

TAKING PEOPLE-CENTERED JUSTICE TO SCALE

**investing in what
works to deliver
SDG 16.3 in Kosovo**





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I. Introduction and background

Kosovo emerging from a complex historical and political landscape, stands at a crucial juncture in its development of a just and equitable society. The establishment of a robust and people-centered justice system is paramount in this journey. This policy paper aims to explore and propose strategies for financing and implementing a justice system in Kosovo that is not only effective but also rooted in the needs and realities of its people.

The relevance of people-centered justice in Kosovo cannot be overstated. A people-centered approach to justice prioritizes the needs and rights of individuals, particularly those who are most vulnerable or marginalized. It seeks to make justice accessible, affordable, and understandable to all citizens, ensuring that the justice system is a tool for empowerment rather than a source of alienation.

To effectively prevent and manage crises, strengthen the rule of law, and protect the rights of citizens, justice services and institutions must be responsive, easily accessible, and capable of providing high-quality legal services for all, especially for the most vulnerable members of society.¹ Thus, a people-centered approach to transforming justice systems has a profound impact because it redefines the essence of what justice means.

People-centered justice refers to a justice system that puts people first and aims to fairly address the needs of every member of the community by facilitating their involvement and active engagement in the legal system. Thus, bringing out the human side of legal proceedings, recognizing that people who participate in the judicial system have demands beyond the simple application of the law. Their meaningful participation in the justice system will contribute to the overall efficiency of justice processes and outcomes. The services provided by justice must be easily accessible to everyone.

In July 2022, the Kosovo Institute for Local Government, with the support of USAID, published the report “Mapping Justice in Communities in Kosovo”. According to this report, in many cases, citizens may miss their legal deadlines, due to limited awareness regarding the institutions responsible for addressing their rights. The report states that the respondents were asked about the reasons for their inaction to solve the problems, and about 9.38% of them have emphasized that they have not taken action due to various delays, 3.13% think that there are no institutions or organizations that provide free legal assistance. Whereas, 14.1% tried to get advice, but did not get it, 4.6% of them stated that they did not have enough money, while 29.7% of the respondents did not know where they could ask for advice. At the same time, 4.6% of them stated that they did not have time, while 34.4% of the respondents stated that they did not believe that they would be provided with assistance.²

According to the data presented in this report, 20.44% of the respondents stated that they took action in cases of facing legal problems. Most of the respondents or 36% stated that in

¹ United Nations Development Programme, the global programme for strengthening the rule of law, human rights, justice and security for sustainable peace and development, “Access to Justice”, see link: https://www.undp.org/sites/g/files/zskgke326/files/2022-11/UNDP%20GP_%20Justice.pdf, (Last accessed on February 16, 2024).

² Kosovo Local Government Institute, Community Justice Mapping in Kosovo, 2022, p.17.

cases of their legal problems they went to the police, 33.3% consulted a lawyer and 22.67% went to the court. While, another 10.67% asked for help from friends, 17.33% went to municipal institutions and 18.67% to central institutions. The level of satisfaction among respondents when engaging with state institutions or other entities is notably low.

This data underscores the necessity of orienting justice towards citizens, treating it as a fundamental service that should be readily accessible and well-informed to all. Thus, beyond the construction of legal mechanisms and various procedural solutions, the focus should be on the orientation of justice as a service to citizens.

Initially, the data presented above are disturbing because many citizens have no information at all about where they can seek help for their legal problems. However, the most significant challenge within the framework of civil justice in Kosovo arises from the duration of handling civil cases, particularly in instances where assistance from the courts is required.

The duration of court proceedings is one of the main aspects that violates the right of citizens' access to justice. Several reports on the monitoring of this field highlight various issues in civil case proceedings. However, nearly all of them identify the prolonged duration of civil proceedings as a significant concern, as it encroaches upon citizens' right to a trial within a reasonable time. During the year 2022, the Ombudsperson Institution accepted a total of 1595 complaints, out of which 970 were related to the right to legal remedies and the right to a fair and impartial trial.³ The latter included the handling of the case within a reasonable time frame.

Among other things, the European Commission Report on Kosovo underlines that "The time taken for judgments (i.e. the average time from filing a court case to receiving a judgment) remains a cause for concern as this overall takes far too long."⁴ In 2022, the disposition time was 690 days for civil cases in first instance⁵, whereas in 2023 the disposition time increased to 763 days in the first instance.⁶ The Strategy for the Rule of Law, among other things, states that "of the accumulated cases, the duration of civil cases is particularly problematic"⁷.

Along with others, the large number of civil cases has been one of the main reasons for the delay in dealing with civil cases. Since 2018, the backlog number of civil cases has continuously increased. While in 2021 there were a total of 85,087 unresolved cases 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.

³ Ombudsperson Institution, Annual Report 2022, pg.16, see link: https://oik-rks.org/wp-content/uploads/2023/03/OIK_AnnualReport_alb_web_01_compressed.pdf, (Last accessed on February 16, 2024).

⁴ European Commission, Kosovo 2023 Report, pg. 21, see link: https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf, (Last accessed on February 16, 2024).

⁵ Kosovo Judicial Council annual report 2022.

⁶ Kosovo Judicial Council annual report 2023.

⁷ Government of Republic of Kosovo, Rule of Law Strategy 2021-2026, 2021, p.12.

Hence, the increase in the number of accepted subjects had the most impact.⁸ Whereas in 2023 this number increased to 112623.⁹

For these reasons, among others, to reduce the time period necessary for handling civil cases, it is necessary to allocate a sufficient budget to meet the needs of the justice system. This ensures civil cases are processed within a reasonable timeframe, thus serving justice promptly.

To orient justice towards the citizen, adequate funding is essential. This entails creating mechanisms for citizens to easily access justice services, including basic and first-line services, when encountering legal issues. Whereas, in cases where the same people turn to the Court, it is required that they receive justice within a reasonable time. In this regard, Kosovo has taken several legal measures. However, as elaborated further in this report, many of these solutions have not been implemented due to financial constraints.

To enhance the citizen-centric orientation of justice, adequate funding must be preceded by thorough analyses. These assessments should evaluate needs and the effectiveness of proposed measures, ensuring that allocated funds yield maximum benefit for citizens. Strengthening justice and improving human capacity to access justice ensures that the rule of law is applied equitably, fostering social and economic development.¹⁰ However, not many people can access information, advice or representation in solving their problems. This limitation may be due to financial constraints or a general unavailability of systems. However, another constraint on service delivery efficiency, which further limits access, stems from the government's capacity constraints. This lack of capacity in post-conflict countries may stem from a lack of financial resources, or a lack of government will.¹¹

Consequently, government funding for legal services is crucial to ensuring access to justice for all citizens, regardless of socio-economic situation. This funding is particularly important for certain groups, including low-income individuals, marginalized communities and victims of discrimination, empowering them to exercise their rights and seek justice. This is because access to justice itself is more limited for these specific groups. On the other hand, government spending on legal services also plays a vital role in preserving democracy, since the financial support of law enforcement actors is essential in preserving public safety.¹²

Ensuring every country has at least a basic justice system seems to be a reasonable aspiration for the international community, in line with SDG 16.3. The costs are below those of providing access to a basic education or health system.¹³

⁸ Aurela Merlaku and Nuraje Bllaca, Civil Justice, pg. 5-7, see link: https://kli-ks.org/wp-content/uploads/2023/08/Raporti-final-Drejtesia-civile_2022-final.pdf, (Last accessed on February 16, 2024)

⁹ Kosovo Judicial Council annual report 2023.

¹⁰ Bosio, Erica, Ana Palacio Jaramillo. 2023. Increasing Access to Justice in Fragile Settings. Washington, DC: World Bank, see link: <https://openknowledge.worldbank.org/server/api/core/bitstreams/67db7e01-058a-482a-b082-d78f98142e4c/content>, Last accessed on February 16, 2024).

