



# CIVIL JUSTICE 2022

Author: Aurela Mërlaku and Nuraje Bllaca

Editor: Gzim Shala

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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.

## KLI

Str. Ilaz Agushi  
Pristina  
E: [info@kli-ks.org](mailto:info@kli-ks.org)  
[www.kli-ks.org](http://www.kli-ks.org)

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## **1. Executive summary**

Chronologically, over the years, the number of unresolved cases has continuously increased, aggravating the state of civil divisions. While in 2021 there were a total of 85,087 outstanding cases which were carried over to the following year, the year 2022 marked a record for the increase in the number of outstanding cases with 99 thousand 407 cases.

In addition to the increase in the number of accepted cases, the inefficiency of judges and the non-proportional distribution of judges contributed to the increase in the number of unresolved cases. This is because the number of judges to handle contentious cases during 2022 was 107, while the number of resolved cases was 25,632. This is due to the fact that each judge on average resolved 239.5 cases within a year, despite the obligation from the KJC that each of them is obliged to resolve 329 cases within the year.

Non-implementation of Collective Contracts is the main reason for the increase in the number of civil cases accepted by the judiciary. In 2022, 40,826 cases of a civil nature were accepted, and it is thought that about 40% of the accepted cases are of this nature. This is due to the fact that only during the year 2022, it is considered that about 16,330 civil cases are cases that derive from disputes related to the non-implementation of obligations from collective contracts.

The overall average length of court cases clearly speaks to a handling of civil court cases within an unreasonable time frame. The average duration of cases resolved only at first instance is 1,415 days or 3.8 years, while the average duration of cases handled by the Court of Appeal is 638 days or 1.7 years.

During the monitoring, KLI found that, in general, there is a lack of implementation of Law No. 05/L-021 on Protection from Discrimination, since despite the fact that in various lawsuits filed a claim for discrimination, lawsuits were not filed based on this law, with the request to ascertain the existence of any of the forms of discrimination.

Likewise, the lack of lawsuits, along with other indicators, speaks of an insufficient level of implementation of Law No. 06/L-085 for the Protection of Whistleblowers. For this reason, the further promotion of this law remains a necessity of the institutions.

Regarding the treatment of property cases, based on the analysis of 20 judgments, it appears that the average duration of treatment of cases related to property issues in the first instance is 9 years and 3 months, while the average treatment of cases arising from collective contracts is 1 year and 7 months, and that this high difference shows that in 2022 there was a neglect of property disputes and a focus on cases of collective contracts.

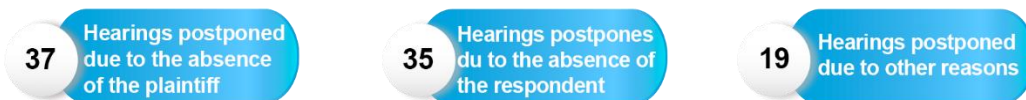
Regarding mediation as an alternative way of resolving disputes, KLI finds that the year 2022 has a markedly positive trend, since during this year the courts in this procedure have referred a total of 4,269 cases.

## 2. Monitoring civil justice

This report is the result of direct monitoring that the Kosovo Law Institute (KLI) conducted on civil justice in Kosovo. During 2022, KLI monitored a total of 492 court hearings of a civil nature. Of these, 401 hearings were held, while another 91 were postponed. Expressed as a percentage, 81.5% of civil court hearings were held, while 18.5% of them were postponed.<sup>1</sup>



The biggest reason for postponing court hearings is the absence of the plaintiff (37 cases), followed by the absence of the respondent (35 cases). But, in quite a few cases, the judges themselves have been the reason why court hearings in civil cases have been postponed.



If we analyze it as a trend, the number of postponed court hearings has decreased year after year. This is considered a positive trend. Moreover, this trend in a slight percentage is also expressed in this report. This is because in the previous report on civil justice, KLI found that the percentage of postponed hearings was 21.8%, while this year this percentage has decreased by 3.3%, respectively to 18.5%. Despite this improvement, this statistic shows that approximately one in five court hearings in civil cases is still postponed. This situation means that in the field of adequate administration of justice, which does not allow postponement of hearings, improvement is still required.

