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THE TRIAL WITHIN A REASONABLE TIME

(Constitutional issues of the current Draft Law)

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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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ACRONYMS

KLI	Kosovo Law Institute
ECHR	The European Convention on Human Rights
ECtHR	The European Court of Human Rights
Draft Law	Draft Law on the trial within a reasonable time
MJ	Ministry of Justice
MFLT	Ministry of Finance, Labor and Transfers
KJC	Kosovo Judicial Council
BC	Basic Courts
CoA	Court of Appeal
SC	Supreme Court
DS	Department Special
AK	Competent Authority

1. Executive summary

One of the ongoing issues faced by the Kosovo justice system is the timely adjudication of cases. Despite some progress in certain areas, the violation of this right continues to be systemic. To address this violation, the MJ has published for public consultation the Draft Law on the Realization of the Right to a Trial within a Reasonable Timeframe (hereinafter: the Draft Law). The legitimate goal intended by the content of the Draft Law is not addressed. Moreover, this Draft Law, with its current content, risks creating more chaos in the judicial system.

The European Court of Human Rights emphasizes that states have a duty to organize their judicial systems in such a way that the Courts can meet each of the requirements of a fair trial, including trial within a reasonable timeframe. The ECtHR has highlighted that the measures chosen must be tailored to the specific context of the Judiciary in a given state. The ECtHR has made it clear that in countries where there are already problems with the duration of proceedings, a legal remedy created to expedite procedures—though desirable for the future—may not be suitable for correcting a situation where proceedings are already excessively long. For this reason, to address the violation within a reasonable timeframe, the state must take measures suited to a specific context. This approach is not followed by the Draft Law. The provisions of the Draft Law seem not to consider the chaos they may cause in practice. This creates problems both in the administration of cases coming through the application of the Draft Law's provisions and in the general administration of the courts.

The Draft Law has set time limits for trials, which are considered reasonable: three years in the first instance and two years in the second instance. The determination of these time limits as criteria for calculating a reasonable timeframe is in open contradiction with the standards established by the ECtHR regarding trial within a reasonable timeframe. The ECtHR has decisively determined that there cannot be a uniform criterion regarding the assessment of the reasonableness of the timeframe, but this must be assessed on a case-by-case basis, according to the criteria established by the ECtHR. After setting the time limits, the Draft Law lists the ECtHR criteria as exceptional criteria, but not as basic criteria for assessing the reasonableness of the duration of the trial.

Due to these criteria, the Kosovo Law Institute (KLI) finds that it is this Draft Law that violates the right to a trial within a reasonable timeframe, even though it aims for the opposite: there will be no violation of the reasonable timeframe for trials even in cases where, objectively, trials could be completed more quickly (e.g., cases in the Department Special) if the time determined in the Draft Law has not elapsed.

By not focusing on empowering the justice system to respect trials within a reasonable timeframe, KLI finds that the Draft Law creates discrimination between citizens who use legal remedies according to the Draft Law and those who do not use these legal remedies. KLI finds cases where the Draft Law guarantees the right to a legal remedy, thereby involving constitutional violations.

2. Legitimate aim

One of the main issues in the justice system in Kosovo since the declaration of independence has been the duration of judicial proceedings. An unreasonable duration undermines one of the key components of a fair trial, which is the right to a trial within a reasonable timeframe. In many reports, the Kosovo Law Institute (KLI) has consistently raised concerns about the length of judicial proceedings in the context of violating the right to a trial within a reasonable timeframe [1]. The Rule of Law Strategy also emphasizes that "The duration of proceedings remains one of the most critical and complex issues in the rule of law sector. It directly affects the right to a trial within a reasonable timeframe, as defined by the Constitution and the ECHR"[2].

So far, significant reforms have been undertaken to address this problem [3]. However, to date, the required progress has not been achieved, particularly in the civil sector. Throughout the institutional deliberations for reforms in this area, citizens have continued to wait for justice. The right to a trial within a reasonable timeframe has continued to be violated [4], even systematically.

In 2021, KLI published the report "Delayed Justice in Kosovo." This report emphasized that "the duration of judicial proceedings can also be attributed to the lack of an effective legal remedy that would offer our citizens the effective protection of the right to a trial within a reasonable timeframe. In this regard, our citizens are unprotected, as the Republic of Kosovo has not provided any means that could be used by them either to expedite the process or to obtain compensation for the consequences caused by the failure to timely realize this right".

In this situation, the goal of building mechanisms to address this violation is extremely legitimate. Such mechanisms aim to hold institutions accountable for protecting human rights, guaranteed by the Constitution and international instruments. However, above all, these mechanisms must be adequate and in line with the specific context of Kosovo to be effective and efficient.

