless he is authorized to do so”*.

⁴⁸ Decision No.03/109 dated 23.11.2022.

KLI and Civil Society Organizations had reacted strongly to the Government of the Republic of Kosovo, which, contrary to constitutional standards and using untrue facts, issued a decision to reduce the salaries of judges and prosecutors.⁴⁹

The path followed by the KJC to respond to this decision of the Government was wrong. On November 23, the KJC made a decision requesting the annulment of the Government's decision on salaries and made a decision to reduce the work in the courts. The Council called the Government's decision an attempt to interfere in the work of the judicial system and reduce the independence of the judicial system.⁵⁰

Such a decision of the KJC had caused many court hearings that had been scheduled to be cancelled.⁵¹ This failure of hearing lasted until December 3, 2022, after the BC in Pristina, Department for Administrative Issues approved the temporary measure of the Prosecutors Association against the government's decision on salaries.⁵²

Faced with an unconstitutional decision of the Government of the Republic of Kosovo, the justice system should be an example of how a right is protected through the court system and not take actions that harm the citizens of the Republic of Kosovo. This way of judicial action violates the rights of many parties, who may have waited for years for their cases to be resolved.

9. KJC budget challenges

In 2022, the KJC had requested a budget of 38 million and 623 thousand euros, but despite the requests of the KJC, in the end the amount of 32 million euros was approved for this institution.⁵³ This budget has made it impossible for this institution to fulfill all the obligations of the judiciary, since 6 million euros less than the request of this institution had

⁴⁹ "Civil society: Cutting salaries for the justice system represents an interference with justice and increases the potential for corruption". Kosovo Law Institute. 23 November 2022. (Available at: <https://kli-ks.org/shoqeria-civile-ulja-e-pagave-per-sistemin-e-drejtise-paraqet-nderhyrje-ne-drejtisi-dhe-rrit-potencialin-korruptiv/>). (Last accessed on 14 January 2023).

⁵⁰ "KJC demands the annulment of the Government's decision on salaries, a decision is made to reduce the work in the courts". Betimi për Drejtësi. 23 November 2023. (Available at: <https://betimiperdrejtisi.com/kgjk-kerkon-anulimin-e-vendimit-te-qeverise-per-pagat-merret-vendim-per-reduktim-te-punes-ne-gjykata/>). (Last accessed on 14 January 2023).

⁵¹ "In the Basic Court in Pristina and its branches, 113 sessions were canceled today, 6 from the list of essential services were kept". Betimi për Drejtësi. 29 November 2022. (Available at: <https://betimiperdrejtisi.com/ne-gjykatën-themelore-ne-prishtinë-dhe-deget-e-saj-sot-u-anuluan-113-seanca-u-mbajten-6-nga-lista-e-sherbimeve-esenciale/>). (Last accessed on 14 January 2023).

"The decision of the KJC, the Court of Prizren on Wednesday canceled 30 hearings". Betimi për Drejtësi. 30 November 2022 (Available at: <https://betimiperdrejtisi.com/vendimi-i-kgjk-se-gjykata-e-prizrenit-te-merkuren-anuloi-30-seanca/>). (Last accessed on 14 January 2023).

"The Commercial Court canceled 36 hearings since the KJC's decision to reduce work". Betimi për Drejtësi. 30 November 2022. (Available at: <https://betimiperdrejtisi.com/gjykata-komerciale-anuloi-36-seanca-qe-nga-vendimi-i-kgjk-se-per-reduktim-te-punes/>). (Last accessed on 14 January 2023).

"About 800 hearings canceled in the Basic Court in Pristina since the decision of the KJC" Betimi për Drejtësi. 1 December 2022. (Available at: <https://betimiperdrejtisi.com/rreth-800-seanca-te-anuluara-ne-gjykatën-themelore-ne-prishtinë-qe-nga-vendimi-i-kgjk-se/>). (Last accessed 14 January 2023).

⁵² (Available at: <https://betimiperdrejtisi.com/gjykata-pezuillon-vendimin-e-qeverise-per-uljen-e-pagave-te-prokuroreve-dhe-gjyqtareve/>). (Last accessed on 14 January 2023).

⁵³ See: Law on Budgetary Allocations for the Budget of the Republic of Kosovo for 2022.

been approved. This was reflected in the non-fulfillment of certain legal obligations, specifically in the non-establishment of new court branches, non-fulfillment of the obligation for each court to have one (1) professional associate, and also in the non-providing of full capacities for Commercial Court and other needs of the judicial system.