## 3. Increase in the number of unresolved cases

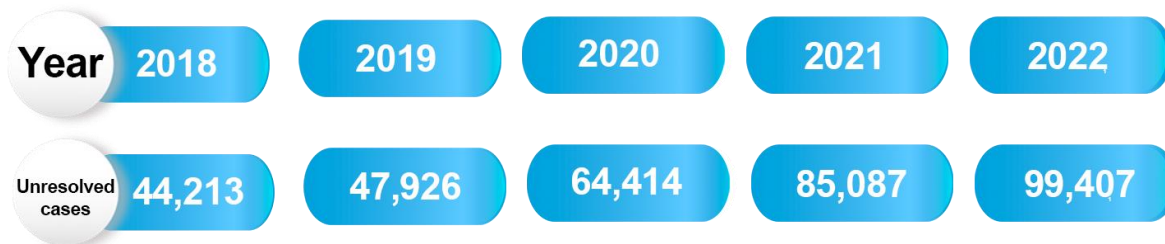
The large number of unsolved cases continues to eclipse other problems in the field of civil justice. A large number of problems in this field are considered to come precisely from the large number of unsolved cases. The Rule of Law Strategy states that: “*Of the accumulated cases, the duration of civil cases is particularly problematic*”<sup>2</sup>. This load, in addition to the duration, can be considered to affect the quality of court decisions.

<sup>1</sup> See: <https://www.ejudiciary.org/kli>. (Last accessed on 20 January 2023).

<sup>2</sup> Rule of Law Strategy 2021 – 2026. Ministry of Justice. July 2021. Page 12. (See: <https://md.rks-gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf>). (Last accessed 29 June 2023).

In the report on civil justice for 2018, KLI found that there is a very small decrease in the number of pending cases. At this rate, KLI emphasized that civil justice in Kosovo would take a long time to stabilize. Unfortunately, since that time, the complete opposite has happened: the number of pending cases in the civil field has now doubled.

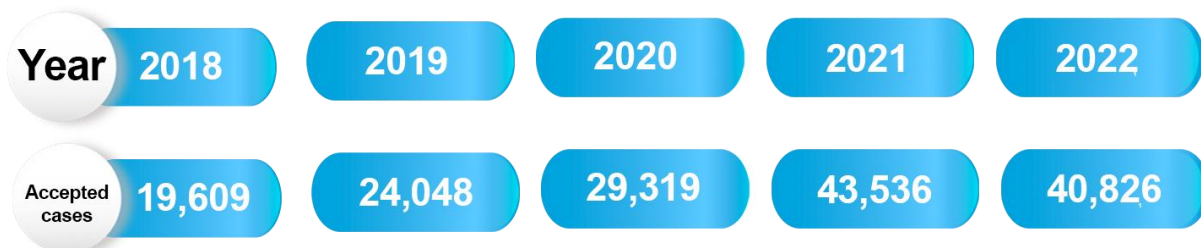
Chronologically, from 2018 to the end of 2022, the number of pending cases has continuously increased, aggravating the situation of civil divisions in terms of caseload.



**Table 3. Unresolved cases in the Basic Courts from 2018-2022.**

While in 2021 there were a total of 85,087 unresolved cases<sup>3</sup> which were carried over to the following year, the year 2022 marked a record for the increase in the number of unresolved cases which were carried over year after year, with 99,407 unresolved cases.<sup>4</sup>

In the trajectory of increasing the number of pending cases, the primary role is played by the exponential increase in the number of accepted cases:



**Table 4. number of accepted cases in the Basic Courts from 2018-2022.**

However, in addition to the increase in the number of accepted cases, the inefficiency of the judges also contributed to the increase in the number of unresolved cases. This is if we take into account the KJC Regulation on indicative norms, which was in force last year. This is because the number of judges to handle contentious cases during 2022 was 107, while the number of resolved cases was 25,632. This is due to the fact that each judge has resolved 239.5 cases on

<sup>3</sup> Annual statistics report for courts 2021. (See: [https://www.gjyqesori-rks.org/wp-content/uploads/reports/91632\\_KGJK\\_Raporti\\_Statistikor\\_Vjetor\\_Gjykatave\\_2021.pdf](https://www.gjyqesori-rks.org/wp-content/uploads/reports/91632_KGJK_Raporti_Statistikor_Vjetor_Gjykatave_2021.pdf)). (Law accessed 26 January 2023).

<sup>4</sup> Annual statistics report for courts 2022. (See: [https://www.gjyqesori-rks.org/wp-content/uploads/reports/45114\\_RAPORTI%20STATISTIKOR%20I%20GJYKATAVE%20VJETOR%202022.pdf](https://www.gjyqesori-rks.org/wp-content/uploads/reports/45114_RAPORTI%20STATISTIKOR%20I%20GJYKATAVE%20VJETOR%202022.pdf)). (Last accessed 30 January 2023).

average within a year despite the obligation from the KJC that each of them is obliged to resolve 329 cases within the year. If this rate were reached, the judicial system would have about 9,500 fewer civil cases.

In accordance with KLI recommendation<sup>5</sup>, the KJC on April 6, 2023 approved the new Regulation on the Working Norms of Judges, which presents a new system related to the norms of judges. The effects of this regulation remain to be seen in the subsequent stages.