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[1] Makshana L; "Amnesty of criminality through the statute of limitation"; KLI, Prishtina, December 2023; (See link: file:///C:/Users/ikd20/Downloads/Amnistimi-i-kriminalitetit-permes-parashkrimit-2023-Pdf-anglisht%20(2).pdf), (Last accessed on 2 July 2024). Makshana L; "Prosecution and Trial of Corruption 2023"; KLI, Prishtina, December 2023; (See link: file:///C:/Users/ikd20/Downloads/Ndjekja-dhe-Gjykimi-i-Korrupsionit-2023-Anglisht-pdf%20(2).pdf), (Last accessed on 2 July 2024). Zekaj E; "Compensation for the victims of domestic violence"; KLI, Prishtina, September 2023; (See link: file:///C:/Users/ikd20/Downloads/COMPENSATION-FOR-THE-VICTIMS-OF-DOMESTIC-VIOLENCE%20(1).pdf), (Last accessed on 2 July 2024). Hoxha A; "Deficient Investigations and Petty Trials"; Prishtina, September 2023; (See link: https://kli-ks.org/wp-content/uploads/2023/09/Raporti-i-Departamentit-te-Pergjithshem-2022-14.09.2023.pdf), (Last accessed on 2 July 2024). Bllaca N dhe Mërlaku A; "Civil Justice 2022"; KLI, Prishtina, August 2023; (See link: https://kli-ks.org/drejtesia-civile-2022/), (Last accessed on 2 July 2024). Kosovo Law Institute "Regression of Civil Justice"; KLI, Prishtina, September 2022. (See link: https://kli-ks.org/wp-content/uploads/2022/09/Raporti_Drejtesia-civile-2021-1.pdf), (Last accessed on 2 July 2024). Thaqi M dhe Nocaj D; "Delayed Justice in Kosovo"; KLI, Prishtina, December 2021; (See link: https://kli-ks.org/wp-content/uploads/2021/12/Drejtesia-e-vonuar-ne-Kosove-2021.pdf), (Last accessed on 2 July 2024). Frrokaj J dhe Hashani G; "The Handling of Murder Cases in Kosovo"; KLI, Prishtina, April 2021; (See link: https://kli-ks.org/trajtimi-i-vrasjeve-ne-kosove/). (Last accessed on 2 July 2024). Shala G; "The practice of the ECtHR an obligation in writing"; KLI, Prishtina, September 2020; (See link: https://kli-ks.org/wp-content/uploads/2020/09/Praktika-e-GjEDNj-se-obligim-ne-leter.pdf), (Last accessed on 2 July 2024).

[2] "Strategy on the Rule of Law 2021-2026"; Ministry of Justice, July 2021; (See link: https://md.rks-gov.net/desk/inc/media/6DC1CBD5-0DF1-46AE-9D1A-78C96146C7D0.pdf) - P.11, (Last accessed on 20 June 2024).

[3] Ibid.

[4] "Delayed justice, denied justice for citizens"; Betimi për Drejtësi, 16 September 2024; (See link; https://betimiperdrejtesi.com/betimi-per-drejtesi-330-drejtesia-e-vonuar-drejtesi-e-mohuar-per-qytetaret/), (Last accessed on 2 July 2024) and "Delays in justice for solving crimes against adolescents"; Betimi për Drejtësi, 25 March 2023; (See link: https://betimiperdrejtesi.com/betimi-per-drejtesi-311-zvarritjet-e-drejtesise-per-zbardhjen-e-krimit-mbi-adoleshentet/), (Last accessed on 2 July 2024).;

3. The contest: Why do delays occur

Since 2013, KLI has been systematically monitoring court cases in all Courts of the Republic of Kosovo. Over the years, KLI has monitored an average of around 5,000 court sessions per year in the criminal, civil, administrative, and commercial fields. Regarding the duration of judicial proceedings and the factors affecting these cases, the KLI's findings have been continuously published in monitoring reports.

If we group the causes, we can conclude that the reasons for the postponement of sessions are either objective, related to the Courts or other institutions, or subjective, related to the efficiency of judges, the proper administration of cases, the behaviour of the parties, etc.

One of the main reasons causing delays in the handling of court cases is the heavy workload of the courts. This is particularly pronounced in the civil sector. Unfortunately, this situation has only worsened over the years.

In the 2018 report on civil justice, KLI found that there was a very slight decrease in the number of unresolved cases. At this pace, KLI emphasized that it would take a long time for civil justice in Kosovo to stabilize. Unfortunately, since then, the opposite has happened: the number of unresolved cases in the civil sector has now doubled[5].

Chronologically, from 2018 until the end of 2022, the number of unresolved cases has consistently increased, worsening the situation in civil divisions regarding case loads. This increase continued until the end of 2023, reaching its peak: There were 112,623 unresolved cases in the Basic Courts.