¹¹ Ibid, pg.8.

¹² Legal Practice Intelligence, Government Legal Funding: Access to Justice and Change, see link: <https://www.legalpracticeintelligence.com/blogs/practice-intelligence/government-legal-funding-access-to-justice-and-change>, (Last accessed on February 16, 2024).

¹³ Clare Manuel and Marcus Manuel, ODI Report, How to finance universal access to people-centred justice: scaling up local innovation to leave no-one behind, pr.30, see link:

2. Research limitation

The costing exercise described in this paper is an initial attempt to scope out the scale of the funding gap for a basic justice system, and to look at its affordability. The exercise is far from perfect, and there is clearly scope for a much more detailed and thorough exercise (as has been undertaken in the health and education sectors) that draws on a wider range of data sets.

However, this paper aims to push forward the need for creating an adequate platform for assessing gaps, evaluating the cost-effectiveness in justice, and finding cost-effective solutions. At this stage, an in-depth evaluation of this nature is impossible for several reasons. Initially, the data generated by the judicial system and the FLAA are not oriented towards this goal, but are oriented in other directions (e.g. Judicial efficiency).

Therefore, in order to conduct an adequate evaluation, the judicial system and FLAA must determine the necessary data for such evaluations and ensure that these are generated continuously, so that a thorough assessment of this nature is feasible and easy to conduct on an ongoing basis. Once this data is identified, through a standard methodology, the judicial system and FLAA should draw thorough conclusions, which should be addressed by other law enforcement institutions. In this way, this analysis lays the groundwork for such an assessment and aims to provide a solid basis for developing a platform for future research.

3. Defining People-Centered Justice in Kosovo

Increasing access to justice focused on citizens emphasizes that even justice, in its way, can be seen as a service for citizens, similar to health or education. Despite the differences and goals pursued by the justice sector to other services, there are elements that this sector can take from other sectors, such as Health. This is done by shifting the balance of resources from broad institutional reform and capacity building, to frontline services so that the delivery of justice services is scaled up at the country level and everyone has access to these services.¹⁴ In this context, basic services and front-line services are distinguished.

The aim of defining basic justice services is that everyone has access to them. The creation of this concept is based on the basic health services. In this sense, non-formal and alternative legal problem-solving systems are included as basic justice services, while only the most serious problems and complaints require treatment by the courts.

In the case of Kosovo, the resolution of disputes through alternative mechanisms, such as mediation, could be considered a service of this nature. Through this procedure, people can solve their legal problems at a low cost and in an informal way, without having to go to court. In cases where the solution to the problem ends in a mediation procedure, this agreement is

https://odi.cdn.ngo/media/documents/How_to_finance_universal_access_to_people-centred_justice.pdf, (Last accessed on February 16, 2024).

¹⁴ Ibid, pg.9-10.

binding and suitable for enforcement.¹⁵ So, this agreement is equivalent to the court decision, even though informal.

To increase the provision of mediation services, it is essential to have mediation offices and especially to inform the public about this possibility. Resolving cases through mediation allows parties to resolve their cases informally and efficiently, without having to go through a formal, costly, and lengthy court process. On the other hand, investment in this area is very beneficial for the justice system, as it relieves the pressure on this system and does not burden it further with cases, therefore other cases are resolved within a shorter timeframe.

On the other hand, to escalate justice, in cases where judicial resolution is needed, in Kosovo each of the seven (7) Basic Courts has its branches, in which all civil cases can be resolved.¹⁶ This is for the citizens to be as close as possible to the Court, an aspect that represents an increase in citizens' access to justice. In addition, the resolution of cases in the branches of the Courts eases the burden of cases in the headquarters of the Basic Courts.

On the other hand, to increase access to justice, by focusing justice on citizens, it is important to ensure the first line of justice services. ODI considers that these services can be considered 1) Legal advice, assistance, and non-formal resolution of conflicts for communities and individuals, which conflicts can be civil, criminal, or administrative. It can also be 2) Legal advice and assistance for groups particularly marginalized and vulnerable to human rights abuses, such as detainees.¹⁷

In the case of Kosovo, it can be considered that first-line legal services are provided by the Lawyers and the Free Legal Aid Agency (FLAA), as well as NGOs that are in partnership with FLAA. Within the framework of FLAA, regional office's function. According to the Law, the Regional Offices cover the provision of free legal aid throughout the territory of the Republic of Kosovo, while the Regional Offices are obliged to provide free legal aid in the municipalities covered by that regional office, through mobile offices. Whereas, Mobile Offices for free legal aid as a form of organization of legal services, operate in municipalities where free legal aid offices have not been established.¹⁸

Regional legal aid offices are obliged to provide free legal aid in the municipalities covered by that regional office, through mobile offices. In 2018, with the support of UNDP, two more legal aid officers were hired for four months for the mobile legal aid offices in Drenas, Malisheve, Podujeve, and Gračanica municipalities. With the support of German Cooperation for International Development (GIZ), the Agency hired four more legal aid officers who provided support to ten municipalities of Kosovo, namely in Fushe-Kosovo, Drenas, Istog, Peje, Suhareke, Dragash, Mitrovica, Leposavic, Zubin Potok and Zvečan. FLAA constantly has difficulties achieving full coverage due to a lack of budget. A criticism given by USAID to what

¹⁵ Law No. 06/L-009 for Mediation, article 8, 11 and 14.

¹⁶ Law No. 06/L – 054 for Courts, Article 9.2.

¹⁷ Clare Manuel and Marcus Manuel, ODI Report, How to finance universal access to people-centred justice: scaling up local innovation to leave no-one behind, pr.13, see link: https://odi.cdn.ngo/media/documents/How_to_finance_universal_access_to_people-centred_justice.pdf, (Last accessed on February 16, 2024)

¹⁸ Law No. 04/L-017 for Free Legal Aid, Article 22., par 1-2 and Article 28.

was said above is that these mobile offices have been opened for short periods and are not based on any preliminary assessment of the need for territorial coverage. Donor support is channeled based on the FLAA Strategic Plan 2015-2019 and regular meetings are held every two months for donor coordination, where the needs of FLAA are regularly expressed. There is a need for this funding to continue until the Kosovar authorities can provide adequate resources to meet the legal needs of their citizens.¹⁹

In other words, according to Law No. 04/L-017 for Free Legal Aid [Article 26], in addition to regional offices, providers of free legal aid are also lawyers and non-governmental organizations in cases where they enter into a partnership with the Free Legal Aid Agency. Regarding the provision of Free Legal Aid by Civil Society Organizations, the Ministry of Justice has now approved Regulation No. 05/2023 determining the criteria for the provision of free legal aid by non-governmental organizations in partnership with the FLAA. Since then, there are seven (7) NGOs in Kosovo that met the criteria and thus are eligible to provide free legal aid.

Considering the purpose of front-line legal services on the direct impact on SDG 16.3, these services in terms of treatment and prevention of human rights abuse are also dedicated to unsentenced detainees detained beyond a reasonable time (16.3.2). In criminal cases, in the case of Kosovo, legally, given this situation, the issue of detainees does not seem to be very controversial. According to Code No. 08/L-032 of the Criminal Procedure, the defendant must necessarily have a defense attorney against arrest, during the detention hearing and during the time he is in custody.²⁰ Thus, legal aid in this case, according to the Law, must be provided.

In conclusion, in the context of people-centered justice, the Law recognizes both basic services and frontline services. For this reason, it is very important that, among others, the focus is on these areas. The ultimate goal was to avoid the main problem of civil justice in Kosovo, which is the duration of civil procedures.