#### 4. Challenge of civil justice by collective contracts

The Collective Contract of Education in Kosovo signed in 2017, as well as the other collective contract signed in January 2021, in article 35, paragraph 7 and 8, provides for the right to compensation of employees during working hours and the compensation of remuneration jubilee defined as in the contract. Provisions of this nature are also contained in other collective contracts.

Non-implementation of Collective Contracts is the main reason for the increase in the number of civil cases accepted by the judiciary. This is not the fault of the judiciary, but of the Government that did not allocate a budget for the implementation of these contracts, forcing the beneficiaries to realize their rights in legal ways, burdening the judiciary with cases and damaging the budget with procedural expenses.<sup>6</sup>

In 2022, 40,826 cases of a civil nature were accepted, and it is thought that about 40% of the accepted cases are of this nature.<sup>7</sup> This is due to the fact that only during the year 2022, it is considered that about 16,330 civil cases are cases that derive from disputes related to the implementation of obligations in relation to collective contracts.

From the statistical data of the Kosovo Judicial Council (KJC)<sup>8</sup>, within the nine months of 2022, a total of 4,739 cases for jubilee salaries were resolved by the Basic Courts of the Republic of Kosovo and their branches. On the other hand, during this nine-month period, the courts have resolved a total of 18,375 civil cases. Thus, about 25% of all resolved cases in the field of civil justice are related to jubilee salaries. So, every fourth settled civil case belongs to jubilee salaries.

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<sup>5</sup> Nocaj D. “Civil Justice in Kosovo, law vs. practice”. KLI. Pristina. November 2019. Page 21 (See: <https://kli-ks.org/wp-content/uploads/2019/11/IKD-Drejt%C3%ABsia-Civile-Ligji-vs.-Praktika-03.11.2019-1.pdf>). Law accessed 29 June 2023).

<sup>6</sup> “Implementation of the Collective Contract of Education through court decisions”. Betimi për Drejtësi. September 2021. (See: <https://betimiperdrejtesi.com/zbatimi-i-kontrates-kolektive-te-arsimit-permes-vendimeve-gjyqesore/?fbclid=IwAR2spC7HPkpLFLPIGkAG0ECQDtAIUJzOaS058BkyGNhxSZqI3IEwbFOgAJE>).

<sup>7</sup> Kosovo Law Institute. “Civil Justice Regression - Report of the monitoring of civil court cases during the year 2021”. Pristina. September 2022. Page 7. (See: [file:///C:/Users/hp/Downloads/Raporti\\_Drejtësia-civile-2021-1%20\(1\).pdf](file:///C:/Users/hp/Downloads/Raporti_Drejtësia-civile-2021-1%20(1).pdf)). (Last accessed 29 June 2023).

<sup>8</sup> Written reply from the Kosovo Judicial Council. 21 December 2022.

Basic Court	Cases resolved for jubilee salaries (nine months 2022)
Pristina	1,401
Peja	1,232
Gjilan	1,023
Ferizaj	445
Mitrovica	270
Prizren	208
Gjakova	150

**Table 5. Cases resolved in the ninth month of 2022 for jubilee salaries by the Basic Courts of the Republic of Kosovo.**

Thus, if the institutions would fulfill the obligations according to the collective contracts, there would be no need for the employees to follow the legal path, so that it would not come to the creation of procedural expenses which in some cases could be higher than the right that is sought. Furthermore, this created situation has moved civil justice outside the tracks of stabilization. For these reasons, KLI recommends that the Government as soon as possible allocate the budget funds for the realization of obligations arising from collective contracts, so that citizens are not forced to turn to the judiciary and the latter is not unnecessarily burdened.

## 5. Civil case load according to the type of disputes

The Basic Courts and their branches during 2022 have handled various types of disputes, including compensation for damage, family disputes, labor disputes, defamation and insults, disputes arising from collective contracts, etc. According to the data of the KJC, the court with the most cases is that of Pristina with a total of 32 thousand 453 cases, while the court with the least load is the Basic Court in Mitrovica, branch in Zubin Potok with a total of 39 cases at work.

In the seven Basic Courts and their branches, during the year 2022, leading were disputes concerning compensation for damage, with a total of 36,888 cases, followed by property disputes, disputes arising from collective contracts, etc:



Damage compensation	Family Disputes	Labor disputes	Lawsuit for defamation and insults	Property disputes	Disputes arising from collective contracts	Other	Total
36,888	6,401	10,324	663	17,900	14,830	28,054	115,060
32%	5.50%	9.0%	0.5%	15.5%	12.8%	24.3%	

**Table 6: Workload of courts with cases according to disputes.**

If the aforementioned statistics are calculated, then it turns out that somewhere around 32% of the cases at work were cases concerning the compensation of damage. While, as it has been stated in previous KLI reports, is the worrying large number of cases concerning jubilee salaries, which make up 12.8% of court cases. Only that of Pristina during the year 2022 had about 5,526 cases concerning jubilee salaries.