Year	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**
Number of unresolved cases	44,213	47,926	64,414	85,087	99.407	112,623

Indicator no. 1, *Number of unresolved cases among years.*

"The judge 'sleeps' on the usury case"; Betimi për Drejtësi, 26 November 2024; (See link: https://betimiperdrejtesi.com/betimi-per-drejtesi-296-gjykatesi-fle-mbi-lenden-e-fajdese/), (Last accessed on 2 July 2024).

"Delayed justice"; Betimi për Drejtësi, 5 December 2020; (See link: https://betimiperdrejtesi.com/drejtesia-e-vonuar/), (Last accessed on 2 July 2024).

"Cases in the drawers of the courts"; Betimi për Drejtësi, 12 February 2020; (See link: https://betimiperdrejtesi.com/lendet-ne-sirtare-te-gjykatave/), (Last accessed on 2 July 2024).

[5] "Civil Justice 2022"; KLI, August 2023; (See link: Po aty), P.5-7, (Last accessed on 2 July 2024).

In the trajectory of the increasing number of unresolved cases, the primary role has been played by the exponential increase in the number of cases accepted.

Year	2018	2019	2020	2021	2022	2023
Number of unresolved cases	19,609	21,048	29,319	43,536	40,826	53,767

Indicator no. 2, *Number of unresolved civil cases among years.*

Thus, at least over the past six years, the situation with the number of unresolved cases has not improved but has worsened. However, this entire situation has been influenced by factors external to the judiciary. The non-implementation of obligations by public institutions arising from collective contracts has forced citizens to seek their rights through the judicial system. Instead of public institutions fulfilling these obligations, they have compelled citizens to turn to the courts. Aside from violating citizens' rights and harming the budget, this situation has burdened the judiciary to its current state.

Similarly, the government continues to disregard double pensions. Despite clear legal provisions and judicial practice in this field, the Ministry of Finance, Labour, and Transfers refuses to recognize this right for citizens. For this reason, citizens are forced to resort to the courts. Therefore, this situation also contributes to the increase in the number of cases.[6]

These situations make it impossible for the judicial system to deliver justice within a reasonable timeframe. Faced with such a large number of cases stemming from the non-compliance of public institutions with their obligations to citizens, the judiciary is unable to act within reasonable deadlines.

In addition to the case overload, findings from KLI monitoring also demonstrate other subjective factors creating procedural delays. These include inadequate case management by judges, which involves failure to take procedural actions according to the procedural stages defined by Law No. 03/L-006 on Contested Procedure. Postponement of court sessions, irregular sending of court summons, inability to send summons electronically, delays in cases being referred to experts, etc., are some of the issues highlighted in the Concept Document for the Civil Procedure Code[7].

[6] "The Government of Kosovo is violating the rights of pensioners to a double pension"; KLI, 14 June 2024; (See link: https://kli-ks.org/qeveria-e-kosoves-eshte-duke-shkelur-te-drejtat-e-pensionisteve-per-pension-te-dyfishte/), (Last accessed on 30 June 2024).

[7] "Concept document for the Civil Procedure Code of Kosovo"; Office of the Prime Minister, 24 August 2023; (See link: https://kryeministri.rks-gov.net/wp-content/uploads/2023/08/KD-per-KPC-per-publikim-shq.pdf), P. 26, (Last accessed on 30 June 2024)

4. How should the trial within a reasonable time frame be addressed

ECtHR asserts unequivocally that the most appropriate way to address the violation of the right to a trial within a reasonable timeframe is prevention. The Court emphasizes that states have an obligation to organize their judicial systems in a manner that allows courts to meet all requirements of a fair trial, including timely adjudication. The ECtHR further emphasizes that in cases where the judicial system is deficient in this regard, the most effective solution is the creation of legal mechanisms to expedite procedures and prevent excessive delays.[8]

However, ECtHR itself emphasizes that the chosen measures must be tailored to the specific context of the judicial situation in a particular state. The Court clarifies that for countries already facing problems with procedural delays, a legal mechanism designed to expedite proceedings—while desirable for the future—may not be suitable to rectify a situation where procedures are already clearly too lengthy. This stance of the ECtHR has been upheld in several cases.[9]

Therefore, to address the violation within a reasonable timeframe, the state must take measures that are tailored to a specific context. In other words, measures taken by states that do not emphasize this issue significantly cannot be applied in systems where the violation of timely adjudication is almost standard and court proceedings are excessively lengthy.

In this situation, before determining legal measures that compel the judiciary to respect this right, it is crucial to strengthen the judiciary to the extent possible, at least objectively, to respect this right. Otherwise, there is a risk that the judiciary will violate another right guaranteed by the Draft Law, which is the subject of this document.

Thus, above all, the Government of the Republic of Kosovo must take steps to reform the judiciary. Of course, these measures should not in any way exceed the Government's competencies or interfere with the functioning of justice system institutions.

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[8] Decision of the European Court of Human Rights, "Case of Scordino v. Italy (No. 1)", Paragraph 183; Strasbourg, 29 March 2006; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-72925%22]}), (Las accessed on 29 June 2024).