4. Cost of justice services

From 2021 to 2024, the budget for the justice system has continuously increased. Compared to 2021, the budget for 2024 is 6,612,318 euros higher. The total cost of the judiciary, for the year 2024, was 35,806,910 euros.

In 2023, the judiciary's total budget, including donations, was €32,888,599.39, while the KJC's expenditures amounted to €30,781,797.84. This means the KJC utilized 93.59% of the allocated budget. The lowest expenditure rates were observed in the donations category at 62.85%, followed by capital expenditures at 66.77%.²¹

¹⁹ Ministry of Justice, Increasing Access to Courts and the Prosecutor's Office, Functional Review of Rule of Law Sector in Kosovo, 2019, p. 17.

²⁰ Code No. 08/L-032 of Criminal Procedure, article 56.1.1.2.

²¹ Judicial Council of Kosovo, "2023 Work Report for the Judicial System of the Republic of Kosovo", p.73, see the link at: https://www.gjyqesori-rks.org/wp-content/uploads/reports/40736_KGJK_RAPORTI_VJETOR_2023.pdf, (Last accessed on September 10, 2024).

However, the general increase in government spending according to the Budget Allocation Laws has not been proportionally reflected even in the judicial system. In 2021 and 2022, the participation of the budget of the justice system in the total amount of government expenditures was 1.2%. Whereas, this percentage has dropped to 1.1% in 2023 and 2024. Also, even compared to the budget expenditures for central institutions, the percentage of the budget of the justice system has decreased in 2024 compared to 2022.

If in 2024 the participation of the judiciary in the budget had remained at the percentage of 1.2%, then the justice system would have a total of 3,820,966 euros more.

The budget request of KJC that was not approved by the Assembly with Law No. 08/L-260 on Budget Appropriations for the year 2024 (hereinafter: Law on Budget Appropriations for the year 2024), was 7,629,161 euros. To meet this requirement, then the participation of the judiciary in the general state budget should be around 1.27%.

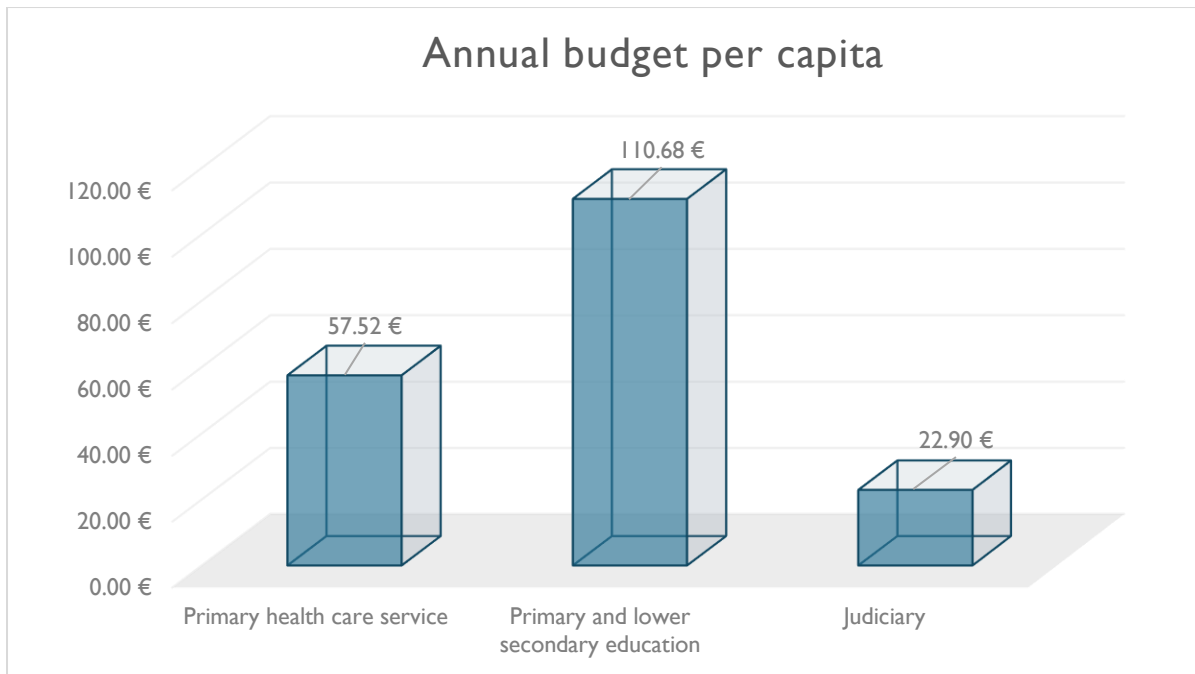
	Total budget	The percentage in relation to the planned general expenses	% in relation to the planned expenses for central institutions
2021	29,194,592	1.20%	1.20%
2022	32,183,896	1.20%	1.50%
2023	34,155,572	1.10%	1.40%
2024	35,806,910	1.10%	1.40%

Table I. Budget for the justice system during the years 2021-2024.

Thus, compared to the population of the Republic of Kosovo,²² the annual budget for the judiciary is 22.9 euros per capita.

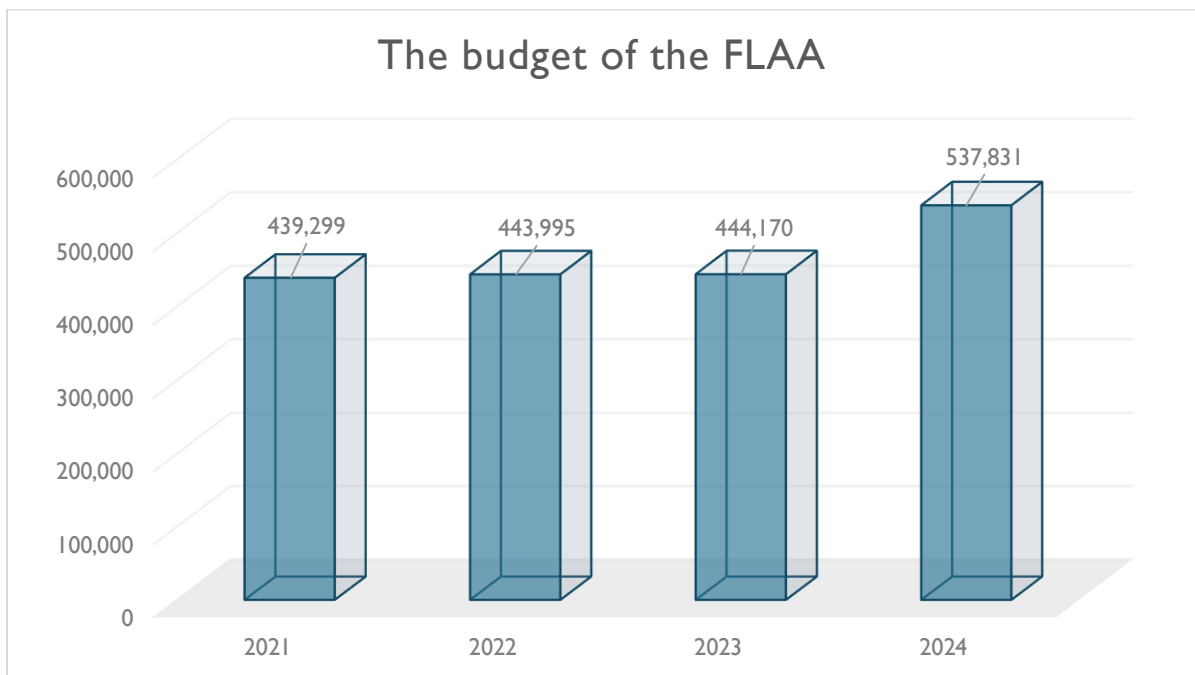
Compared to primary health care and primary education, the judiciary’s budget is significantly lower. For instance, under Law No. 08/L-260 on Budget Appropriations for the Republic of Kosovo for 2024, the budget for primary health care services, excluding central-level capital investments, is €91,266,064 across all municipalities. This equals to €57.52 per capita for primary healthcare services. Additionally, the budget for primary and lower secondary education, excluding central-level capital investments, totals €175,615,092. This results in €110.68 per capita for primary and lower secondary education, excluding capital expenditures. Therefore, the budget for primary health care is more than double that of the judiciary, and the budget for primary and lower secondary education is approximately five times higher than the judiciary’s allocation.