Below is a table with each court for specific types of disputes that the courts had during 2022.<sup>9</sup>

Court and branches	Damage compensation	Family Disputes	Labor disputes	Lawsuit for defamation and insults	Property disputes	Disputes arising from collective contracts	Other	Total
Prishtinë	8834	1359	1872	489	4502	5226	10171	32453
Podujevë	828	287	1979	9	535	509	988	5135
Graçanicë	205	51	22	1	335	135	217	966
Lipjan	881	173	107	5	379	1725	541	3811
Glogoc	1163	171	1260	19	194	82	1096	3985
Gjilan	1177	402	76	12	1138	1152	3187	7144
Kamenicë	164	111	78	4	297	540	750	1944
Viti	693	184	16	8	969	491	3679	6040
Novobërdë	89	13	33	1	178	62	618	994
Prizren	5462	597	79	21	1642	345	1172	9318
Suharekë	1077	145	855	3	871	170	1961	5082
Dragash	96	70	136	1	140	686	170	1299
Mitrovicë	815	403	66	9	1255	674	3033	6255
Leposaviq	2	28	16	0	36	10	35	127
Vushtrri	891	237	52	4	449	1009	722	3364
Zubin Potok	11	5	3	0	8	10	2	39
Skenderaj	782	170	22	8	240	33	735	1990
Gjakovë	1710	359	1518	15	577	327	509	5015
Malishevë	1162	154	967	5	444	63	511	3307
Rahovec	1082	141	756	1	460	15	282	2747
Pejë	1788	417	34	19	256	469	3964	6947
Istog	545	163	79	3	556	137	733	2216
Klinë	784	161	35	1	785	25	774	2565
Deçan	1602	139	4	1	181	177	1047	3151
Ferizaj	4480	375	48	15	1091	424	921	7354
Kaçanik	476	74	108	5	273	280	338	1554
Shtërpçë	89	12	103	4	109	54	69	440
<b>Total</b>	<b>36888</b>	<b>6401</b>	<b>10324</b>	<b>663</b>	<b>17900</b>	<b>14830</b>	<b>28054</b>	

**Table 7: Workload of the courts according to the type of dispute.**

<sup>9</sup> Source data: Kosovo Judicial Council – Statistics Department.

## 6. Duration of handlings civil cases

In the field of civil law, the duration of court proceedings remains one of the main challenges in the administration of justice.

*“Reasonable deadlines are also foreseen in the Civil Procedure Law. According to the Law on Contested Procedure, the courts have one month to hold the preliminary session, and another month to hold the main hearings. If someone calculates the various procedural steps, civil cases must be handled within two to three months from the date on which they are submitted to the Court”,* it is provided in the document "Increasing the efficiency of the judicial and prosecutorial system" produced by the process of Functional Review of the Rule of Law Sector (FRRLS).<sup>10</sup>

Yet, according to the calculations of the KJC, made on the basis of a formula of the European Commission for the Efficiency of Justice (CEPEJ), the average duration of cases resolved only at first instance is 1,415 days. This is due to the fact that in order to receive the epilogue of a civil case, only in the first instance, citizens must wait a total of 3.8 years. According to the same formula, the average duration of handling cases by the Court of Appeal is 638 days or 1.7 years. Thus, in total, the duration of a civil case from the moment it is submitted to the court until the moment it ends in the Court of Appeal is a total of 5.5 years.

The overall average length of court cases clearly speaks to a handling of civil court cases within an unreasonable time frame. In this regard, KLI has found that many factors have influenced, starting from the misadministration of administrative institutions and the performance of judges, and also the inadequate administration of justice.

Given the exponential increase in the number of unresolved cases, the length of court proceedings seems to continue to remain one of the main problems in the field of civil justice in Kosovo.

## 7. Lack of judicial cases for discrimination

Law No. 05/L-021 on Protection from Discrimination [Article 13.1.] has defined the possibility for each person who claims to have been discriminated to file a lawsuit in court. This lawsuit [Article 14.3.] can be submitted within the period of five (5) years from the day the injured person became aware of the discrimination suffered. The specificity of lawsuits filed under this law is that the burden of proof does not fall, as usual, on the plaintiff but on the respondent. According to this law [Article 16.9], the judicial procedure in these cases is treated with priority.

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<sup>10</sup> *“Increasing the efficiency of the judicial and prosecutorial system”. Functional Review of the Rule of Law in Kosovo. Ministry of Justice. June 2019. Page 14.*

During monitoring, KLI has found that, in general, there is a lack of implementation of this law. In spite of the fact that in various lawsuits you raised the claim for discrimination, the lawsuits were not filed based on this law, with the request to establish the existence of any of the forms of discrimination.