[9] Ibid, Paragraph 185 and decisions of the European Court of Human Rights: "Case of Tomazic v. Slovenia (Application no. 38350/02)", Paragraph 37; Strasbourg, 13 December 2007; (See link: https://hudoc.echr.coe.int/eng#{%22appno%22:[%2238350/02%22],%22itemid%22:[%22001-83973%22]}); "Case of Finger v. Bulgaria (Application no. 37346/05)", Paragraph 127; Strasbourg, 10 May 2011; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104698%22]}); "Case of Robert Lesjak v. Slovenia (Application no. 33946/03)", Paragraph 36; Strasbourg, 21 July 2009; (See link: https://hudoc.echr.coe.int/eng#{%22appno%22:[%2233946/03%22],%22itemid%22:[%22001-93660%22]}), (Last accessed on 30 June 2024).

What the Government is required to do initially is to take measures for institutions to enforce their obligations. Implementing these obligations would reduce the number of court cases, enabling the judiciary to handle cases more swiftly. Furthermore, there is a need to strengthen mechanisms for Alternative Dispute Resolution so that a significant number of cases can be resolved through these mechanisms rather than through the courts. Only in this scenario, where the judiciary is objectively ready to respect the right to a trial within a reasonable timeframe, can mechanisms be developed that fit within the judicial system, in exceptional cases where the right to a trial within a reasonable timeframe is violated. However, these measures are presumed to fail in a system where delays in procedures are excessive.

Therefore, as emphasized by the ECtHR, such measures are not adequate in systems where procedural delays are too long. Further analysis provides additional details of this situation, demonstrating that the Draft Law is more likely to create chaos in the judicial system than to address this situation.

5. Duration criteria

Article 5 of the Draft Law has stipulated that "1. Reasonable time limits for the conclusion of judicial proceedings in the courts of the Republic of Kosovo, for the purposes of this law, shall be considered as follows: 1.1. In first-instance proceedings, the conclusion of the trial process within three (3) years from its commencement; 1.2. In second-instance proceedings, the conclusion of the trial process within two (2) years from its commencement; and 1.3. In criminal investigations, the maximum duration of the investigation period as per the Code of Criminal Procedure."

The establishment of these time limits as criteria for calculating a reasonable timeframe is openly contrary to the standards set by the ECtHR regarding trial within a reasonable time.

The ECtHR has decisively determined that there cannot be a uniform criterion regarding the assessment of the reasonableness of time limits. This Court has emphasized that the reasonableness of the duration of a judicial procedure must be assessed on a case-by-case basis, considering specific circumstances and criteria established by the ECtHR.[10]

The ECtHR has determined that the criteria for assessing the reasonableness of time in each case include the complexity of the case [11]

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[10] Decision of the European Court on Human Rights: “Case of Comingersoll S.A. v. Portugal (Application no. 35382/97)”, Paragraph 19; Strasbourg 6 April 2000; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58562%22]}), (Last accessed on 30 June 2024).

[11] Decisions of the European Court on Human Rights: “Case of Katte Klitsche de la Grange v. Italy”, Paragraph 55; Strasbourg; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22: [%22001-57893%22]}), (Last accessed on 30 June 2024); “Case of Humen v. Poland (Application no. 26614/95)”, Paragraph 39; Strasbourg, 15 Tetor 1999; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58322%22]}), (Last accessed on 30 June 2024).

the conduct of the parties [12], the conduct of the judiciary and other institutions[13], and the significance of the case[14]. Based on these criteria, the reasonableness of the time taken in each case should be evaluated to conclude whether the time elapsed constitutes a reasonable timeframe for the examination of a case.

In this particular case, the Draft Law, without any criteria, sets forth reasonable time limits for the conclusion of judicial proceedings: three years for first-instance proceedings and two years for second-instance proceedings. Thus, it establishes a specific calendar period. As mentioned, this is entirely contrary to what the ECtHR stipulates in its jurisprudence, which is mandatory in Kosovo[15].

After establishing exact time limits without any criteria, Article 6 of the Draft Law states that "1. When deciding on a request for expedited proceedings, the president of the court shall take into account the following criteria: 1.1. the nature and factual and legal complexity of the case, 1.2. the behavior of the parties, 1.3. the actions of the court and other relevant institutions in the procedure, and 1.4. the importance of the matter for the persons claiming the violation." In this situation, while Article 5 sets precise time limits regarding the reasonableness of time frames, these criteria are unclear. On one hand, we have exact time limits of three and two years, and on the other, we have evaluation criteria. These norms are entirely unclear in relation to each other. In this ambiguity, based on Article 11.3 of the Draft Law, which states that "The president of the court rejects the request/deems it inadmissible if it is established that the request was submitted by an unauthorized person, if the request is premature or submitted after the conclusion of the judicial proceedings," it follows that the criteria in Article 6 are exclusionary criteria, used only to assess the absence of a breach of the reasonable time frame, but not basic criteria for evaluating the overall reasonableness of the time frame.