9.1. Non establishment of new court branches

With Law No. 06/L – 054 on Courts, the KJC was obliged to establish new branches of the courts, specifically the branch of Fushë Kosova, Obiliq, Junik, Shtime and Hani of Elezi.⁵⁴ According to the KJC, the branch in Fushë Kosovë has been established and is in the process of being operationalized, while as for the other branches, the KJC has clarified that it will proceed with this issue in accordance with the budgetary possibilities, namely the allocation of the budget, as well as taking into account the case load and the number of inhabitants of these municipalities, based on the official registration by the competent institutions.⁵⁵

The implementation of these legal provisions for the establishment of the aforementioned branches was also requested by the Functional Review of the Justice Sector in Kosovo.⁵⁶ However, the opening of these court branches is also conditioned by the budget funds that the Assembly of the Republic of Kosovo has allocated to the KJC. With the 2021 budget approved by the Assembly⁵⁷, among other things, the construction of the Court building in Fushë Kosovë was foreseen, until 2022⁵⁸, in addition to the continuation of the project for the Court in Fushë-Kosovo, the approved budget also planned the construction of the Court building in Shtime, but not the construction of the buildings for the Court of Junik and Hani of Elez. Even though the approved budget provided for the construction of the Court building in Shtime, KJC did not complete the construction of this building during 2022.

he establishment of new court branches is of special importance for the advancement of access to justice for citizens. Through the establishment of new court branches, citizens find it easier to receive services from the courts, while the same dismisses other courts, in which the citizens of these municipalities receive services. Determining by law these branches of the courts and not supporting the judicial system with a budget for the establishment of these branches represents a lack of real will to advance access to justice for citizens.

9.2. Lack of professional associates

Article 39 of Law No. 06/L - 054 on Courts, has determined that each judge must have at least one professional associate, who serves exclusively the judge in question. Due to budget shortfalls, KJC has not been able to fulfill this obligation. The fulfillment of such an

⁵⁴ Law no 06/L - 054 on Court, Article 10.

⁵⁵ KJC response to KLI, 19 January 2023.

⁵⁶ **Note:** According to the document "Increasing the efficiency of the judicial and prosecutorial system", the legal provisions for the establishment of the branches of the Basic Courts in Fushë Kosovë, Junik and Shtime must be implemented. Pg.74.

⁵⁷ Law no.07/L-041 on budget allocations for the Budget of the Republic of Kosovo for the year 2021. Pg.115-116

⁵⁸ Law no.08/L-066 on budget allocations for the Budget of the Republic of Kosovo for the year 2022. Pg.100-101.

obligation would directly affect the increase in efficiency in the judiciary and this would be reflected in smaller delays in the resolution of court cases. Above all, the law would be respected.

According to the KJC, during the year 2022, 277 professional associates were employed in the Courts of the country.⁵⁹ If compared to the number of judges, 404,⁶⁰ it means that 127 judges are without professional associated. According to the KJC, this obligation has not been realized as a result of a non-budget given by the Government related to these position.⁶¹ According to the KJC, the Ministry of Finance requested that 167 positions be approved, but according to them, these positions were not approved for 2022. KLI, during the drafting of this report, requested clarification from the Ministry of Finance as to why these positions were not approved, but did not receive a response at all.

Otherwise, in the Progress Report for Kosovo for 2022, among other things, it is stated that: *"Although the number of professional associates in all Kosovo courts has increased in 2021, the number of legal staff that directly assists judges and prosecutors remains insufficient. A number of competitions have remained unfilled since the Assembly did not approve the full request of the judiciary budget for 2022"*.



Grapg 4: The number of professional associates in relation to the number of judges during 2022

UN Fundamental Principle 7 on the independence of the judiciary states: *"It is the duty of each Member State to provide sufficient resources to enable the judiciary to perform its functions properly"*.⁶² In this regard, supporting the justice system only with laws, without allocating an adequate budget for the fulfillment of these laws, does not represent support for the justice system. Therefore, it is important that the Assembly allocates an adequate budget for the justice system, at least enough to fulfill the obligations defined by the laws approved by the Assembly.

⁵⁹ KJC response to KLI. 26 January 2023.

⁶⁰ See: Annual Statistical Reposrt on Court 2022. Pg.3.

⁶¹ KJC response to KLI. 19 January 2023.

⁶² "Basic principles for the independence of the judiciary"- (Available at: https://www.icj.org/wp-content/uploads/2014/03/UN-Basic-principles-independence-judiciary-1985-eng.pdf?fbclid=IwAR0qAt0U3sObLGy1gixveBRc51ueNHEbMN7p-QoRzsk4oCfOnys1xq_-Lo).