In the report “*(In)Justice and Gender-Based Discrimination in labor relations*” KLI found that “*there has been no case where the courts have decided on discrimination based on the Law on Discrimination*”. “*Based on the monitoring of these cases, it is proven that something like this especially happens because even in those cases it was only mentioned in the report of the lawsuit that in specific cases there is discrimination, the claim did not contain anything concrete in this regard, which means that the party in the lawsuit, in no case did he ask for the determination of this issue or the punishment of the institution/company in relation to this situation*” it was said in this report<sup>11</sup> The small number of cases filed for discrimination is also found in the annual report of the Ombudsperson Institution.<sup>12</sup>

The obligation to apply this law, above all, falls on the lawyers who represent the parties in various judicial processes. Law No. 05/L-021 on Protection from Discrimination presents a powerful mechanism for ascertaining discrimination in each case and for fighting discrimination in general. For this reason, in terms of preventing discrimination, the application of this law remains a basic issue.

## **8. Labor disputes with elements of discrimination**

As stated, in principle, the number of cases initiated under Law No. 05/L-021 on Protection from Discrimination is low. In spite of this, KLI has identified and analyzed cases where allegations of discrimination have been raised in the reports of lawsuits from the labor relationship. For the purposes of this report, KLI has analyzed 20 judgments of this nature.

KLI findings show that from the judgments analyzed in 15 of them, the court approved the claim of the plaintiffs, while in five other cases the claim was rejected. Of the 15 approving verdicts, in four of them it was not decided on the compensation of material damage, while in 11 of them the amount of compensation of material damage was determined according to the claimant's request. Whereas, in these judgments, only in one case was the height for the compensation of non-material damage determined.

KLI found that in three cases, the courts did not mention the legal basis which the claim was rejected for claims related to discrimination.

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<sup>11</sup> Kosovo Law Institute. “*(In) Justice and Gender-Based Discrimination in Labor Relations*”. Pristina. 2021. Page 20. (See: [file:///C:/Users/hp/Downloads/Final\\_PADREJT%C3%8BSIA-DHE-DISKRIMINIMI-ME-BAZ%C3%8B-GJINORE-N%C3%8B-MARR%C3%8BDH%C3%8BNIET-E-PUN%C3%8BS.pdf](file:///C:/Users/hp/Downloads/Final_PADREJT%C3%8BSIA-DHE-DISKRIMINIMI-ME-BAZ%C3%8B-GJINORE-N%C3%8B-MARR%C3%8BDH%C3%8BNIET-E-PUN%C3%8BS.pdf)). (Last accessed 29 June 2023).

<sup>12</sup> Annual Report 2022, no. 22. Ombudsperson Institution. Page 52. (See: [https://oik-rks.org/wp-content/uploads/2023/03/OIK\\_AnnualReport\\_alb\\_web\\_01\\_compressed.pdf](https://oik-rks.org/wp-content/uploads/2023/03/OIK_AnnualReport_alb_web_01_compressed.pdf)). (Last accessed 29 June 2023).

Meanwhile, it is noted that even in the cases of approving the claim, in two cases the court did not mention at all the legal basis on which the claim for discrimination was accepted, while in nine other cases, the court did not issue a concrete basis but only referred to the article 5, paragraph 1 of Labor Law No. 03/L-212, which stipulates that “*Discrimination is prohibited in employment and profession, related to employment recruitment, training, employment promotion, employment conditions, disciplinary measures, termination of the employment contract or other matters from the employment relationship regulated by this law and by laws of others in force*”, not specifying the basis of discrimination.

However, in six cases the court has specifically mentioned the legal basis of discrimination in the case of decision-making.

From the analysis of these judgments, it results that the most frequent basis according to which a claim for discrimination is filed is the claim for discrimination in employment in the case of termination of the employment relationship. Thus, out of 20 lawsuits analyzed for cases of discrimination, 12 of them were filed claiming discrimination in employment, six of them discrimination in wages, one lawsuit for discrimination based on age and one lawsuit for discrimination in physical conditions in public spaces for persons with disabilities.

Law No. 03/L-006 on the Contested Procedure determines that “*In disputes from the labor relationship, and especially in the case of setting deadlines and convening court hearings, the court will always take into account the need for urgent resolution of disputes from the labor relationship*”.

As for the duration of handling these cases, eight lawsuits are from 2020, three from 2019, four from 2018, three from 2017 and one case each from 2014 and 2013. If the calculation of procedural steps is made, civil cases must be dealt with within two to three months from the date on which the claim was submitted to the Court<sup>13</sup>. Whereas, in the case of cases from the labor relationship, with claims of discrimination, despite the legal requirement for an urgent resolution of these cases, the average duration from the day the lawsuit is filed until the court makes a decision turns out to be **3 years and 1 month**.