For these reasons, the criteria in the Draft Law are contrary to the standards of the ECtHR. Therefore, KLI recommends to the MJ that the time limits set forth in Article 5 of the Draft Law be removed, while the criteria established in Article 6 of the Draft Law should be the sole criteria for evaluation. Following this, KLI recommends that this change be reflected in other parts of the Draft Law as well.

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[12] Decisions of the European Court on Human Rights: "Case of Poiss vs Austria", Paragraph 57; Strasbourg, 23 April 1987; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57560%22]}); "Case of Wiesinger v. Austria (Application no. 11796/85)", Paragraph 56; Strasbourg, 30 October 1991; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57714%22]}); "Case of Humen v. Poland (Application no. 26614/95)", Paragraph 66; Strasbourg, 15 October 1999; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58322%22]}), (Last accessed on 30 June 2024).

[13] Decision of the European Court on Human Rights: "Case of Martins Moreira v. Portugal", Paragraph 60; Strasbourg, 26 October 1988; (See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57535%22]}), (Last accessed on 30 June 2024).

[14] [12] Decisions of the European Court on Human Rights: "Case of Scordino v. Italy", Paragraph 17; See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-72925%22]}); "Case of Paulsen-Madalen and Svensson v. Sweden", Paragraph 79; See link: https://hudoc.echr.coe.int/eng?fbclid=IwZXh0bgNhZW0CMTAAAR0Jmn12hUvQSn4cOblCtGRtIlQlELsDSdbt7xBylXWh3voSOC7Cnv4ZSyI_aem_xjBgeraNXRjQVTOrsc0xew#{%22itemid%22:[%22001-58132%22]}; "Case of Mikulic v. Croatia", Paragraph 44; See link: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-60035%22]}, (Last accessed on 30 June 2024).

[15] Article 53; Constitution of the Republic of Kosovo, K-09042008; Official Gazzete of the Republic of Kosovo; Prishtina, 2008

6. The draft law violates the right to a trial within a reasonable time

Facing the legitimate aim of the Draft Law to prevent and address the violation of the right to a trial within a reasonable time, KLI finds that it is precisely this Draft Law that becomes the cause of the violation of this right. Article 5 of the Draft Law specifies the time limits for handling cases, within which the cases are considered to be handled within a reasonable time frame.

However, the time limits set by this Law cannot be considered reasonable. According to this Law, from the initiation of a case in court, five years must pass until a judgment becomes final (three in the first instance and two in the second instance) to be considered that the trial has been conducted within a reasonable time frame. If we look at the legal time limits set by Law No. 03/L-006 on Contested Procedure or Code No. 08/L-032 of Criminal Procedure, the time limits are much shorter. In this situation, the aim for the judiciary is also lowered: the judiciary will not aim to handle cases within the time limits set by the Laws but, regardless of the specifics, to resolve cases within five years. In a general perspective, five years for handling a case is not considered a reasonable time frame.

On the other hand, in some departments, the judiciary has significantly advanced in terms of handling cases. For example, take the DS of the Basic Court in Pristina and the DS of the Court of Appeals. If we have only one indictment raised by the Special Prosecution of the Republic of Kosovo (SPRK), against one defendant, for one criminal offense, who has pleaded guilty, and the case is handled by the first instance in 2 years and 11 months, according to the Draft Law, there is no violation of the right to a trial within a reasonable time frame. However, based on the criteria of the ECtHR, hypothetically, in this situation, we would clearly be dealing with a violation of the right to a trial within a reasonable time frame.

For this reason, the criteria set by the Draft Law, which aims to protect the right to a trial within a reasonable time frame, are precisely the cause of the violation of this right.

7. The discrimination of citizens

As elaborated in this document, in the case of Kosovo, the violation of the right to a trial within a reasonable time frame is a widespread phenomenon. For this reason, systematic actions are required to empower the judiciary with the capability to handle cases within a reasonable time frame.

However, in this situation, if addressing the violation of citizens' right to a trial within a reasonable time frame is limited only by the provisions of this Draft Law, then another side of the violation will be created, which is the discrimination against citizens who do not use the legal remedies provided by the Draft Law.

Thus, if two citizens' right to a trial within a reasonable timeframe is violated and only one of them uses the legal remedies provided by the Draft Law, then only the one who utilized these remedies will have their violation addressed, while the person who did not apply the legal remedies according to the Draft Law will not. However, this right should belong to both citizens, and institutions must ensure that this right is protected for all citizens.