9.3. Shortened functioning of the Commercial Court as a result of the low budget

Law No. 08/L-015 for the Commercial Court, which entered into force on February 10, 2022, foresees the organization and operation of this Court within the existing framework of the judicial system of the Republic of Kosovo. According to Article 9 of this law, the Commercial Court will function quickly and efficiently to ensure the timely resolution of disputes.⁶³ The KJC, after the entry into force of this law, was obliged to start the procedures for the functionalization of this court, specifically with the election of judges, the recruitment of support staff, the transfer of cases and other obligations defined according to the Law on the Commercial Court.

However, until now the KJC has elected the president of the Commercial Court, nine (9) judges in the first instance chamber and six (6) judges in the second instance chamber of this court. In the KJC, they say that out of the 82 necessary positions, only 50 of them have been approved and that, according to them, this has also affected the efficiency of this court.⁶⁴

In the calculation in relation to the Regulation for setting the work rate of judges, it turns out that with this number of judges, the first instance chamber of the Commercial Court needs 3.13 years to complete the cases. This without accepting new subjects. In this way, we cannot say that the Commercial Court has full capacity to provide businesses with better quality justice and in a more reasonable time, which is the purpose of its establishment. Thus, the political will to advance commercial justice through the adoption of legislation has lacked the will to allocate a sufficient budget.

10. (Non) Gender Equality in the KJC and the Court

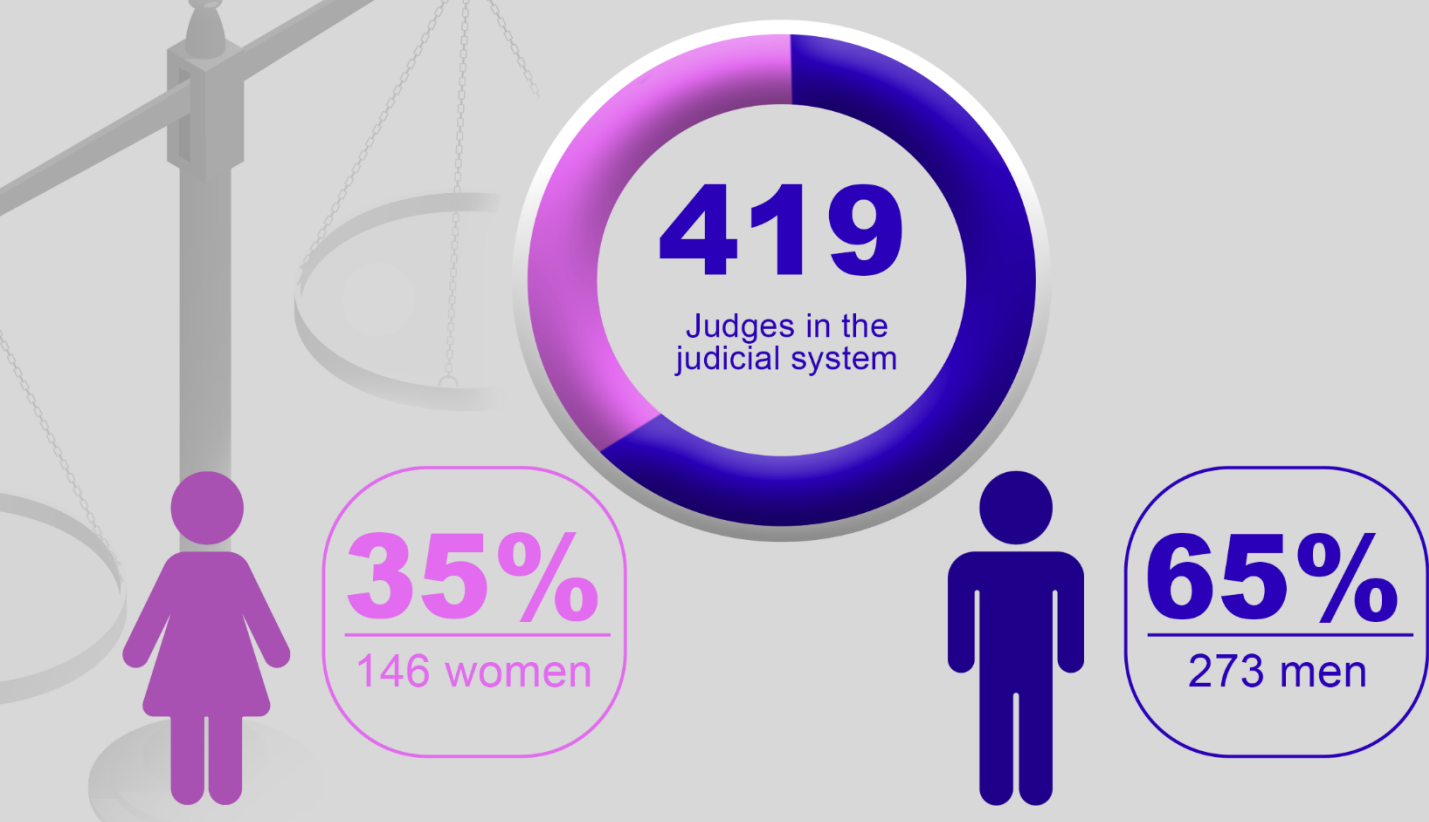
Unequal gender representation is pronounced in the judicial system. Of the 419 judges currently in the judicial system, 273 are men or about 65% and 146 are women or 35%. According to the 2022 Progress Report, Kosovo still has a low percentage of female judges and prosecutors compared to most other European countries. The percentage is almost similar in terms of the composition of the KJC. Out of 11 members of the Council, only four (4) are women. Expressed as a percentage, it turns out that 63.63% of KJK consists of men and only 36.36% of KJK consists of women.