From the judgments analyzed, in six cases the plaintiff was a woman, in which case in five cases the claim was approved in cases of discrimination, while in another 14 cases the plaintiffs were men, of which 10 were approved in the party's claims for discrimination. In cases of discrimination where the woman is the plaintiff, KLI has found that the most frequent basis is discrimination in employment due to the termination of the employment relationship.

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<sup>13</sup> “*Increasing the efficiency of the judicial and prosecutorial system*”. *Functional Review of the Rule of Law in Kosovo*. Ministry of Justice. June 2019. Page 14.

## 9. Lack of whistleblowing lawsuits

Law No. 06/L-085 on the Protection of Whistleblowers (LPW), which entered into force on January 2, 2019, has defined the rules, whistleblowing procedures, rights and protection of whistleblowers, as well as the obligations of public institutions and private entities in relation to whistleblowing.

The whistleblower and the person related to the whistleblower who has suffered from harmful actions related to the whistleblowing, has the right to judicial protection, without being obliged to exhaust internal legal remedies in administrative proceedings. According to the law [Article 24.5] "all cases related to whistleblowing are dealt with as a priority by the Court".<sup>14</sup>

The official data of the Agency for the Prevention of Corruption speak of an increasing trend in the number of whistle-blowing cases. In 2022, as external whistleblowing, the Agency for the Prevention of Corruption received 13 whistleblowing cases, while in 2021 it had received nine.

However, the legal protection of whistleblowers seems to have not yet been addressed by the courts. KLI, with the aim of compiling the most comprehensive report, addressed the KJC for information and access to public documents regarding the cases of lawsuits filed in the Basic Courts of the Republic of Kosovo related to the rights of whistleblowers, but the same has not been provided access to such documents.

Through requests for access to information and public documents, IKD has asked the courts for information on whether they have had cases of this nature at work. According to these answers, it turns out that the Basic Court in Peja with its branches in Klinë, Istog and Deçan, the Basic Court in Ferizaj with its branches in Kaçanik and Shtërpcë, the Basic Court in Prizren with its branches in Suharekë and Dragash, the Basic Court in Gjilan and it in Mitrovica they have not accepted or handled any case related to the issue of whistleblowers' rights.<sup>15</sup> Other courts have not responded.

The lack of lawsuits, along with other indicators, indicates insufficient level of implementation of Law No. 06/L-085 for the Protection of Whistleblowers. For this reason, the further promotion of this law remains a necessity of the institutions.

## 10. Judicial protection of property

Property represents one of the main civil-legal institutes in any legal order. In Kosovo, ownership is guaranteed through the Constitution, the European Convention on Human Rights

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<sup>14</sup> Law No. 06/L -085 for the Protection of Whistleblowers Article 24 paragraph 5

<sup>15</sup> Written answer from the Basic Court of Peja. January 19, 2023. Written answer from the Basic Court of Prizren. January 19, 2023. Written answer from the Basic Court in Ferizaj. January 20, 2023. Written answer from the Basic Court in Gjilan. February 1, 2023. Written answer from the Basic Court in Mitrovica. 08 February 2023.

and the law. The right of ownership is further regulated in more detail by Law No. 03/L-154 on Property and Other Property Rights.

For the purposes of drafting this report, KLI has analyzed a total of 20 judgments of the Basic Courts of the Republic of Kosovo and 20 judgments of the Court of Appeal related to property issues.<sup>16</sup>

In the 20 judgments of the first instance, in 13 of them the claim was approved, in three cases the claim was rejected, while in four other cases the claim was considered withdrawn.

Regarding the handling of property cases, KLI has found significant problems in the administration of these cases. Further, in terms of the duration of these cases, KLI finds that the duration in the treatment of these cases represents a special delay beyond the general delay.

Regarding the treatment of these cases, based on the analysis of 20 judgments, it appears that the average duration of treatment of cases related to property issues in the first instance is **9 years and 3 months**. Meanwhile, compared to the duration of the treatment of cases arising from collective contracts, a high level of disproportion is observed in the duration of treatment of a case of this nature, since from the moment of filing the lawsuit until a decision of the Basic Court the average of handling cases arising from collective contracts turns out to be 1 year and 7 months.<sup>17</sup>

However, the average processing time of a jubilee salary case from the filing of the lawsuit to the decision of the Court of Appeal is **2 years and 5 months**.<sup>18</sup>

Taking into account the much more pronounced complexity of property cases, in relation to disputes arising from collective contracts, this high difference shows that in 2022 there was a neglect of property disputes and a focus on cases of collective contracts. In terms of remedying these situations, it is worth evaluating the new Regulation on the Norms of Judges, which has addressed this situation, making the differentiation of court cases, according to their complexity.<sup>19</sup>

On the other hand, in the analysis of these judgments, it can be seen that in four cases the court gave a judgment based on the affirmation. But, despite the fact that in these cases no procedure

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<sup>16</sup> Note: The judgments are provided on the official websites of the Basic Courts of the Republic of Kosovo and the official website of the Court of Appeal.