²² Koha, “Kosovo, with 1,586,659 resident inhabitants”, June 12, 2024, see link:https://www.koha.net/arberi/425890/kosova-me-1586659-banore-rezident?fbclid=IwZXh0bgNhZW0CMTEAARlXcsxjCqs8nNjFgfU5JgxbguC6Ek286X7yN3GireEUVizgvpkLWrrvdx8_aem_Da8BIF-ma2rgrsJuoltWdg, (Last accessed on September 08, 2024).



Graph 1. Comparisons of annual budget per capita for primary health care service, primary and lower secondary education, and judiciary.

As for the Free Legal Aid Agency, from 2021 to 2023, the growth was almost negligible. The most significant increase in the budget for this agency occurred in 2024, representing a 21.08% increase compared to the previous year. In comparison to the number of inhabitants, the FLAA budget for 2024 is only 33 cents per person.



Graph 2. Free Legal Aid Agency's total budget during the years 2021-2024.

Whereas, legal aid in criminal cases, in cases where the defense is provided through public revenues, is not included in this cost. This is because the payment for this is made through the budget of the judicial and prosecutorial system, to the lawyers who are assigned.

5. Gaps and Needs

5.1. Mediation as a basic service

In the context of the basic services that were elaborated above in this report, mediation is considered a very adequate method for citizens to informally and very effectively resolve their disputes, without the need for their cases to proceed to the Court.

During the year 2023, a total of 10,864 cases were referred to the mediation procedure, 8,925 of which were resolved, while the rest remained in the procedure. Out of the total cases in the mediation procedure, 6,037 cases were referred by the Courts and 2,793 by the Prosecutor's Offices. While, with the initiative of the parties, outside the courts and prosecutor's offices, 2,034 cases have been initiated.²³

Compared to the number of civil cases accepted by the courts, the number of cases initiated by the parties themselves for the mediation procedure turns out to be very low. In 2023, the Courts accepted 44,575 contested civil cases, indicating that citizens turned to the Courts about 22 times more than they initiated mediation procedures.

Insufficient utilization of the mediation procedure, as an alternative dispute resolution method, stems from citizens' lack of awareness about the procedure and its advantages, as identified in the Functional Review Process of the Rule of Law Sector. Therefore, it was recommended to all relevant actors to raise the awareness of the public regarding the mediation procedure and the benefits of this procedure for citizens in different ways.²⁴

On the other hand, as it was said, this basic justice service is important to be scaled at the country level. In our case, this means that mediators and mediation offices must be present in all municipalities of the Republic of Kosovo. With few exceptions, Mediation Offices are virtually absent in most municipalities of the Republic of Kosovo. The primary reason for this is the modest income of mediators, who often cannot sustain themselves solely through mediation and typically pursue it as a secondary profession. This is largely due to the minimal fees paid to mediators, coupled with the low volume of cases directed toward mediation. Consequently, it is not economically suitable for mediators, as independent professionals, to open Mediation Offices.²⁵

For this purpose, the Ministry of Justice should take proactive steps to coordinate efforts with all relevant stakeholders to enhance public awareness regarding the mediation process for

²³ Kosovo's Chamber of Mediators, Referred and Resolved Cases Through Mediation in 2023, February 8, 2024, see link: <https://ndermjetesimi.com/rastet-e-referuara-dhe-te-zgjidhura-me-ndermjetesim-ne-vitin-2023/>, (Last accessed on September 08, 2024).

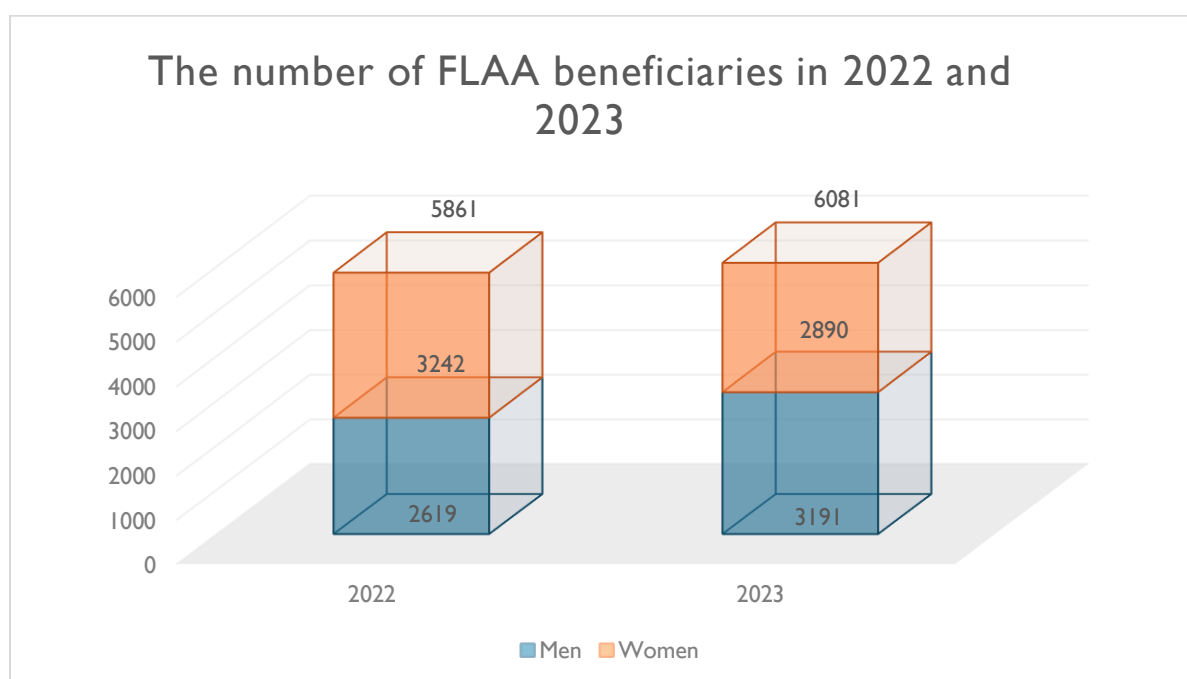
²⁴ Ministry of Justice, Improving the quality of services in professions related to the justice system, Functional Review of Rule of Law Sector in Kosovo, 2019, p. 34.

²⁵ Interview with Mediator Yll Zekaj, February 12, 2024.

case resolution. Scaling up mediation cases would create the economic conditions necessary to establish Mediation Offices in every municipality. To support these initiatives, the Assembly of the Republic of Kosovo must allocate a sufficient budget following thorough analysis of the needs in this section.