On the other hand, in the same situation, it is precisely the Draft Law that has the potential to create unequal treatment of parties. For example, if a citizen has been waiting for more than three (3) years at the first instance to receive justice and then addresses the Court President with a request to expedite the procedure, and if the criteria according to this Law are met, the Court President, in accordance with Article 13 of the Draft Law, decides to accept the request to expedite the procedure and sets a timeframe for resolving the case, the court must treat this case within the deadlines set in the Court President's decision. However, this urgency may reflect an inability for the judge to address another, older case. This is solely because in the first case, the citizen used the legal remedies according to the Draft Law, while in the second case, they did not. In conclusion, addressing the right to a trial within a reasonable timeframe should not be limited to those who utilize the legal remedies of the Draft Law. All citizens should have their rights equally protected, and measures should be taken to ensure the judiciary can handle all cases in a timely manner without discriminating between those who do and do not use specific legal provisions.

8. The consequences of the draft law on the administration of justice

The provisions of the Draft Law appear not to consider the chaos they might cause in practice. This could create problems both in the administration of cases submitted through the application of the Draft Law's provisions and in the general administration of the courts.

Firstly, due to the frequency of violations of the right to a trial within a reasonable timeframe, there is a high potential for courts to be overwhelmed by a large number of requests to expedite procedures.

Regarding the request to expedite the procedure, the Court President has two procedural stages to decide: the admissibility of the request according to Article 11 of the Draft Law and the decision regarding the request to expedite the procedure according to Article 13 of the Draft Law. The latter must be preceded by the procedure outlined in Article 12 of the Draft Law. Within this procedure, the Court President must request the judge, the presiding judge of the panel, or the prosecutor to submit a report within 10 days regarding the party's request to expedite the procedure [Article 12.1 of the Draft Law]. Additionally, "the Court President may request that the judge or the panel submit the case file" [Article 12.3 of the Draft Law].

If Court Presidents are inundated with a large number of requests to expedite procedures, then the Court President, along with an additional judge, will not be able to handle these cases within the timeframes specified by this Draft Law. This situation will lead to another violation against citizens, that of handling requests according to the Draft Law within a reasonable timeframe.

Furthermore, this burden on the Chief Justice jeopardizes the Chief Justice's ability to fulfill his obligations for the administration of the Court. This will consequently create adverse consequences in the administration of justice in all Courts.

Furthermore, until cases are handled by the Chief Justice, there is a risk of compromising the efficiency of case processing. This is because judges must, upon request by the Chief Justice, submit case files to the Chief Justice. In addition to impairing case administration, the administrative burden for this process will be substantial. This situation will significantly impair the proper administration of justice within the courts.

For this reason, KLI recommends MJ to reconsider the provisions of the draft law, particularly concerning competence and procedure, in terms of how they impact the administration of justice.

9. The judge responsibility

Article 8.1 of the Draft Law has stipulated that "In cases of failure by a judge or chief justice to act in the manner and within the deadlines prescribed by this law constitutes grounds for initiating disciplinary proceedings in accordance with the relevant legislation on disciplinary responsibility of judges."

According to this provision, a judge can be held accountable even without fault on their part. This is because in the specific case, the Draft Law does not refer to the fault of the judge, but simply to the "failure" to act within the deadlines prescribed by the law. There may be situations where a judge has "failed" to handle cases within the prescribed deadlines due to objective circumstances, such as excessive workload, complexity of the case, inadequate response from other institutions, etc. Despite this, the provision of the Draft Law holds the judge accountable without considering the need to investigate the level of fault, such as whether the failure was due to negligence, mismanagement, etc., or due to objective reasons.

Therefore, KLI recommends MoJ to reconsider Article 8 of the Draft Law.

10. Supreme Court competences

Article 19 of the Draft Law specifies that "1. To decide on a claim for fair compensation related to the violation of the right to a trial within a reasonable timeframe, the competent authority is the Supreme Court. 2. The Supreme Court decides in a panel of three (3) judges." Handling these cases by the Supreme Court risks undermining the Supreme Court itself. Furthermore, the Supreme Court's establishment as the first instance violates citizens' right to legal recourse.

Currently, out of all the courts, almost only the Supreme Court has a backlog of cases. At the beginning of 2013, this court had 202 active cases. Out of 1,860 cases received, the court managed to resolve 1,860 of them, leaving only 214 cases pending for the subsequent period[16]. If the competence to handle claims for compensation due to the violation of the right to a trial within a reasonable timeframe is assigned exclusively to the Supreme Court, then this court will be overwhelmed by the large number of cases. In this situation, the stability achieved by the Supreme Court will be jeopardized, hindering its ability to exercise its fundamental competencies effectively.

On the other hand, Law No. 06/L - 054 on Courts [Article 26] defines the basic competencies of the Supreme Court. In this specific case, acting as a court of first instance is not within the nature of the Supreme Court as the highest court. Here, we consider that this provision in the Law on Courts can be amended by another law. However, it is crucial to maintain the character of the Supreme Court.