<sup>17</sup> Note: In order to analyze the duration of handling cases with jubilee salaries, 20 judgments of the Basic Courts of the Republic of Kosovo, provided on the official website of the Courts, were analyzed.

<sup>18</sup> Note: For the analysis of the duration of the treatment of cases with jubilee salaries in the second instance, 20 judgments of the Court of Appeal, provided on the official website of the Court, were analyzed.

<sup>19</sup> Regulation No.03/2023 Judges Norms. Kosovo Judicial Council. Pristina. April 2023. (See: [https://www.gjyqesori-rks.org/wp-content/uploads/lgs/49162\\_Rregullore\\_Nr\\_03\\_2023\\_per\\_normen\\_punes\\_se\\_gjyqtareve.pdf](https://www.gjyqesori-rks.org/wp-content/uploads/lgs/49162_Rregullore_Nr_03_2023_per_normen_punes_se_gjyqtareve.pdf)). (Last accessed 29 June 2023).

takes place at all (*except for the determination of the availability of the claim*), the judgments in these cases were issued about seven years after the filing of the lawsuits.

Further, KLI has found that two of the analyzed cases are cases returned to retrial and re-review by the Court of Appeal, in which case until a decision is made by the first instance since the filing of lawsuits in one case have passed 12 years, respectively nine years in the other case. Whereas, KLI has found that in a case in which the lawsuit was filed in 2010 and in 2022, the court rejected the plaintiff's claim. Thus, for the treatment of this case, a total of 12 years had passed until the verdict was received from the first instance.

The phenomenon of frequent return of cases to retrial and re-review is very pronounced in cases of property disputes. For the purposes of this research, IKD has also analyzed 20 decisions of the Court of Appeal in property disputes. In this case, IKD finds that in six cases the Court of Appeals has confirmed the decisions of the first instance courts, while in 14 cases it has overturned the decisions of the Basic Courts of the Republic of Kosovo and returned the civil cases to retrial and re-review.

In the cases returned for retrial according to the Court of Appeal, it can be seen that the reasoning of the decisions begins with a template that *"the decision of the court of first instance is not fair and legal since the challenged judgment is included in the violation of the provisions of the contested procedure, the factual situation has not been ascertained in a fair and complete manner and consequently the material right has been applied in a wrong way"*.

However, the biggest reason for returning the cases to retrial, namely in 10 such cases, is according to the Court of Appeal that the decisions of the first instance are included in the fundamental violation of the provisions of the contentious procedure from Article 182.2, point n) *"if the judgment has defects due to which they cannot be examined, and especially if the disposition of the judgment is incomprehensible or contradictory to itself or to the reasons of the judgment, or if the judgment has no reasons at all or they are not indicated in it the reasons for the decisive facts at all, or those reasons are unclear, or contradictory, or if for the decisive facts there is a contradiction between what is said in the reasons for the judgment about the content of the document or the minutes for the statements given in the procedure and those documents themselves or of the minutes;"*.

While in two other cases it is said that the court decisions exceeded the claim, while in two other cases it is said that the decisions of the first instance were involved in other procedural violations [Law on Contested Procedure, article 182.2, item k).

Returning cases to retrial is one of the main reasons for causing procedural delays, both in other cases and in property cases. From the analysis of these decisions, it appears that from the moment of the decision of the first instance to the decision of the Court of Appeal, on average, **3 years and 5 months** pass, while from the moment of filing the lawsuit to a decision of The

Court of Appeals, on average, takes **7 years and 8 months** to handle the case for property cases, not counting the retrial procedure, in cases where the decisions of the basic courts are overturned by the Court of Appeals.

In this way, based on this analysis, KLI finds that the justice system during 2022 has not managed to adequately handle property cases. This mode of operation of the justice system weakens the implementation in practice of a basic right of citizens, that of property.

## 11. Mediation in legal-civil disputes

Mediation is one of the most efficient ways for the out-of-court settlement of disputes, which procedure enables the parties to resolve their cases without procedural formalities and also frees the courts from a significant number of cases.

The Strategy for the Rule of Law states that "Despite the legal regulations, mostly literal for arbitration and especially for mediation, the parties rarely use them. The parties are little informed about the possibilities they create for efficient choice of disputes"<sup>20</sup> The parties are little informed about the possibilities they create for efficient dispute resolution and that "Encouraging the use of alternative dispute resolution mechanisms (ADR), such as arbitration (for civil cases) and mediation (for civil and criminal cases) will significantly affect the reduction of the number of necessary cases that are decided by the courts"<sup>21</sup>.