5.2. Legal Aid

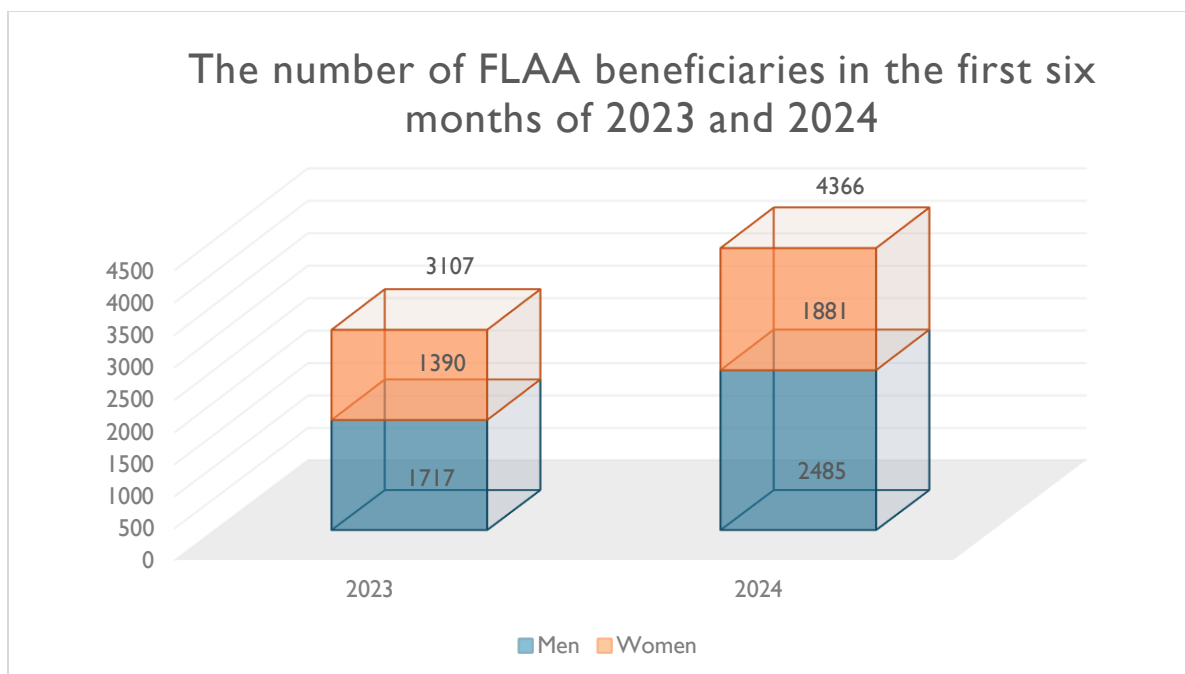
As mentioned, in the context of people-centered justice, the provision of legal aid is considered one of the frontline legal services. In 2022, FLAA provided assistance to a total of 5,861 citizens, with 2,619 being men and 3,242 women. During 2023, the FLAA provided free legal assistance to a total of 6,081 citizens, of which 3,191 were men and 2,890 were women.²⁶



Graph 3. The number of FLAA beneficiaries in 2022 and 2023.

Comparing the first half of 2024 to the same period in the previous year, there has been an increase in the number of citizens receiving free legal aid from the FLAA. In the first half of 2023, the FLAA provided free legal aid to 3,107 individuals (1,717 men and 1,390 women). In the first half of 2024, this number rose to 4,366, comprising of 2,485 men and 1,881 women.

²⁶ Free Legal Aid Agency, Annual Report 2023, Article 7.2 – 7.8, see link: <https://anjf.rks-gov.net/desk/inc/media/7D82613F-8A95-4CF3-9DA4-BACB2E77696C.pdf>, par. 7.2 – 7.8., (Last accessed on September 08, 2024).



Graph 4. The number of FLAA beneficiaries in the first six months of 2023 and 2024.

The “Community Justice Mapping” report emphasized challenges encountered by the Agency for Free Legal Aid, notably arising from budgetary constraints. According to the report, the Agency has not yet secured full funding for its staff and operational spaces. Other research findings indicate that the staff of the Free Legal Aid Agency have undergone continuous training to enhance their capacities. However, a significant obstacle to their communication with various ethnic groups is the lack of proficiency in their languages or vice versa. This issue was identified in municipalities such as Skenderaj, Mitrovica and Prizren.

The Strategic Plan of FLAA 2021-2025 outlines strategic goals, including securing financial resources to meet FLAA’s legal obligations and enhancing administrative and financial efficiency.²⁷

The financial constraints experienced by the Free Legal Aid Agency have led in difficulties in establishing mobile offices in all municipalities of Kosovo, thereby affecting the provision of legal aid to citizens. The establishment of these offices is a legal obligation according to Article 22 of Law No. 04/L-017 for Free Legal Aid²⁸. For a relatively long period, budgetary limitations have prevented the Agency from implementing a legal provision designed to bring the agency closer to citizens, hindering access to legal aid – an essential element of the broader goal of

²⁷ Medium term expenditure framework 2023-2025, Free Legal Aid Agency, pg.5, see link: <https://anif.rks-gov.net/desk/inc/media/0B9C7876-CB7A-4871-A16F-D9BA6419E26D.pdf> , (Last accessed on February 18,2024).

²⁸ Ibid, pg.2.

enhancing access to justice. As of June 2024, the FLAA has opened six (6) new mobile offices for free legal aid.²⁹

According to the Law on Budget Appropriations for the year 2024, the budget for the Free Legal Aid Agency was foreseen to be 537,831 euros. This represents a significant increase of 21.08% compared to the budget allocated in 2023.

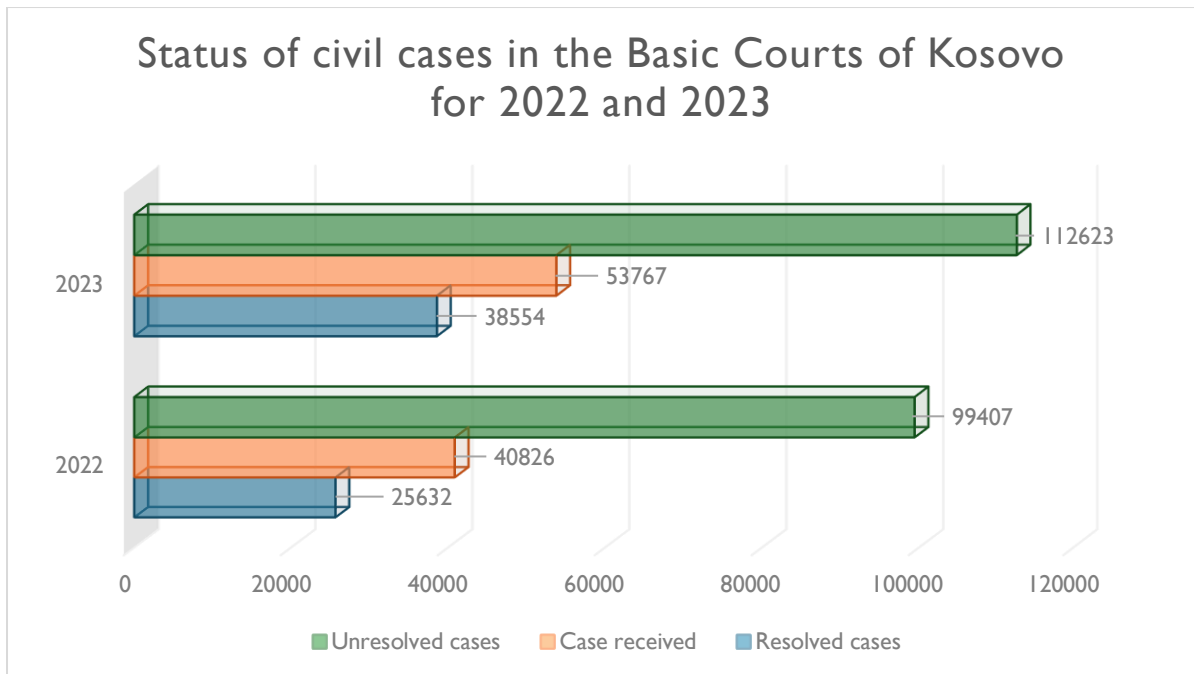
Considering the vital role of free legal aid in ensuring access to justice for individuals unable to afford legal expenses, it is crucial to elevate the budget of the FLAA to a level that enables them to meet all legal obligations and provide adequate free legal aid. It is essential to prevent any compromise on the provision of free legal aid due to financial constraints, especially considering that free legal aid is a fundamental aspect of ensuring access to justice.