Furthermore, designating the Supreme Court as a court of first instance violates citizens' right to legal recourse. The Draft Law has not defined any legal remedy or extraordinary recourse against decisions of the Supreme Court. Article 32 of the Constitution of the Republic of Kosovo states that "Everyone has the right to use legal remedies against court and administrative decisions that violate their rights or interests in the manner determined by law." The lack of a legal remedy in this specific case constitutes a violation of human rights and fundamental freedoms.

Regarding the possibility of initiating a case in the Constitutional Court, it should be emphasized that the possibility of bringing such a case under Article 113.7 of the Constitution of the Republic of Kosovo does not constitute an adequate legal remedy. Citizens should be provided with a legal remedy within the judiciary before resorting to the Constitutional Court.

However, parties still have the right to appeal to the Constitutional Court. This situation also risks overwhelming the Constitutional Court with appeals stemming from provisions of this Law. Thus, in addition to burdening the Supreme Court, leaving these cases within the competence of the Supreme Court also jeopardizes the administration of the Constitutional Court.

For these reasons, KLI proposes to MJ to review the provisions regarding the competence to handle claims for compensation due to the violation of the right to a trial within a reasonable timeframe. In this case, consideration should be given to the possibility of establishing a specialized judicial body or creating an administrative mechanism within the judiciary, similar to the Panel for Release with Conditions or the Compensation Commission for wrongfully convicted or detained individual.

[16] "Statistical Report of the Courts, Annual 2023"; Kosovo Judicial Council; (See link: https://www.gjyqesori-rks.org/wp content/uploads/reports/1682_KGJK_Raporti_Statistikor_Gjykatave_Vjetori_2023.pdf), f. 3, (Last accessed on 30 June 2024).

11. Violation of the right to legal remedy

Article 11 of the Draft Law establishes provisions regarding the admissibility of requests for expedited procedures. Paragraph 4 of this article specifies that "The court president decides on the admissibility of the request for expedited judicial procedure within 15 days from the submission of the request." However, the subsequent paragraph of this article states that "No appeal is allowed against this decision."

Therefore, according to Article 11 of the Draft Law, if the court president arbitrarily decides to declare a case inadmissible, there is no possibility to appeal this decision. This provision contradicts Article 32 of the Constitution of the Republic of Kosovo, which states that "Everyone has the right to use legal remedies against court and administrative decisions that violate their rights or interests in the manner determined by law."

Thus, Article 11.5 of the Draft Law is inconsistent with the Constitution. For this reason, KLI recommends that MJ review this provision to ensure the guarantee of legal remedies, a right ensured by Article 32 of the Constitution of the Republic of Kosovo and Article 13 of the European Convention on Human Rights.

12. The effectiveness of the request for expedited procedure

The request for expedited procedure is supposed to be a tool that addresses the violation of the right to a trial within a reasonable timeframe. If we look at the provisions of Article 13 of the Draft Law, it is understood that through this mechanism, a decision is expected to be issued by the court president, which confirms the violation of the trial deadline and sets a deadline for the conclusion of the case.

However, the purpose of the request for expedited procedure is undermined by Article 12.4 of the Draft Law, which states that "If during the consideration of the request for expedited procedure the court or prosecutor taking the actions requested by the party within 30 days from the submission of the request, the consideration of the request shall cease." This provision undermines the predictability of this legal tool. In each case, the citizen's interest lies in the assessment of the timeliness of case handling, and in the event of a finding of violation of the right to timely trial, the setting of a final deadline for resolving the case. However, all of this is jeopardized by Article 12.4 of the Draft Law.

At the moment a request for expedited procedure is filed, the respective judge has the authority to take procedural action, and based on this provision, to halt the process of considering the request for expedited procedure.

So, the undertaking of a procedural action allows for the suspension of the expedited procedure request processing procedure, but does not enable the resolution of the case within a reasonable time frame.

For this reason, KLI recommends that Article 12.4 of the Draft Law be deleted.

13. Deadline to complete the procedure

Article 13.3 of the Draft Law specifies that "The court president decides on the acceptance of the request for expedited procedure and may assign a time limit of no more than 120 days for the conclusion of the judicial procedure." In this case as well, the Draft Law chooses to set a specific time period without allowing for temporal adjustments.

Initially, it is positive that the law sets a maximum ceiling, allowing for shorter timeframes in specific cases. For example, if the case conclusion depends on just one hearing, the Draft Law permits the possibility of a shorter timeframe than 120 days.

However, the Draft Law does not address practical situations that may arise where the 120-day timeframe is insufficient. In practice, there are situations where more time is needed to conclude cases. For instance, in cases involving dozens of accused persons or hundreds of witnesses, expecting the judge to conclude the case within 120 days is unreasonable. In such instances, setting a 120-day deadline for case resolution is presumed not to be applicable in practice.

For this reason, KLI recommends that MJ review the specified timeframe in Article 13.3 of the Draft Law.