The mediation procedure is regulated by Law No. 06/L-009 on Mediation, which provides for the manner, operation, procedure and organization of mediation, the rights, duties and responsibilities of mediators in order to facilitate access to the alternative resolution of disputes and disputes as well as promote their amicable solution. This law also categorizes the nature of court cases suitable for mediation and has also defined mandatory mediation<sup>22</sup>.

Regarding mediation as an alternative way of resolving disputes, KLI finds that the year 2022 has a markedly positive trend. According to the statistical data of the Ministry of Justice<sup>23</sup>, it can be observed that from the Basic Courts of the Republic of Kosovo regarding civil cases, in 2020 only 143 cases were referred to the mediation procedure, while this number was raised in 2021, where in the mediation procedure were referred a total of 887 cases. A significant increase in the referral of cases in the mediation procedure was noted during the year 2022, where the courts in this procedure referred a total of 4,269 cases.

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<sup>20</sup> Rule of Law Strategy 2021 – 2026. Ministry of Justice. July 2021. Page 13. (See: <https://md.rks-gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf>). (Last accessed 29 June 2023).

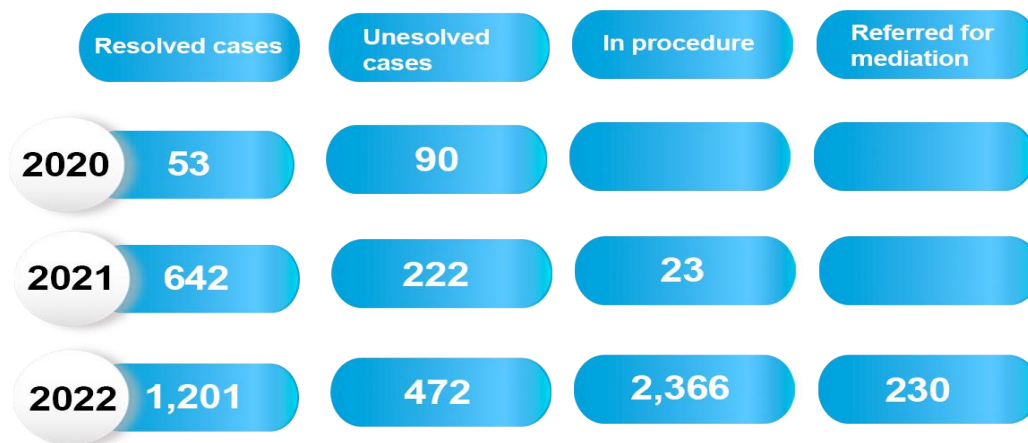
<sup>21</sup> Ibid. Page 27.

<sup>22</sup> Law No.06/L-009 on Mediation. Article 9.

<sup>23</sup> Written reply from the Ministry of Justice. 26 January 2023.



Thus, KLI finds that during 2022 there was a positive trend in increasing the number of cases referred to mediation. As is known, it contains in itself multiple benefits, both for the parties and for the justice system. The trend of increasing the number of cases referred to mediation should continue to increase until the procedure for resolving disputes through mediation is a well-known procedure among citizens. The following table presents the statistics related to the resolution of cases referred to mediation.



**Table 8. Handling of civil cases in the mediation procedure for the years 2020-2022.**

## 12. Disproportionate workload of judges with civil cases

The proportional distribution of judges, in accordance with the caseload, represents good administration of the justice system, which also affects the increase in efficiency.

Regarding such distribution, KLI finds that in 2022, comparing the case load in four courts and the number of judges dealing with civil cases, it results that on average, a judge in the Basic Court in Prizren is charged with 1,634 cases, in Ferizaj with 1,350 cases, while a judge in the Basic Court in Gjilan is charged with 902 cases and in Mitrovica with 908 cases. In this way, it turns out that we have a non-proportional distribution of judges between the Basic Courts of Prizren, Ferizaj on one side and those in Gjilan and Mitrovica on the other side.

Basic Court	Number of civil cases at work	Number of judges handling civil cases	Average caseload for a judge
Prizren	9,809	6	1,634
Ferizaj	8,105	6	1,350
Mitrovica	6,359	7	908
Gjilan	6,317	7	902

**Table 9. Average caseload for a judge in Basic Courts in 2022.**

Bearing in mind these data, the KJC should ensure that judges are distributed proportionally to the case load that a court has, so that this affects the reduction of the number of unresolved cases and the increase of efficiency. In this situation, the KJC should aim to achieve this through the institute for the transfer of judges.