5.3. Absences in the Judiciary

In 2022, the Basic Courts in the Republic of Kosovo resolved a total of 25,632 contested civil cases, while receiving 40,826 cases of this nature. Consequently, these Courts were unable to resolve as many cases as they received, resulting in a total of 99,407 unresolved cases by the end of the year 2022.³⁰ In 2023, the trend endured as judges received 53,767 contested civil cases but only managed to resolve 38,554 cases of this nature. Consequently, by the end of 2023, the number of unsolved contested civil cases has reached 112,623 cases.

²⁹ Free Legal Aid Agency, “The Free Legal Aid Agency ensures the provision of free legal aid in 6 (six) additional municipalities of the Republic of Kosovo”, August 05, 2024, see link: <https://anjf.rks.gov.net/page.aspx?id=1.%202.272>, (Last accessed on September 08, 2024).

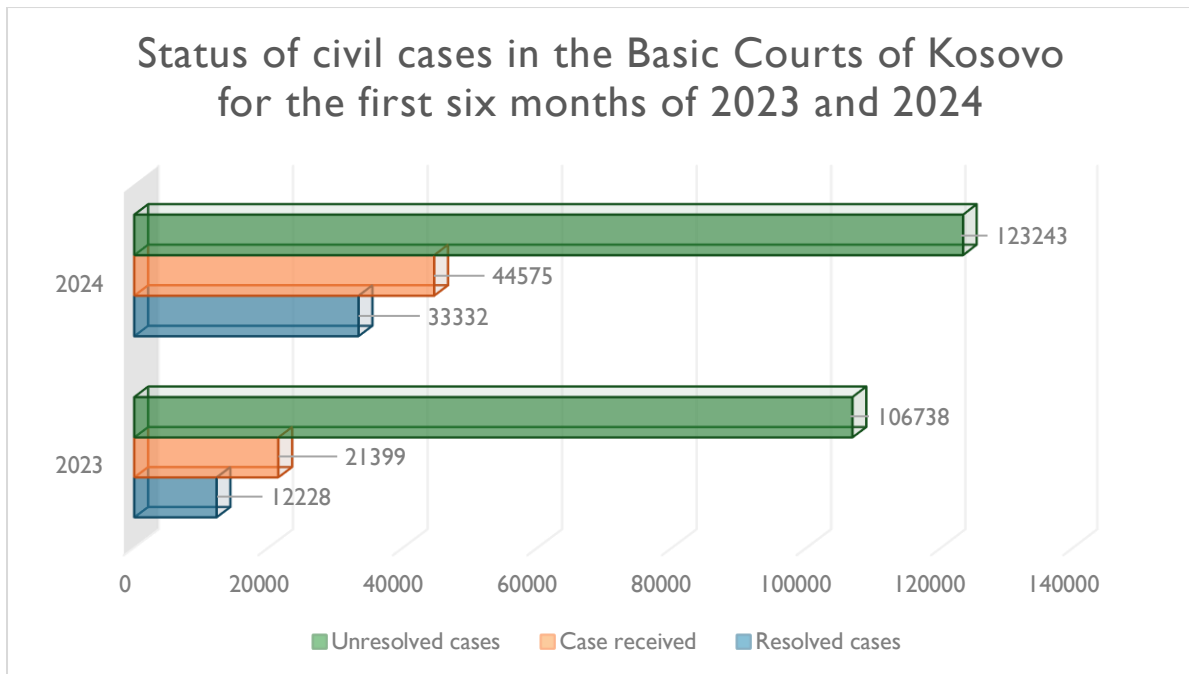
³⁰ Kosovo Judicial Council, Statistical report of the courts 2022, pg. 8, see link: https://www.gjyqesori-rks.org/wp-content/uploads/reports/45114_RAPORTI%20STATISTIKOR%20I%20GJYKATAVE%20VJETOR%202022.pdf, (Last accessed on February 18, 2024).



Graph 5. The handling of civil dispute cases by the Basic Courts of Kosovo (2022 and 2023).

Although they differ in numbers, the conclusion is the same even if we compare the first six months of 2023 with that of 2024. During 2023, the Courts of the Republic of Kosovo have received a total of 21,399 civil dispute cases while they have resolved 13,228 cases of this nature. As a result, the courts failed to resolve as many cases as they received, leading to an unresolved backlog of 106,738 civil dispute cases by the end of the first half of 2023.

In the first half of 2024, the number of resolved civil dispute cases increased significantly. However, due to the rise in the number of incoming cases, the outcome remained unchanged. During this period, compared to the same period in 2023, the courts managed to resolve a total of 33,332 civil dispute cases. Nevertheless, during this period, the courts also received 44,575 new civil dispute cases. Thus, despite the increase in the number of resolved cases, due to the exponential increase in the number of received cases, the judiciary again failed to resolve as many cases as it received. Consequently, the number of civil dispute cases increased to 123,243 unresolved cases.



Graph 6. The handling of civil dispute cases by the Basic Courts of Kosovo, first half of 2023 and 2024.

Thus, the judiciary was not able to respond to the demands of the citizens. This is attributed to the court’s inability to resolve at least as many cases as it has received, leading to a constant increase in the number of unresolved civil cases. The section below elaborates the timeframe of handling of cases, specifically the delays of handling such cases. Whereas the following sections explains the financial deficiencies that hinder the judicial system’s ability to address the needs of citizens.

5.3.1. Lack of judges

The number of judges in the judicial system has increased annually. Budgetary support for this initiative is considered highly positive because it ensures that the judiciary has adequate resources to handle court cases within a reasonable timeframe.

Currently, there are total of 434 judges serving in Courts of Kosovo. Among them, 367 judges resolved cases during 2023, with 145 specifically assigned to the Civil Divisions of the General Departments of the Basic Courts and the Court of Appeal.³¹ However, since 2018, the number of civil cases has doubled. In addition to other strategies aimed at reducing the number of pending cases (that are not covered by this report), increasing the number of judges is imperative to address this situation effectively. In the budget request of the KJC for the year 2024, the KJC requested an increase in the number of judges for 30 positions. The

³¹ Kosovo Judicial Council, “Statistical Report of the Courts first half of 2024”, see link: https://www.gjyqesori-rks.org/wp-content/uploads/reports/81513_Raporti_i_pergjithshem_gjashtemujori_2024_ALB.pdf, (Last accessed on September 10, 2024).

budget cost for the approval of this proposal is 512,568 euros. However, this request was rejected by the Assembly during the approval of the Law on Budget Appropriations for 2024.

5.3.2. Lack of professional associates

One of the measures to increase the efficiency of the judicial system is the employment of professional associates. Given the importance of the employment of a professional associate, Law No. 06/L – 054 on Courts [Article 39.2], which entered into force in January 2019, determines that “every judge should have at least one professional associate serving exclusively the judge in question”. This provision is considered quite positive because professional associates will help judges increase both the quality and efficiency in handling cases. Consequently, citizens would receive faster and more professional justice, leading to enhanced access to justice for the citizens.

However, this legal provision has not been accompanied by the necessary budget to fill these positions. Almost five (5) years after the entry into force of Law on Courts, the Kosovo Judicial Council has not been able to recruit a sufficient number of professional associates due to budget constraints. Currently, the judicial system has a lack of 151 professional associates, meaning that the legal requirement to assign a professional associate to each of the 151 judges within the judicial system, remains unmet.

In its budget proposal for 2024, the Kosovo Judicial Council has incorporated the budget request for 151 professional associates. However, this request was not approved by the Assembly in the Law on Budget Appropriations for 2024.