The most pronounced inequality is expressed in leadership positions. The percentage of women in leadership positions is not equivalent to the overall percentage of women judges in the justice system. This is because out of ten (10) courts in the country, only two (2) of them (*the Basic Court in Pristina and the one in Prizren*) are currently led by women.

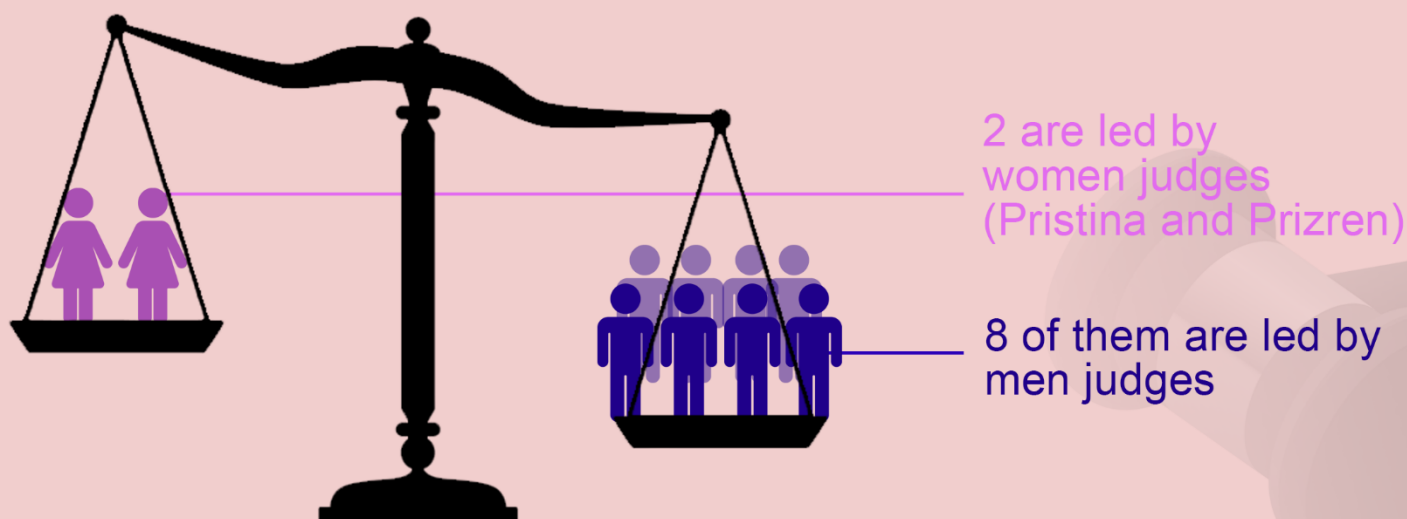
Thus, in the face of the fact that 35% of the judicial system consists of women, only 20% of them are in leadership positions. (See infographic below).

⁶³ Law No. 08/L-015 on Commercial Court, Article 9.

⁶⁴ “Veliaj: 6 million euros less than we requested were approved, it affects efficiency”. *Betimi për Drejtësi*. 7 June 2022. (Available at: <https://betimiperdrejtesi.com/veliaj-jane-aprovuar-6-milione-euro-me-pak-se-qe-kemi-kerkuar-ndikon-ne-efikasitet/>). (Last accessed on 24 January 2023)



OUT OF **10** COURTS



Only 20% of women are in leadership positions