14. Conditional compensation

Under the meaning of Article 17.2 of the Draft Law, citizens cannot file a lawsuit for damages unless they have first submitted a request for expedited procedure. However, it must be emphasized that if a case is not handled within a reasonable timeframe, the violation has already occurred. The citizen's constitutional right has been denied, even if they have not previously requested an expedited procedure.

For this reason, the procedural condition for claiming damages due to the violation of the right to a trial within a reasonable timeframe, tied to the requirement for requesting expedited procedure, leaves unaddressed cases where this right has been violated, but the citizen did not request expedited procedure.

Compensation for the violation of the right to a trial within a reasonable timeframe should serve not only as compensation for the citizen but also as a tool for holding the judiciary accountable for failing to respect this right. Therefore, it is unreasonable to protect the judiciary from such lawsuits through the procedural obstacle outlined in Article 17.2 of the Draft Law.

For this reason, KLI recommends the deletion of Article 17.2 of the Draft Law.

15. Impossibility of action

Article 14.1 of the Draft Law specifies that "The court president cannot decide on a request for expedited procedure if they have previously dealt with the case in their capacity as a judge." Furthermore, paragraph 3 of the same article states that "If the President of the Supreme Court cannot act according to paragraph 1 of this article, a panel of three judges of the Supreme Court shall decide on the request."

A panel of three Supreme Court judges cannot be considered an adequate solution for this situation. This is because all three judges of the Supreme Court in this case are subordinates of the President of this Court. This solution, which is not applied in relation to the President of the Basic Court, should not be applied in relation to the President of the Supreme Court either.

For this situation, KLI recommends an analogous solution as in the Law on Disciplinary Responsibility of Judges and Prosecutors, where the competent authority for alleged violations by the President of the Supreme Court is the Kosovo Judicial Council [17].

Therefore, KLI recommends that MJ review this provision.

16. Additional judge

Article 11.2 of the Draft Law states that "In courts with more than ten (10) judges, an additional judge may be appointed by the president to decide on requests for expedited procedure in addition to the president."

Conditioning the appointment of an additional judge on having “ten (10) judges” seems arbitrary. There is no court in Kosovo with fewer than 10 judges. For this reason, this provision is applicable in every case. There are instances where branches of the Basic Courts have fewer than 10 judges. However, these are branches of the courts and not separate courts. They also do not have court presidents, but supervisory judges.

[17] Ligji I Nr. 06/L - 057 për Përgjegjësinë Disiplinore të Gjyqtarëve dhe Prokurorëve, neni 9.1.1.3.

17. Publication of the decision

Article 18.2 of the Draft Law stipulates that “In addition to monetary compensation, the party has the right to request from the court, to which the request for expedited procedure is submitted, to publish the decision which ascertained the violation of the right to a trial within a reasonable time frame.” The publication of the decision at the request of the party does not present an adequate standard.

One of the principles of Law No. 06/L-081 on Access to Public Documents [Article 4.2] is that “access to public documents is provided through proactive publication by public institutions of public documents and through the request of a person for access to public documents.” Meanwhile, Code No. 08/L-032 of Criminal Procedure in Article 370 has determined provisions related to the publication of judicial decisions, while the order for the publication of the judgment is also listed as a supplementary punishment [18].

These quoted provisions do not have any connection to the specific case. However, they illustrate the nature of provisions related to the publication of public documents. Such provisions should be referenced to the institution and should serve a legitimate purpose, such as transparency. However, provisions concerning the publication of decisions by the institution should not be categorized as rights of the parties. Parties have the opportunity to publish decisions themselves. They can do this on various platforms rather than through the institution.

For this reason, KLI recommends considering the possibility of establishing general provisions for the publication of all decisions, rather than having the judiciary serve as a publication platform solely for the parties.

18. Involvement of the prosecution

Article 5 of the Draft Law has stipulated that "Reasonable deadlines for the conclusion of judicial proceedings in the courts of the Republic of Kosovo, for the purposes of this law, shall be considered: 1.3. In the investigation of criminal offenses, the maximum duration of investigations shall be in accordance with the Code of Criminal Procedure." The issue of investigation does not fall within the scope of "judgment," the timely conclusion of which is the subject of this Draft Law. For this reason, the inclusion of the investigative phase in this Draft Law is outside the scope of the Draft Law's objectives.

For these reasons, KLI recommends that Article 5.1.1.3. of the Draft Law be removed, and this should also be reflected in other articles of the Draft Law, such as Article 12, Article 15.3, etc.

Raporti "Gjykimi brenda afatit të arsyeshëm", (Problemet juridike të Projektligjit aktual), është realizuar nga Instituti i Kosovës për Drejtësi me mbështetjen e Byrosë për Çështje të Narkotikëve Ndërkombëtar dhe Sundimit të Ligjit (INL) – Departamenti i Shtetit Amerikan dhe të National Endowment for Democracy (NED).

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