5.4. Failure to establish new branches of courts

With Law No. 06/L – 054 on Courts, the KJC was obliged to establish new branches of the courts, specifically the branch of Fushe Kosova, Obiliq, Ranilug, Partes, Klllokot, Verboc, Mamusha, Junik, Shtime and Hani Elezit.³² As per the information provided by the KJC, the branch in Fushe Kosova has been established and is currently in the process of being operationalized. In terms of establishing additional branches, the KJC has clarified its approach, indicating that decisions will be contingent upon budgetary constraints. Factors such as caseload and population size in respective municipalities, as officially registered by competent institutions, will also be considered during the decision-making process.³³

The implementation of these legal provisions for the establishment of the aforementioned branches, also came as request from the Functional Review of the Rule of Law in Kosovo.³⁴

³² Law No. 06/L – 054 for Courts, Article 9.

³³ Lavdim Makshana, Challenges in Judicial Administration, pg. 16, see link: <https://kli-ks.org/wp-content/uploads/2023/04/Monitoring-of-the-KPC-report-for-2022-FINAL-12.04.2023-1.pdf>, (Last accessed on February 16, 2024)

³⁴ Ministry of Justice, Increasing the efficiency of the judicial and prosecutorial system, Functional Review of Rule of Law Sector in Kosovo, 2019, pg. 74.

The Law on Budget Appropriations for 2024 has specifically identified the construction of the Basic Court facility in Ferizaj – Branch in Shtime, as a budget activity. However, it is worth noting that no budget has been allocated for this activity in the current fiscal year. Instead, there is a plan to allocate 30,000 euros for this purpose in 2025. In some instances, activities related to the design and construction of existing courts have been listed in the budget, with allocated funds. However, there is a notable absence of budget allocation for the construction of new court branches, despite the legal obligation to establish them.

The primary criticism for the failure to establish new branches, likely falls on the Assembly, primarily due to inadequate budget allocation for the establishment of these new branches. However, upon analyzing the budget request for 2024, it is evident that the KJC has not included the issue related to the establishment of new court branches in their request. Consequently, no additional budget has been requested from the judiciary for this purpose.³⁵ As a result, the cost for the establishment of these court branches remains unknown.

The Kosovo Judicial Council has stated that the establishment of new branches will depend on budgetary possibilities, which have not been requested, and will also consider factors such as caseload and population size based on official registration by competent institutions. However, it's important to note that the assessment of the need for new court branches does not fall within the jurisdiction of the KJC. According to the law, specific municipalities where new court branches should be established are defined. Therefore, the KJC does not have the authority to assess the necessity of establishing new court branches if it is stipulated in the law. Therefore, the non-submission of budget requests by the KJC to the Assembly for the establishment of new court branches, an obligation that derives precisely from the Law approved by the Assembly, represents an inadequate approach to the judicial system.

The Assembly could be held responsible for not allocating the budget only after submitting the budget request for the establishment of new court branches by the KJC.

5.5. Lack of translation

The right of litigants to follow court proceedings in a language they understand is one of the basic components of the principle of access to justice. According to the Constitution of the Republic of Kosovo [Article 5.1] “[the] official languages in the Republic of Kosovo are Albanian and Serbian”. Whereas, all litigants have the right to use their own language or the language they understand in the proceedings before the court. The expenses related to the translation fall on the burden of the budget funds of the Court.³⁶

The European Commission’s report on Kosovo for 2023 underlines that “Kosovo must continue to ensure that judicial procedures are accessible in all official languages, as required by the Constitution. Other court interpreters have been recruited and the KJC is in the process of developing a platform for centralizing translations in courts. However, more efforts are needed to address the

³⁵ Kosovo Judicial Council, 2024 budget request for the Judicial Council of Kosovo according to budget circular 2024/01 and additional requests, June 2023.

³⁶ Law No. 03/L-006 on the Contested Procedure, article 96.

shortage of qualified translators, also with the aim of reducing the number of pending cases”.³⁷ The analysis conducted by the Kosovo Law Institute, based on the criteria of the European Commission for the Efficiency of Justice, examined the satisfaction of court users and lawyers, as per the Council of Europe’s evaluation. This analysis identified instances where litigants did not receive translation services when the judicial proceedings were not conducted in their native language.³⁸

To implement these obligations, the judicial system must have sufficient resources. In the budget request for the 2024 fiscal year, the KJC included a request for additional funding to cover 10 positions for translators. The cost associated with fulfilling this was approximately 452,000 euros. This request was not approved by the Assembly and was not included in the Law on Budget Appropriations for 2024.

5.6. Adoption of laws without a dedicated budget

In quite a few cases, the Assembly of the Republic of Kosovo has adopted Laws which represent the advancement of citizens’ access to justice. However, the implementation of these Laws has entailed additional costs. Unfortunately, in quite a few cases, the Assembly has been satisfied with the approval of these Laws, but has not allocated a sufficient budget for these Laws to be implemented in practice. Consequently, while there are commendable provisions on paper, their practical implementation falls short.

An example of this is the Law No. 06/L-054 on Courts. As explained above, due to budget constraints, provisions concerning the establishment of additional court branches and the requirement that each judge have a professional associate, were not implemented in practice.

In February 2022, Law No. 08/L-015 on the Commercial Court entered into force, according to which Law the Commercial Court was founded. A few days before the entry into force of this Law, the Kosovo Judicial Council expressed its complaints about the lack of budgetary support for the establishment of this Court, as defined by the Law. *“With the 2022 budget and the allowed positions, the Council makes it known as of today that the Commercial Court has no possibility to become operational. With this budget, even the forecasts made by the Ministry of Justice have not been fulfilled, because according to the forecast of the Ministry of Justice, there should be at least 94 permitted positions, while there are 44 permitted positions”*, stated the Chairman of the KJC, Albert Zogaj during a meeting of the KJC.³⁹ This discrepancy between the budget

³⁷ European Commission, Kosovo 2023 Report, see link: https://neighbourhood-enlargement.ec.europa.eu/document/download/760aacca-4e88-4667-8792-3ed08cdd65c3_en?filename=SWD_2023_692%20Kosovo%20report_0.pdf, (Last accessed on February 16, 2024).

³⁸ Kosovo Law Institute, Analysis of the satisfaction results of Court users and lawyers in the Basic Court in Pristina, in the Basic Court in Mitrovica and in the Basic Court in Peja, as a tool for court management, based on the methodology of the European Commission for the Efficiency of Justice (CEPEJ), see link: https://www.gjyqesori-rks.org/wp-content/uploads/reports/23353_KGJK_Alanliza_CEPEJ.pdf

³⁹ Betimi për Drejtësi, The head of the KGjK says that the Commercial Court cannot be operationalized due to the lack of budget, 21 January 2022, see link: <https://betimiperdrejtesi.com/kryesuesi-i-kgjk-se-thote-se-gjykata-komerciale-nuk-mund-te-funksionalizohet-per-shkak-te-mungeses-se-buxhetit/>, (Last accessed on February 18, 2024).

allocation and the requirements outlined in the law posed a significant challenge. Hence, it underscores the need for adequate financial support and resources to implement legal reforms effectively and ensure proper functioning of judicial institutions.

Article 57.1 of Code No. 04/L-123 of Criminal Procedure stipulates that the “*Defendant must have a defense attorney in cases of mandatory defense, including when the indictment has been filed against them for a criminal offense punishable by at least ten years of imprisonment*”. However, in February 2023, Code No. 08/L-032 of Criminal Procedure entered into force, reducing the criterion of mandatory defense to offenses punishable by at least five years of imprisonment (Article 56.1.1.3). This change has automatically increased the number of criminal offenses for which defense is mandatory to 176. Consequently, the implementation of this provision is expected to result in a significantly higher budgetary burden. To implement the new obligation under the Code No. 08/L-032 of the Criminal Procedure, the Judicial Council of Kosovo has requested an additional 400,000 euros to cover the increased expenses for defense lawyers with public funds. However, this request was not taken into account in the Law for Budget Appropriations for 2024.

In advancing access to justice, it is crucial to enact laws that offer effective solutions for various situations, particularly in maintaining the rule of law. The approval of these Laws must be preceded by an in-depth analysis of the problems, which must be carried out through an extensive consultation process with all relevant actors. However, in no case, addressing the problems related to citizens’ access to justice should be simply the adoption of Laws. If the adoption of laws is not accompanied by financial support of institutions mandated for their implementation, it results in legal norms advancing access to justice only on paper, with little to no change in practice. Therefore, it is essential to conduct a thorough budget assessment for each law, evaluating its cost and benefits. Additionally, the approval of any law should be accompanied by an adequate budget to enable its effective implementation.

6. Cost-benefit analysis

Legal aid services come with a wide range of costs and advantages. Some are direct costs and benefits arising from the provision of legal aid services. Others are the indirect consequences of such services for the individuals, the justice system, the economy, and society.⁴⁰ Therefore, for the evaluation of the economic efficiency of public policies, the cost-benefit analysis is used, which achieves this through the systematic measurement of costs and social benefits.⁴¹

Depending on the timing of the analysis, Cost-Benefit Analysis (CBA) can be conducted as either ex-post or ex-ante. An ex-post CBA is typically performed after a policy has been implemented to assess its performance, effectiveness, and whether it should be expanded or modified in decision-making processes. On the contrary, an ex-ante CBA is conducted before

⁴⁰ A TOOL FOR JUSTICE: A COST BENEFIT ANALYSIS OF LEGAL AID, World Bank, pg.12, see link: <https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>.

⁴¹ International Encyclopedia of the Social and Behavioral Sciences, 2001, <https://www.sciencedirect.com/topics/social-sciences/cost-benefit-analysis>.

the creation of a legal aid policy to determine the most effective ways to allocate funding and resources.⁴²

With the above in mind, the main objective of conducting a CBA is to quantify the net benefit (benefits minus costs) of a policy in a standardized and comparable manner. This includes three main components for a comprehensive assessment.

The first analytical block or initial step is to estimate what would be expected from the situation of doing nothing (i.e., no project). The second step involves creating a “project” situation by calculating the benefits and costs of pursuing this alternative. Finally, a comparison of these two situations results in net benefits expected to occur at different stages of legal aid policy implementation. The effectiveness of resource allocation for the proposed legal aid program will be assessed using these benefits as a basis for calculating a range of financial and economic performance indicators.⁴³

In this regard, several studies analyzed the costs and benefits attributed to alternative legal dispute resolution, advice and legal representation in courts, with the aim of expanding early access to dispute resolution mechanisms for poor and marginalized groups⁴⁴, including avoiding detention and sentencing costs.⁴⁵

In light of this, decision-makers should use cost-benefit analysis in each case to assess the financial effects of legal aid and related services and decide on the best way to address the justice gap and allocate funds more efficiently.

7. Conclusions

The aim of this policy paper is to illustrate the importance of the establishment of a robust and people-centered justice system with adequate government financing. A justice system that is firmly grounded in the needs and realities of its citizens, not only fosters a sense of security and trust among the population, but also plays a great role in upholding the rule of law. Adequate financing is an indispensable factor in ensuring the effectiveness of such a system.

Access to justice for all citizens, regardless of socio-economic situation is crucial. Thus, enabling low-income individuals, marginalized communities, and victims of discrimination to exercise their rights and seek justice is made possible through funding. In this regard, appropriate systems must be put in place to ensure that citizens who encounter legal issues

⁴² A TOOL FOR JUSTICE: A COST BENEFIT ANALYSIS OF LEGAL AID, World Bank, pg.12, see link: <https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>.

⁴³ Ibid, pg. 26.

⁴⁴ See Legal Aid Service Providers’ Network, Cost Benefit Analysis of the Uganda National Legal Aid Policy, May 2016, <http://www.laspnet.org/joomla-pages/reports/researchreports/405-cost-benefit-analysis-of-the-uganda-national-legal-aid-policy/file>.

⁴⁵ A TOOL FOR JUSTICE: A COST BENEFIT ANALYSIS OF LEGAL AID, World Bank, pg.18, see link: <https://documents1.worldbank.org/curated/en/592901569218028553/pdf/A-Tool-for-Justice-The-Cost-Benefit-Analysis-of-Legal-Aid.pdf>.

can easily access basic and first-line services. Kosovo should adopt cost-effective justice services, such as mediation, which benefits both the citizens involved and the judicial system.

On the other hand, when the same individuals approach courts, they must be granted justice promptly. In many instances – as this study illustrates in more detail – financial constraints have prevented the implementation of these alternatives. Compared to other sectors, such as primary healthcare or primary education, justice is not a priority in the state budget, despite the fact that courts are the final address where citizens seek resolution of their disputes. Moreover, in comparison to budget increases over the years, there has been no significant progress in this field. The general increase in government spending according to the Budget Allocation Laws has not been proportionally reflected even in the judicial system. In 2021 and 2022, the participation of the budget of the justice system in the total amount of government expenditures was 1.2%. Whereas, this percentage has dropped to 1.1% in 2023 and 2024. Initially, the data presented is disturbing because many citizens have no information at all about where they can seek for aid regarding their legal issues. However, in cases where this help is required by the courts, the most prominent problem in the framework of civil justice in Kosovo is the duration of handling civil cases. On the other hand, financial deficiencies cause the incapacity of the judicial system in other forms as well. Incapacity can be shown in the form of a small number of judges and legal associates, with lack of translation, and failure to establish new branches of courts.

Given these challenges and complexities, it is imperative for the government to ensure adequate financing. This funding should be preceded by thorough analyses that evaluate needs and effectiveness, ensuring that costs are maximally beneficial for citizens. In Kosovo's situation, with a limited budget, conducting an ex-ante Cost-benefit analysis before creating a policy on legal aid will help determine the most effective ways for funding, thereby guarding against unnecessary expenses. Therefore, aligning the justice system of Kosovo with the aspirations of the international community, in accordance with SDG 16.3, becomes a reasonable objective.

8. Recommendations

- Establish a tool to undertake further analysis of the cost of delivering universal basic justice. A thorough analysis of the costs of universal basic justice is needed, but it would require much more substantive investment than this initial research.
- All relevant actors of the rule of law should engage in joint activities aimed at raising awareness of the benefits of resolving disputes through the mediation procedure.
- In each case of the adoption of a certain policy, the institutions must analyze whether that policy is in line with the principles of people-centered justice.
- In each case of the adoption of a certain policy, the institutions should analyze the cost and benefits of the implementation of a certain analysis.
- In each case, after the approval of certain laws, the relevant budgetary means should be allocated for the implementation of that Law.

- Through the Budget Allocation Laws, the needs of the Free Legal Aid Agency should be met, so that this Agency can provide free legal aid in all parts of the Republic of Kosovo.
- The Kosovo Judicial Council should assess the overall cost related to the amount of funds required for the establishment of new branches of the courts, which according to the Law are mandatory to be established.
- The Assembly should allocate a sufficient budget for increasing the number of judges so that citizens are given the opportunity to receive justice within a reasonable time.
- The Assembly should allocate a sufficient budget for recruitment of professional associates, as required by Law No. 06/L-054 on the Courts, to increase the efficiency of the courts in providing justice to the citizens.
- The Assembly should allocate sufficient budget for the recruitment of translators, so that every citizen is granted the right to use the language they understand.